CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 85233 of 2013

(Arising out of Order-in-Appeal No. BC/308/M-III/2012-13 dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s. Crompton Greaves Ltd. **Appellant**
3rd Floor, CG House,
Dr. Annie Besant Road,
Worli, Mumbai 400 030.

Vs.

Commissioner of Central Excise, Mumbai-III **Respondent**
3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (W),
Mumbai 400 604.

Appearance:

Shri Aditya Chitale, Advocate, for the Appellant
Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 21.02.2023
Date of Decision: 21.02.2023

FINAL ORDER NO. 85466/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Appeal No. BC/308/M-III/2012-13 dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III, whereby the Commissioner (Appeals) has upheld Order-in-Original No. 03/YDB/2006-2007 dated 29.06.2006 passed by the Additional Commissioner of Central Exc*ise, Mumbai-III, holding as follows:-*

"ORDER

(a) I confirm the Central Excise Duty of Rs. 29,44,101/- (Twenty Nine Lakhs forty-four Thousand one hundred and one only) due, but not paid on the goods, by the assessee under proviso to Section 11A(1) of Central Excise Act, 1944,

(b) I impose penalty of Rs. 29.44,101 (Rupees Twenty nine lakhs forty four thousand one hundred and one only) on them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

(c) I charge interest at appropriate rate for the relevant period, on short payment of duty, from them under Section 11AB of Central Excise Act."

2.1 Appellant is having manufacturing unit at Kanjurmarg, Mumbai and was procuring order for dispatching transformers directly to the site of the customer through their EPD (Project Division) at Chennai. In terms of this order the goods were directly dispatched to the consignee as the project for which the goods were meant and the customer was shown as EPD division at Chennai. For recovering the freight from the customer during the year 2001-02 and 2002-03 they raised debit notes for Rs.1,84,00,000/- and Rs.630/-. These freight charges were not made part of the assessable value taken for payment of duty.

2.2 A show cause notice dated 21.03.2006 was issued to the appellant asking them to show cause as to why:-

"(a) Duty of Rs.29,44,101/- (Twenty-nine Lakhs forty-four thousand one hundred and one only) due, but not paid, on the goods, should not be demanded and recovered from them under proviso to Section 11 A(1) of Central Excise Act, 1944.

(b) Penalty should not be imposed on them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

(c) Interest should not be charged on short payment of duty which also should not be recovered from them under Section 11AB of Central Excise Act, 1944."

2.3 The show cause notice was adjudicated by the Additional Commissioner as per the order referred to in para 1 above and appeal against the same has been dismissed by the impugned order.

3.1 We have heard Shri Aditya Chitale, Advocate and Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits:-

- In the present case the place of removal of the goods was from the factory gate at Mumbai. In fact that is well established from the invoices raised for clearance of the goods. Therefore the proceedings whereby the freight element is sought to be added stating place of removal as EPD Chennai is not proper.
- Duty has been correctly paid on the basis of the assessable value determined on the basis of transaction value with the customer.
- Rule 5 of Central Excise Valuation Rules is not applicable in the present case.
- Accordingly by making such a demand, the impugned order has proceeded on incorrect presumption of the fact as the goods were dispatched by the appellant directly from their factory to the site of the ultimate customer and not to the EPD. The impugned order is bad in law and liable to be set aside.
- The show cause notice is time barred. The goods were dispatched during the period 01.04.2001 to 31.03.2003 and excise duty was paid thereon as reflected in the ER-1 return. The show cause notice has been issued on 27.03.2006 i.e. much beyond the normal period of limitation.
- In support he would rely on the following decisions:-
    - Bathinda Industrial Gases Pvt. Ltd. [MANU/CE/0426/2022]
    - Jindal Tubular (India) Ltd. [MANU/CE/0254/2022]
    - Ispat Industries Ltd. [2015 (14) SCC 712]
    - Paper Products Ltd. [2016-TIOL-73-CESTAT-MUM]
    - PSL Ltd. [2005 (185) ELT 59]
    - West Coast Paper Mills Ltd. [2004 (172) ELT 493].

3.3 Learned AR reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 For dismissing the appeal filed by the appellant, Commissioner (Appeals) has in her order observed as follows:-

“7. There is no dispute that the appellants have recovered freight charges from their EPD (Project Division) by way of debit notes. The department’s contention is that EPD (Project Division) in the place of removal and hence the freight charges recovered from the factory to the place of removal is to be included in the transaction value. In terms of Rule 5 of Valuation Rules, 2000, expenses incurred upto the place of removal has to be included in the Assessable Value. Hence expenses upto the place of removal which includes the freight charges form part of the transaction value. The difference in opinion between the department and the appellant lies in the place of removal. It is the contention of the appellants that the sale has taken place at the factory gate and the price is inclusive of the freight charges. Hence, no further amount should be added to the Invoice Value for payment of duty. The department's contention is that since the place of removal is EPD (Project Division) all expenses including the freight charges incurred upto the place of removal forms part of transaction value and are liable to duty. In this regard, the appellants submitted few sample invoices along with the appeal. I have perused Invoices No.808 dt.31.12.2001 and 1097 dt. 8.3.2002. These invoices show details like clearance to their EPD (Project Division) as their customer and contain remark" IDT TO- EPD" & NO SALE TAX. The implication NO SALES TAX means that no sale involved and the goods in question were inter. departmental transfer. Thus it is evident that the goods have been transferred to their EPD (Project Division), Chennai, and in turn goods from Chennai, were removed to the customers place, meaning thereby that the place of removal is the EPD (Project Division), Chennai, after the clearance of the said goods from the factory as per Section 4(3)(c) of C.E.A 1944 for the purpose of valuation. The same is also affirmed from the fact that the orders are placed by the EPD

(Project Division) who execute the said orders and also collect the payments thereof from the customers.

