IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Application No. E/MISC/86517/18 In Appeal No. E/1485/09

(Arising out of Order-in-Appeal No.YDB/215/M-II/2009 dated 8.10.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai-II).

M/s Marks Aleli (India) Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise, Mumbai-II	Respondent

Appearance:

Ms. Anjali Hirawat, Advocate	for Appellant
Shri Sanjay Hasija, Supdt. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 26.02.2019

Date of Decision: 26.02.2019

ORDER NO. **A/85394 / 2019**

Per: Dr. D.M. Misra

This appeal is filed against Order-in-Appeal No.YDB/215/M-II/2009 dated 8.10.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of branded toilet soaps for M/s Godrej Soaps Ltd. on job work (loan license) basis. During the relevant period from April, 1997 to January, 1999 they have

cleared the goods to M/s Godrej Soaps Ltd., on the basis of the price declared by them, claiming certain deductions from the price in arriving at the assessable value so as to compute the applicable duty on such value. It is the claim of the appellant that when the job worked goods were cleared to M/s Godrej Soaps Ltd., duty was paid on provisional basis and, after receiving the relevant data relating to actual deductions, the differential duty was paid by re-determining the assessable value. Initially, certain deductions were disallowed by the adjudicating authority which included freight, secondary packing, interest on receivable, bank charges etc. Consequently, a notice was issued to them demanding differential duty after disallowing the deductions with interest and penalty. On adjudication, the demand was confirmed and the matter travelled upto Commissioner (Appeals), who in turn upheld the order of the adjudicating authority. Hence, the present appeal.

3. Learned Advocate for the appellant submits that in the present appeal, they confined their argument to the deductions namely, freight charges, interest on receivable and bank charges, which were disallowed by the authorities below. She submits that in view of the principles of law settled by various Courts, the deductions on account of freight charges incurred for 'delivery of the goods from the depot to the premises of the buyers', interest on receivable and bank charges are admissible to them. It is her contention that even though necessary details for quantifying the deductions have been submitted before the authorities below, supported by the C.A. certificate, the same were not considered and deductions were disallowed by the authorities below. Learned Advocate further submits that since the assessments

were provisional during the relevant period, accordingly after finalization of the same, differential duty payable cannot be subjected to interest. In support, she has referred to the judgment of this Tribunal in the case of *Cadbury India Ltd. Vs. Commissioner of Central Excise – 2009 (246) ELT 342 (T).*

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals). On principle about admissibility of the said deduction, he does not dispute. However, he submits that during the relevant period, the assessment was not declared provisional nor the appellant have followed the prescribed provisions laid down under Rule 9B of the erstwhile Central Excise Rules, 1944. Consequently, interest is payable on the differential duty on re-calculation of the assessable value. In support, he referred to the judgment of Hon'ble Supreme Court and Hon'ble Jharkhand High Court in the case of *Metal Forgings Vs. Union of India – 2002 (146) ELT 241 (SC)* and *Commissioner of Central Excise, Jamshedpur Vs. Pre-Stressed Udyog (India) Pvt. Ltd. – 2016 (331) ELT 539 (Jhar)* respectively.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal is whether the appellant is entitled to deductions on account of freight charge, interest on receivable and bank charges during the relevant period from April, 1997 to January, 1999. In principle, there is no dispute of the fact that all these elements of expenses are eligible as deduction from the price in arriving at the assessable value and their admissibility to the appellant during the said period. The adjudicating authority in the order observed

that the appellant had failed to produce relevant records in support of quantification of deductions claimed by them to arrive at assessable value. For the purpose of quantification, the matter needs to be remanded to the adjudicating authority.

7. As far as applicability of interest on differential duty, if any, payable after redetermination of the assessable value is concerned, we are of the view that this issue is settled by the Hon'ble Jharkhand High Court in the case of *Pre-Stressed Udyog (India) Pvt. Ltd. (supra).* Besides, during the relevant period there was no provisional assessment resorted to by the appellant by following the prescribed procedure. Accordingly, the claim of the appellant that since the assessment was provisional, therefore, interest is not applicable, is not correct, hence not acceptable.

8. In the result, the impugned order is set aside and the appeal is remanded to the adjudicating authority for the purpose of quantification of differential duty and interest. Appeal is allowed by way of remand.

9. MA also stands disposed of.

(Dictated and pronounced in Court)

(P. Anjani Kumar) **Member (Technical)**	**(Dr. D.M. Misra)** **Member (Judicial)**

Sinha