IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/178/2011

[Arising out of Order-in-Appeal No: III/M/288/2010, dated 3rd November 2010 of Commissioner of Central Excise (Appeals), Pune – III.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Chaitanya Ropes Pvt Ltd … ***Appellant***

versus

Commissioner of Central Excise
Pune – III ***…Respondent***

Appearance:

Shri MPS Joshi, Advocate for appellant

Shri Anil Chaudhary, Deputy Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 27/12/2018
Date of decision: 27/12/2018

ORDER NO: A/88298 / 2018

Per: C J Mathew

In this appeal of M/s Chaitanya Ropes Pvt Ltd against order-in-appeal no. III/M/288/2010 dated 3rd November 2010 of Commissioner of Central Excise (Appeals), Pune-III, the dispute is limited to the relevance of the expression 'place of removal' in determination of duty liability on 'ropes of plastic' cleared, with effect from 7th July 2009, out of the premises of their consignment agents.

2. Narrating the background, Learned Counsel for appellant contends that the rate of duty on the goods manufactured by them, were enhanced from 4% to 8% with effect from 7th of July 2009 and, in the show cause notice issued to them, it was the case of central excise authorities that such stocks, as were in possession of the consignment agent from that date should discharge liability at the enhanced rate and, to the extent that goods were removed from the premises of the appellant, duty of ₹ 52,472 should be recovered along with appropriate interest, besides penalty of ₹ 2,000 to be imposed

under rule 25 of Central Excise Rules, 2002.

3. According to Learned Counsel, the authorities had erroneously applied the definition of 'sale' in section 2(h) of Central Excise Act, 1944 to the depots of the consignment agent as the 'place of removal' to the extent of clearance from such premises after the enhanced duty came into force. It is the contention of Learned Counsel for appellant that 'place of removal' is relevant only for determining value of goods, as provided for in section 4 of Central Excise Act, 1944, and not to the determination of rate of duty, which is governed by rule 5 of Central Excise Rules, 2002 in pursuance of section 3 of Central Excise Act, 1944. Relying on the decision of the Tribunal in *Tamil Nadu Industrial Explosives Ltd v. Commissioner of Central Excise, Chennai [2010 (253) ELT 123 (Tri-Chennai)]*, it was contended, though in a reverse situation, that the determination of rate of duty with reference to 'place of removal' stood disapproved.

4. We have heard Learned Representative who reiterated the findings of the first appellate authority.

5. Having considered the rival submissions, and on perusal of the relevant provisions of Central Excise Act, 1944, it is amply clear that 'place of removal' is relevant only for determination of the value to be utilised for assessment of duty. No allegation is on record of any change or any alteration arising from the value adopted for the

purposes of discharge of duty liability at the time of removal from the factory. It is clear from the decision of the Tribunal in *re Tamil Nadu Industrial Explosives Ltd* that

> *'2. ……. No doubt, the depot to which the impugned goods have been cleared has been defined as a 'place of removal' for the purpose of valuation under Section 4 of the Act. Under the law, the price prevailing at the depot on the date of removal from the factory has a bearing on the assessable value. However, under the scheme of the law, the "depot" being defined as a 'place of removal' for the purpose of valuation under Section 4 does not appear to have any relevance for determining the rate of duty applicable to the impugned goods for which, the date of removal from the factory alone appears to be relevant as per provisions of Rule 9A. ……'*

6. Considering the decision of the Tribunal, and a plain reading of rule 5 of Central Excise Rules, 2002, the order impugned before us is patently beyond the scope of law. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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