8. The Adjudicating Authority had categorically emphasized in Para 30 of the impugned order that, as per the debit notes it is clear that freight charges are incurred from the factory (Mumbai) to the place of removal (Chennai) and hence, excise duty is payable on such freight charges. It is the contention of the appellants that with the amendments in the Act and Rules made there under, they are statutorily not required to mention the freight element in the invoices. Here, I observe that at the same time there is no provision in the said Act or the rules made there. under, for the appellants to recover freight charges from the customer and also from their EPD Division, Chennal. Over and above, even if they had recovered the freight charges, they should have intimated the Department and paid duty thereon. Regarding the plea that the SCN is hit by limitation, it is a fact that the collection of freight charges from the EPD (Project Division) was never intimated to the department nor known to the department until the conduct of EA 2000 Audit. The said discrepancy would have gone unnoticed but for the audit team leading to considerable loss of due revenue to the department. Hence, the appellants cannot take the plea that there was no intention to evade payment of duty. This act on the part of the appellants, make the case for invocation of extended period and invokation of Section 11AC of the said Act. Thus it is a clear case of suppression of facts with intention to evade payment of duty. Hence, provisions of Section 11A (1) read with Section 11AC are applicable, Where duty is recoverable under Section 11A of the said Act, interest is recoverable under Section 11AB of the said Act."

4.3 The only issue for our consideration is to determine as to what is place of removal in the present case. We reproduce below the invoices on the sample basis:-

Power Systems Group
Business Unit of
Crompton Greaves Ltd.

ORIGINAL
FOR BUYER

Crompton Greaves

Permanent Income Tax No. : AAACC.3840 K BMY / SP / Rg / 53
Central Excise Series No. 65 A Form Invoice
Invoice for removal of Excisable Goods from a Factory or ware house on Payment of Duty under Rules 11 of C.Ex.(No.2) 2001
ECC No. AAACC3840KXM 011. Regd. No. MF. 2904080042
Name of Excisable Commodity : Transformers & Spares,
Chapter Sub Heading No. 8504.00

INVOICE CUM CHALLAN

PLA No : NES (68)471

TRANSFORMER DIVISION
Factory : Kanjur Marg, (East), Mumbai 400 042.
Regd. Off. : 1, Dr. V. B. Gandhi Marg, Mumbai 400 001.

Authorised Signatory

No. & Date of Notification under which any concessionla rates of duty are claimed.
EXCISE RANGE VIII : C/O. CROMPTON GREAVES LTD., KANJUR MARG (E), MUMBAI - 400 042. DIV . VIKHROLI : POLYSHOOR BLDG., L.B.S. MARG, VIKHROLI (W), MUMBAI - 400 083. COMMISSIONARATE MUMBAI-II

Name & address of consignee :
Superintending Engineer,
West Bengal State Electy.Board
Chinsurah Transmission Field
Zone,400/220 Kv Sub Station,
Arambag,Goghat, Dist.-Hooghly. W.B.

LR/RR No. : CGL-001 dt. 27/04/2002
Work Order : T 8773/2.
ECC

Intimation No. : DD No 750979
Invoice No. : D 0110
Insurance : INSURED BY CUSTOMER
Date : 27/04/2002
110
Freight : Paid
Cust Code No. :
KVA --> 315000
Annexure II Declaration No. of dt. :

Customer's Name :
Crompton Greaves Limited.
Engineering Project Division,
Bombay Mutual Bldg.,NSCB Road,
Parry Corner,Chennai.600 001.

Customer's Po No & Dt. : TR/JBIC/SUPPLY/LOT IV/174.

<HOME>

Please Receive the following GOODS IN GOOD CONDITION.

	Description & Specification of Goods	Identification Mark	Product Code	Chapter Sub heading No.	Quantity	Total assessable value per unit	Total assessable value of goods	Rate of Duty	Total Duty Payable	Total Value
1)	TRANSFORMER. 315 MVA,400/220/33 kV, Auto Transformer. Sr.No.T 8773/2. { Gas Filled }		TRANS	8504.00	1	3,65,00,000.00	3,65,00,000.00	16%	58,40,000.00	3,65,00,000.00

(RS. THREE CRORE SIXTY FIVE LAKH ONLY)

Total Value 36500000.00
Total Amount 36500000.00

Customer's CST No./ST No. :

PLA E. No. : dt. :
For Rs.
RG23A Part II E. No. : dt. :
For Rs.
RG23A Part II E. No. : dt. :
For Rs.
Date & Time of Preparation : 27/04/2002 16:30 House : SIXTEEN : THIRTY
Vehicle No. DN 09 A-9085 mhtc Logistic Limited.
Time of Removal in figures : 23:30
Time of Removal in words : TWENTY THREE : THIRTY
Total Duty Payable in words : (RS. FIFTY EIGHT LAKH FORTY THOUSAND ONLY)
Date of Removal 27/04/2002

Sales Tax Declaration Form should be sent to us with 15 days failling which a supplementary bill will follow interest at the rate of 20% per annum will be charged on account of unpaid one month after despatch

"I/We hereby certify that my/our registration certificate under the B.S.T. Act, 1959 is in force on the date on which the sale of the goods specified in this Bill/Cash Memorandum is made by me/us and that the transaction of sale covered by this Bill/Cash memorandum has been effected by me/us in the regular course of my/our business.

Certified that the particulars given below are true & correct. The amount indicated represents the price actually charged & that there is no flow of additional consideration directly or indirectly from the buyer.

N.B. . We take no responsibility for loss, breakages or short weight after the goods have ben made over to the Carrier.
Any complaints to the quality must be made immediately upon receipt of [illegible].
Please Sign and return one Challan.

CERTIFIED that the particulars given above are correct.
CROMPTON GREAVES LIMITED
TRANSFORMER DIVISION

Our Sales Tax No.. ---> BST Registration Certificate No. 400018/S-123 Effective 1.4.96
CST Registration Certificate No. 400018/C-104 Effective 1.4.96

Power Systems Group
Business Unit of
Crompton Greaves Ltd.

FOR BUYER

Crompton Greaves

Permanent Income Tax No. : AAACC.3840 K BMY / SP / Rg / 53
Central Excise Series No. 65 A Form Invoice
Invoice for removal of Excisable Goods from a Factory or ware house on Payment of Duty under Rules 11 of C.Ex.(No.2) 2001
ECC No. AAACC3840KXM 011. Regd. No. MF. 2904080042
Name of Excisable Commodity : Transformers & Spares,
Chapter Sub Heading No. 8504.00

INVOICE CUM CHALLAN

PLA No : NES (68)471

TRANSFORMER DIVISION
Factory : Kanjur Marg, (East), Mumbai 400 042.
Regd. Off. : 1, Dr. V. B. Gandhi Marg, Mumbai 400 001.

Authorised Signatory

No. & Date of Notification under which any concessionla rates of duty are claimed.
EXCISE RANGE VIII : C/O. CROMPTON GREAVES LTD., KANJUR MARG (E), MUMBAI - 400 042. DIV . VIKHROLI : POLYSHOOR BLDG., L.B.S. MARG, VIKHROLI (W), MUMBAI - 400 083. COMMISSIONARATE MUMBAI-II

Name & address of consignee :
Superintending Engineer,
West Bengal State Elecy.Board.
Chinsurh Transmission Field
Zone,400/220 KV Sub Station,
Arambag,Goghat, Dist.-Hooghly. W.B.

LR/RR No. : 003 dt. 31/03/2002
Work Order : T 8773/1.
ECC

Intimation No. : DD No 750975
Invoice No. : D 1212
Insurance : INSURED BY CUSTOMER
Date : 31/03/2002
1212
Freight : Paid
Cust Code No. :
KVA --> 315000
Annexure II Declaration No. of dt. :

Customer's Name :
Crompton Greaves Limited.
Engineering Project Division,
Chennai.600 001.

Customer's Po No & Dt. : IDT to EPD.

<HOME>

Please Receive the following GOODS IN GOOD CONDITION.

	Description & Specification of Goods	Identification Mark	Product Code	Chapter Sub heading No.	Quantity	Total assessable value per unit	Total assessable value of goods	Rate of Duty	Total Duty Payable	Total Value
1)	TRANSFORMER. 315 MVA,400/220/33 kV, Auto Transformer. { Gas Filled } Sr.No.T 8773/1.		TRANS	8504.00	1	3,65,00,000.00	3,65,00,000.00	16%	58,40,000.00	4,23,40,000.00
			TESTING CHARGES			2,92,000.00	2,92,000.00	16%	46,720.00	3,38,720.00

(RS. FOUR CRORE TWENTY SIX LAKH SEVENTY EIGHT THOUSAND SE VEN HUNDRED TWENTY ONLY)

Total Value 42678720.00
Total Amount 42678720.00

Customer's CST No./ST No. : P.O.No.TR/JBIC/Supply/Lot-IV/174 dt 27/3/00

Total Duty(In Figures) 5886720.00

PLA E. No. : dt. :
For Rs.
RG23A Part II E. No. : dt. :
For Rs.
RG23A Part II E. No. : dt. :
For Rs.
Date & Time of Preparation : 31/03/2002 17:30 House : SEVENTEEN : THIRTY
Vehicle No. GJ 6 W-7115 J H Parabia.(Trans.)Pvt.Ltd.
Time of Removal in figures : 23:30
Time of Removal in words : TWENTY THREE : THIRTY
Total Duty Payable in words : (RS. FIFTY EIGHT LAKH EIGHTY SIX THOUSAND SEVEN HUNDRED TWENTY ONLY)
Date of Removal 31/03/2002

Sales Tax Declaration Form should be sent to us with 15 days failling which a supplementary bill will follow interest at the rate of 20% per annum will be charged on account of unpaid one month after despatch

"I/We hereby certify that my/our registration certificate under the B.S.T. Act, 1959 is in force on the date on which the sale of the goods specified in this Bill/Cash Memorandum is made by me/us and that the transaction of sale covered by this Bill/Cash memorandum has been effected by me/us in the regular course of my/our business.

Certified that the particulars given below are true & correct. The amount indicated represents the price actually charged & that there is no flow of additional consideration directly or indirectly from the buyer.

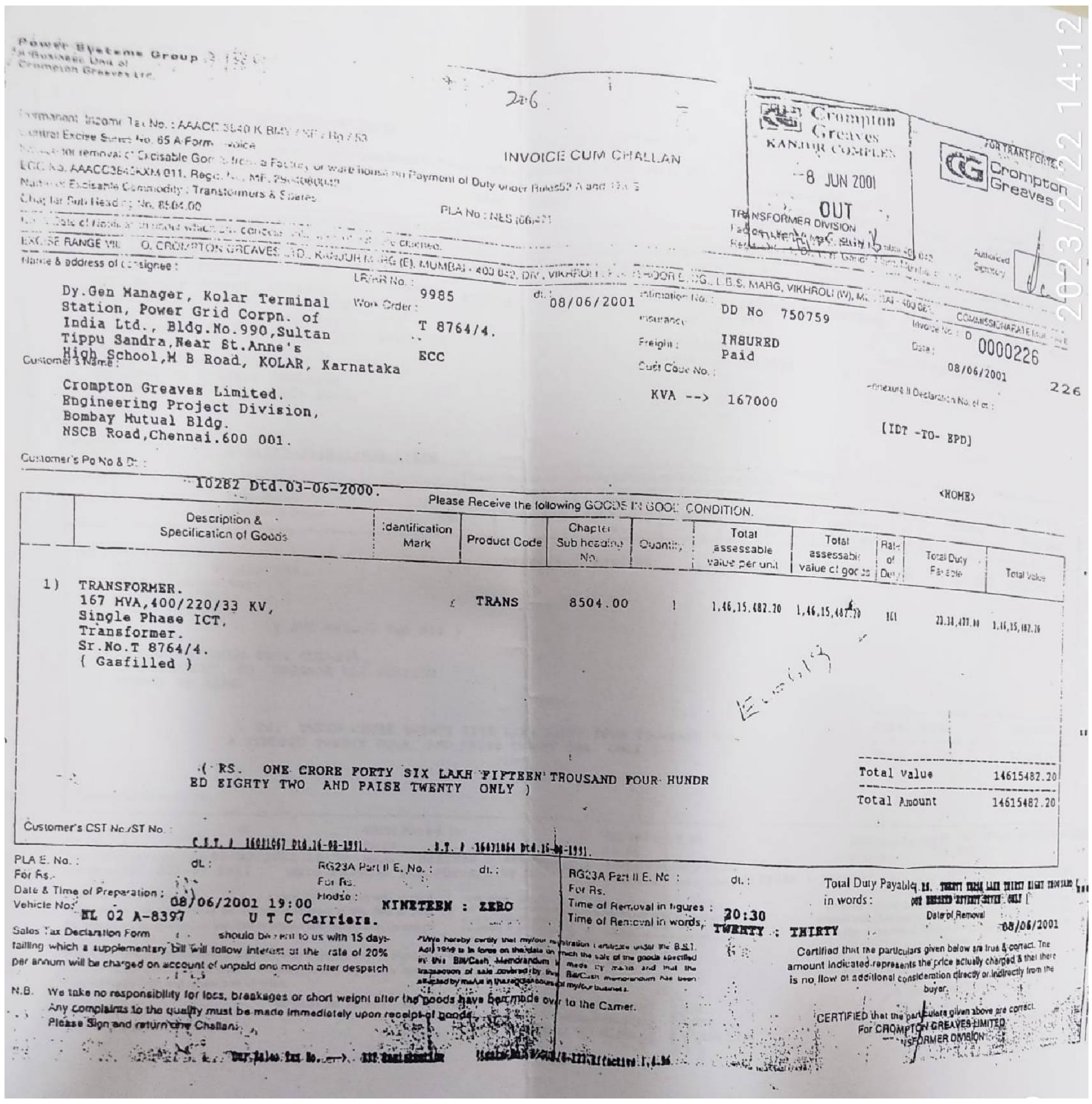
N.B. . We take no responsibility for loss, breakages or short weight after the goods have ben made over to the Carrier.
Any complaints to the quality must be made immediately upon receipt of goods.
Please Sign and return one Challan.

CERTIFIED that the particulars given above are correct.
For CROMPTON GREAVES LIMITED
TRANSFORMER DIVISION

Our Sales Tax No. ---> BST Registration Certificate No. 400018/S-123 Effective 1.4.96
CST Registration Certificate No. 400018/C-104 Effective 1.4.96
Authorisation U/S 24 of the BST Act 1959 No. 400018/A-40 Effective 1.4.96

Receiver's Signature & Stamp

Signature of the Licencee or his authroised agent


Power Systems Group
A Business Unit of
Crompton Greaves Ltd.

INVOICE CUM CHALLAN

Central Excise Serial No. 65 A Form Invoice
Nature of Excisable Commodity : Transformers & Spares
Chapter Sub Heading No. 8504.00
PLA No : NES (06)
EXCISE RANGE VIII O. CROMPTON GREAVES LTD., KANJUR MARG (E), MUMBAI - 400 042, DIV. VIKHROLI
L.B.S. MARG, VIKHROLI (W), MUMBAI - 400 083

Crompton Greaves
KANJUR COMPLEX
-8 JUN 2001
OUT
TRANSFORMER DIVISION

FOR TRANSFORMER
CG Crompton Greaves
Authorised Signatory

Name & address of consignee :
Dy.Gen Manager, Kolar Terminal Station, Power Grid Corpn. of India Ltd., Bldg.No.990,Sultan Tippu Sandra,Near St.Anne's High School,M B Road, KOLAR, Karnataka

LR/RR No. : 9985 dt. : 08/06/2001
Work Order : T 8764/4.
ECC
DD No 750759
Insurance : INSURED
Freight : Paid
Cust Code No. :
KVA --> 167000
Invoice No. : D 0000226
Date : 08/06/2001
226
[IDT -TO- EPD]
<HOME>

Customer's Name :
Crompton Greaves Limited.
Engineering Project Division,
Bombay Mutual Bldg.
NSCB Road,Chennai.600 001.

Customer's Po No & Dt :
10282 Dtd.03-06-2000.

Please Receive the following GOODS IN GOOD CONDITION.

	Description & Specification of Goods	Identification Mark	Product Code	Chapter Sub heading No.	Quantity	Total assessable value per unit	Total assessable value of goods	Rate of Duty	Total Duty Payable	Total Value
1)	TRANSFORMER. 167 MVA,400/220/33 KV, Single Phase ICT, Transformer. Sr.No.T 8764/4. (Gasfilled)		TRANS	8504.00	1	1,46,15,482.20	1,46,15,482.20	16%	[illegible]	1,46,15,482.20

(RS. ONE CRORE FORTY SIX LAKH FIFTEEN THOUSAND FOUR HUNDRED EIGHTY TWO AND PAISE TWENTY ONLY)

Total Value 14615482.20
Total Amount 14615482.20

Customer's CST No./ST No. :

Date & Time of Preparation : 08/06/2001 19:00 NINETEEN : ZERO
Vehicle No : KL 02 A-8397 U T C Carriers.
Time of Removal in figures : 20:30
Time of Removal in words : TWENTY : THIRTY
Date of Removal 08/06/2001

N.B. We take no responsibility for loss, breakages or short weight after the goods have been made over to the Carrier.
Any complaints to the quality must be made immediately upon receipt of goods.
Please Sign and return the Challan.

CERTIFIED that the particulars given above are correct.
For CROMPTON GREAVES LIMITED
TRANSFORMER DIVISION

4.4 From the perusal of the invoices, it is quite evident that the goods were directly dispatched by the appellant from their factory to the site of the ultimate customer.

4.5 The above manner of preparation of invoice has been recognized by the Board by way of Circular No. 96/7/1995 dated 13,02.1995, clarifying as follows in respect of the admissibility of Modvat Credit to the consignee:

"1. A registered person places an order on a manufacturer for supply and delivery of goods directly to a consumer and the goods are accordingly transported from the manufacturer's premises to the user's premises without being brought to the registered person's premises. In such a situation manufacturer will issue an invoice under Rule 52A. This invoice under Rule 52A will contain, in addition to the prescribed details including the consignee's name and address, mentioned therein, the registered person's name and address, on account of whose instructions the goods have been despatched. The consignee in this case will be the end user. In such a situation the registered

person's invoice is not required for availment of Modvat credit. The duplicate copy of the manufacturer's invoice under Rule 52A will serve as cover for transport and for availment of Modvat by the end user."

Undisputedly the goods are directly dispatched from the factory premises of the appellant to the project site. Further the invoice also shows that the insurance against it has been paid by the customer for transportation of the goods and has been borne by the customer and not by the appellant. Freight also is shown to have been paid separately over and above the invoice value. All the above facts show that the goods were offered for delivery at the factory gate and not from the premises of the EPD Division at Chennai. No evidence has been produced by the Revenue at any time of proceedings to show that the goods were cleared by the appellant from their factory to EPD Chennai and thereafter from Chennai to the project site. In absence of any such evidence showing transportation of the goods to the premises of EPD Division, the entire premise on which the case is based has to fail on factual basis.

4.6 Further we find that the issue also is no more res integra and has been decided by the Tribunal in various decisions referred to by the learned counsel. In case of Paper Products Ltd., following has been held:-

"4. Revenue's case is that the sale is not a factory gate sale. The delivery not being at the factory gate, valuation is to be done as per the provisions of Section 4(1)(b) read with Valuation Rules. Rule, 5, which is the applicable Rule, provides that where any excisable goods are sold in the circumstances specified in clause (a) of sub-Section (1) of Section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable good shall be deemed to be the transaction value, excluding the actual cost of transportation from the place of removal upto the place of delivery of such excisable goods provided the cost of transportation is charged to the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods. And, according to learned A.R.,

the transportation charges are not shown separately in the invoice.

5. The only question that needs determination is whether the sale of goods was completed at the factory gate in order to consider the transaction value as per invoices. We find from the purchase order that the freight charges are to the buyer's account. Merely because these are not mentioned separately is no reason to conclude that sale is not complete at the factory gate. The Commissioner in his Order did not reach any conclusion as to the fact of sale at the factory gate. The Commissioner only held that "......Presuming that the sale of goods is complete at the factory gate, then there was no necessity for the assessee to recover any separate charges on account of transportation and insurance cost. By recovering the amount separately from their buyers it is conclusively proved that the sale is not complete at the factory gate.........." The only reasoning given by the Commissioner is that there was no necessity to recover freight charges separately on account of transportation. We do not agree with this reasoning because, effectively, the payment for purchase in this case has been split into invoice value (for goods) and debit notes for charging transportation costs. Merely because the transport has been arranged by appellant on buyers request and recovered from buyer through debit notes cannot be a ground for denying substantial benefit under the law laid down in Section 4. The law requires that duty is not to be paid on the transportation charges which are borne by the buyers. In any case the freight is mentioned as "To our Account" in the purchase order. Reliance is placed on the judgment in the following cases -

(i) Commissioner of Central Excise, Nashik Vs. Garware Enterprises Ltd. 2014 (301) ELT 349 (Tri. - Mumbai).

(ii) Commissioner of Central Excise, Nashik Vs. General Metallisers Ltd. - 2014 (300) ELT 534 (Tri.-Mumbai).

(iii) Commissioner of Central Excise, Nashik Vs. Techno Force (I) Pvt. Ltd. - 2014 (310) ELT 951 (Tri. - Mumbai). = 2014-TIOL-1943-CESTAT-MUM

(iv) Goodyear India Ltd. Vs. Commissioner of Central Excise Delhi-IV - 2014 (301) ELT 410 (Tri.-Del).

The learned A.R. placed reliance on the Hon'ble Apex Court judgment in the case of Commissioner of Customs & Central Excise, Aurangabad Vs. M/s Roofit Industries Ltd. - 2015-TIOL-87-SC-CX. We have seen the judgment. We find that in this case the goods were to be delivered at the place of the buyer and it is only at that place that the acceptance of supplies was to be affected. In the present case, circumstances are different. Revenue has not been able to show that the sale did not take place at the factory gate."

4.7 In the case of Ispat Industries Ltd. [2015 (324) ELT 670 (SC)] after considering Rule 5 and Rule 7 of Central Excise Rules, 2002, Hon'ble Supreme Court has observed as follows:-

*"**18.** By an Amendment Act which came into effect on 1-7-2000, Section 4 was substituted yet again as follows :-*

***"Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -** (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -*

(a) In a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, by the transaction value;

(b) In any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purpose of this section, -

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) Person shall be deemed to be "related" if -

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly in the business of each other.

Explanation. - In this clause -

(i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (64 of 1969); and

(ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);

(c) "place of removal" means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty,

from where such goods are removed;

(d) "transaction value" means the price actually paid or payable for the 'goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter;

but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

19. *A cursory reading of the substituted provision makes it clear that the concept of "normal value" has given way to the concept of "transaction value". Thus, no longer is there a normative price for purposes of valuation of excisable goods. The actual price that is paid or payable on each removal of goods becomes the transaction value. Interestingly, it will be noticed that under Section 4(3)(c), the place of removal is defined as it had been defined in the substituted Section 4 (by the 1973 Amendment) before its further amendment in 1996. What is conspicuous by its absence in the present Section is Section 4(2) and sub-section (b)(iii) in the previous Section 4 (after its amendment in 1996). It is clear therefore, that for the second period in question in the present case, namely, 1-7-2000 to 31-3-2003, the depot, premises of a consignment agent or any other place from which excisable goods are to be sold after their clearance from the factory are no longer places of removal. Also, the definition of "transaction value" makes it clear that freight or transportation expenses are not included in calculating the excise duty payable.*

20. *It is necessary also to refer to Rules 5 and 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 which came into force on the same date as the amendment to Section 4, i.e., 1-7-2000. These Rules read as under :-*

*"**Rule 5.***

Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the actual cost of transportation from the place of removal upto the place of delivery of such excisable goods provided the cost of transportation is charged to *the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods.*

Rule 7.

Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."

21. *The actual cost of transportation from the place of removal up to the place of delivery of excisable goods is excluded from the computation of excise duty provided it is charged to the buyer in addition to the price of goods and shown separately in the invoices for such goods. Interestingly, despite the substituted Section 4 not providing for a depot or other premises as a place of removal, Rule 7 deals with the normal transaction value of goods transferred to a depot or other premises which is said to be at or about the same time or the time nearest to the time of removal of goods under assessment.*

22. *To complete the picture, by an Amendment Act with effect from 14-5-2003, Section 4 was again amended so as to re-include sub-clause (iii) of old Section 4(3)(b) (pre 2000) as Section 4(3)(c)(iii). This amendment reads as follows :-*

"(3)(c)(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;"

Also, Rule 5 of the Central Excise Rules was substituted, with effect from 1-3-2003, to read as follows :

*"**Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.*

Explanation 1. - "Cost of transportation" includes -

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."

***23.** It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.*

***24.** It will thus be seen that, in law, it is clear that for the period from 28-9-1996 up to 1-7-2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods. As a matter of law therefore, the Commissioner's order and Revenue's argument based on that order that freight charges must be included as the sale in the present facts took place at the buyer's premises is incorrect. Further, for the period 1-7-2000 to 31-3-2003 there will be no extended place of* *removal, the factory premises or the warehouse (in the circumstances mentioned in the Section), alone being places of removal. Under no circumstances can the buyer's premises, therefore, be the place of removal for the purpose of Section 4 on the facts of the present case.*

25. *It now remains to deal with some of the judgments cited at the Bar. Escorts JCB Ltd. v. CCE, (2003) 1 SCC 281 = 2002 (146) E.L.T. 31 (S.C.), was strongly relied upon by Shri Bagaria and sought to be distinguished by Shri Panda. The facts of Escorts JCB's case are similar to the facts in the present case. The show cause notice in that case alleged that freight and transit insurance were charged from buyers but no central excise duty was paid by misdeclaring the place of removal as the factory gate instead of the buyer's premises. It will be noted that just as in the present case, the price was "ex-works" and exclusive of freight insurance, etc. After setting out Section 4 post its amendment in 1996, this Court held :-*

"A perusal of the orders passed by the authorities and CEGAT shows that since transit insurance was arranged by the assessee, therefore it was inferred and held that the ownership of the goods was retained by the assessee until it was delivered to the buyer on the reasoning that otherwise there would be no occasion for the seller, namely, the assessee to take risk of any kind of damage to the goods during transportation. To us, the whole reasoning seems to be untenable. The two aspects have been mixed up - one relating to the transaction of sale of the goods and the other arranging for the transit insurance for the buyer and charging the amount expended for the purpose from him separately." [at para 8]

"From the above passage it is clear that ownership in the property may not have any relevance insofar as insurance of goods sold during transit is concerned. It would therefore not be lawful to draw an inference of retention of ownership in the property sold by the seller merely by reason of the fact that the seller had insured such goods during transit to the buyer. It is not necessary that insurance of the goods and the ownership of the property insured must always go together. It may be

depending upon various facts and circumstances of a particular transaction and terms and conditions of sale. A reference has also been made to Colinvauz's Law of Insurance, 6th Edn. by Robert Merkin to indicate that there may be insurance to cover the interest of others, that is to say, not necessarily the person insuring the interest must be the owner of the property." [at para 10]

26. *This Court then went on to follow Bombay Tyre International's case and ultimately held :-*

"In view of the discussion held above, in our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and the transit insurance. Such a conclusion is not sustainable." [at para 12]

27. *We are inclined to the opinion that the Tribunal was correct in relying upon this judgment on the facts in the present case and on the Circular dated 3-3-2003, which specifically stated, following the said judgment, that insurance of goods during transit cannot possibly be the sole consideration to decide ownership or the point of sale of goods.*

28. *Similarly in VIP Industries Ltd. v. Commissioner of Customs & Central Excise, (2003) 5 SCC 507 = 2003 (155) E.L.T. 8 (S.C.), this Court was faced with the following question :-*

"The question for consideration in both these appeals is whether in cases where a manufacturer includes equalised freight in the price of the goods and sells the goods all over the country at a uniform price, the Department is entitled to compute value by including the cost of transportation from the factory to the depot. This question was decided by this Court in the case of Union of India v. Bombay Tyre International Ltd. [(1984) 1 SCC 467 : 1984 SCC (Tax) 17 : 1983 (14) E.L.T. 1896] It was thereafter confirmed in the case of Govt. of India v. Madras Rubber Factory Ltd. [(1995) 4 SCC 349 : 1995 (77) E.L.T. 433]" [at para 3]

29. *Like the Escorts JCB's case this judgment was also concerned with Section 4 as it stood after the amendment of 1996 but before the amendment of 2000. This Court held :-*

"After the amendment, the Department sought to include in the value the cost of transport from factory to the depot, even in case where the manufacturer sold the goods at a uniform price all over the country by including the element of equalised freight. The Tribunal has upheld the view of the Department on the reasoning that by this amendment the definition of the term "place of removal" has been extended to include the depot. The Tribunal has also held that Section 4(2) which excluded the cost of transportation from the place of removal to the place of delivery was not amended when the definition of the term "place of removal" was extended. According to the Tribunal the result was that only the transport charges from the place of removal to the place of delivery were to be excluded from the value.

We have heard the parties at length. In our view, Section 4 has to be read as a whole. Under Section 4(1)(a), the normal price is the price at which goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and price is the sole consideration for sale. Therefore, the normal price is the price at the "time of delivery" and "at the place of removal". Before the amendment, the place of removal was only the factory or any other place or premises where the excisable goods were produced or manufactured or a warehouse or any other place or premises where any excisable goods have been permitted to be deposited without payment of duty. Thus, the price would be the price at that place. By the amendment proviso (ia) to Section 4(1)(a) has been added. Under Section 4(1)(a)(ia) where the price of the goods is different for different places of removal, each such price was deemed to be the normal price of such goods in relation to "such place of removal". Thus, if the place of removal was the factory, then the price would be the normal price at the factory. If the place of removal was some other place like a depot or the premises of a consignment agent and the price was different then that different price would be the price. It is because the newly added proviso (i-a) to Section

4(1)(a) was now providing for different prices at different places of removal that the definition of the term "place of removal" had to be enlarged. Thus the amendment was not negativing the judgments of this Court. If that had been the intention it would have been specifically provided that even where price was the same/uniform all over the country, the cost of transportation was to be added.

Thus in cases where the price remains uniform or constant all over the country, it does not follow that value for the purpose of excise changes merely because the definition of the term "place of removal" is extended. The normal price remains the price at the time of delivery and at the place of removal. In cases of equalised freight it remains the same as per the judgments of this Court set out hereinabove.

In our view, the amendments have made no difference to the earlier position as settled by this Court. In this view of the matter, we are unable to uphold the judgments of the Tribunal. They are accordingly set aside. The appeals are allowed with consequential relief. There shall be no order as to costs." [paras 5 to 8]

30. *In Prabhat Zarda Factory Limited v. CCE, 2002 (146) E.L.T. 497 (S.C.), this Court held :-*

"In these matters, the question is whether freight and insurance charges are to be included in the assessable value for the purposes of excise. This question is covered by the judgment of this Court in the case of Escorts JCB Ltd. v. Commissioner of Central Excise, Delhi-II [2002 (146) E.L.T. 31 (S.C.)]. The only difference which has been pointed out is that in the Escorts case (supra) the sale was at the factory gate whereas in these cases, the sale is from the depot. Learned counsel for the appellants admit that the freight and insurance charges up to the depot would be includible in the assessable value for the purposes of excise. However, the sale being at the depot, the freight and insurance for delivery to the customers from the depot would not be so includible as per the said judgment."

This judgment, therefore, also holds that even in a depot sale, freight and insurance for delivery to customers from the depot to their premises cannot possibly be included, and followed the Escorts JCB case supra.

31. *With this we come to two recent judgments of this Court. In CCE & Customs v. Roofit Industries Ltd., 2015 (319) E.L.T. 221 (S.C.), this Court, after distinguishing the Escorts JCB's case, stated :-*

"The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected, namely, whether it is on factory gate or at a later point of time, i.e., when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of the provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with the Valuation Rules.

In the present case, we find that most of the orders placed with the respondent assessee were by the various government authorities. One such order, i.e., order dated 24-6-1996 placed by Kerala Water Authority is on record. On going through the terms and conditions of the said order, it becomes clear that the goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, Central excise duty, loading, transportation, transit risk and unloading charges, etc. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier, namely, the assessee. As per the "terms of payment" clause contained in the procurement order, 100% payment for *the supplies was to be made by the purchaser after the receipt and verification of material. Thus, there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. From the aforesaid, it would be manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.*

The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of the Sale of Goods Act, the property in goods was transferred at that time only. Section 19 reads as under :

"19. Property passes when intended to pass. - *(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

These are clear finding of facts on the aforesaid lines recorded by the Adjudicating Authority. However, CESTAT did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in Escorts JCB Ltd. [(2003) 1 SCC 281 : (2002) 146 E.L.T. 31] Obviously the exact principle laid down in the judgment has not been appreciated by CESTAT." [at paras 12-15]

32. *It will be seen that this is a decision distinguishing the Escorts JCB's case on facts. It was found that goods were to be delivered only at the place of the buyer and the price of the goods was inclusive of transportation charges. As transit damage* *on the assessee's account would imply that till the goods reached their destination, ownership in the goods remained with the supplier, namely, the assessee, freight charges would have to be added as a component of excise duty. Further, as per the terms of the payment clause contained in the procurement order, payment was only to be made after receipt of goods at the premises of the buyer. On facts, therefore, it was held that the sale of goods did not take place at the factory gate of the assessee. Also, this Court's attention was not drawn to Section 4 as originally enacted and as amended to demonstrate that the buyer's premises cannot, in law, be "a place of removal" under the said Section.*

33. *As has been seen in the present case all prices were "ex-works", like the facts in Escorts JCB's case. Goods were cleared from the factory on payment of the appropriate sales tax by the assessee itself, thereby indicating that it had sold the goods manufactured by it at the factory gate. Sales were made against Letters of Credit and bank discounting facilities, sometimes in advance. Invoices were prepared only at the factory directly in the name of the customer in which the name of the Insurance Company as well as the number of the transit Insurance Policy were mentioned. Above all, excise invoices were prepared at the time of the goods leaving the factory in the name and address of the customers of the respondent. When the goods were handed over to the transporter, the respondent had no right to the disposal of the goods nor did it reserve such rights inasmuch as title had already passed to its customer. On facts, therefore, it is clear that Roofit's judgment is wholly distinguishable. Similarly in Commissioner Central Excise, Mumbai-III v. M/s. EMCO Ltd., this Court re-stated its decision in the Roofit Industries' case but remanded the case to the Tribunal to determine whether on facts the factory gate of the assessee was the place of removal of excisable goods. This case again is wholly distinguishable on facts on the same lines as the Roofit Industries case."*

4.8 In case of Jindal Tubular India Ltd., referred to by the Counsel, relying on the above decision of Hon'ble Apex Court tribunal has held as follows:

"23. Having considered both the submissions, we find that the issue is now settled by the Supreme Court in the case of Ispat Industries that the place of removal in every case has to be only the place relatable to the seller and it cannot be the buyer's premises even though the sale may be completed at the buyer's premises when goods are sold on FOR destination basis. The "place of removal" continues to be the seller's premises whether it be the factory gate or depot or any other place relatable to the seller. In terms of Section 4 of the Central Excise Act, value of the goods is the transaction value of the goods for delivery at the time and place of removal. The freight incurred from the place of removal to the buyer's premises cannot, therefore be includible in the assessable value. Consequently, the demand on this count also needs to be set aside."

4.9 In the case of Bathinda Industrial Gases Pvt Ltd., following has been held:

"5. Having heard the rival contentions, we observe as follows:

The issue involved herein is of the valuation and as to whether the freight charges recovered by the appellant manufacturer from the purchasers of manufactured product / liquid CO2 for transporting the said product in its own specialized tankers to the buyers premises have to be included in the transaction /assessable value or not.

6. The relevant provision for the purpose is section 4 of Central Excise Act, 1944 and Rule 5 of Central Excise Valuation Rules, 2000. Section 4(1) reads as follows:

.....

7. A bare perusal of Rule 5 of Valuation Rules clarifies that the cost of transportation from the 'place of removal' up to the place of delivery of the excisable goods has to be excluded. In this connection, the phrase "place of removal" needs determination, however taking into account the facts of this individual case. The phrase "place of removal" is defined under section 4 of the Central Excise Act, 1944 as: "place of removal" means - (i) a factory or any other place or premises of production or manufacture of the excisable goods; (ii) a warehouse or any other place or premises wherein the excisable goods have been *permitted to be stored without payment of duty; (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed." From this definition, it is clear that in case of a factory gate sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because of following terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the* price of goods. However for place of sale to be the place of removal, it is the place from where the 'goods are to be sold' instead of the place where goods 'have been sold'. The place falling in former category can never be the place of delivery. The place from where goods are to be sold can be the place of manufacturer /seller only.

8. From the definition of "place of removal" also it is seen that where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be the normal value thereof. Subclause (b)(iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of these premises is referable only to the manufacturer and not to the buyer of excisable goods.

9. Hon'ble Apex Court in the case of Union of India vs Bombay Tyre International Ltd. reported as [(1984) 1 SCC 467] held that cost of transportation from 'place of removal' to the 'place of delivery' is statutorily excluded. The relevant paragraph is quoted herein below: "Where the excisable article or an article of *the like kind and quality is not sold in wholesale trade at the place of removal, that is, at the factory gate, but is sold in the wholesale trade at a place outside the factory gate, the value should be determined as the price at which the excisable article is sold in the wholesale trade at such place, after deducting therefrom the cost of transportation of the excisable article from the factory gate to such place. The claim to other deductions will be dealt with later." The Court further went on to say : "Where the sale in the course of wholesale trade is effected by the assessee through its sales organization at a place or places outside the factory gate, the expenses incurred by the assessee upto the place of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery."*

10. To our opinion the harmonious reading of three of above provisions (Section 4 of Central Excise Act, Rule 5 of Valuation Rules and definition of place of removal under section 4 of Central Excise Act, 1944) makes it clear that buyer's premises can never be, by any law, can be called as the place of removal of excisable goods. The place of removal can never be equated with the place of delivery. Place of removal alone is relevant for the purpose of section 4 i.e. for the purpose of calculating the transaction value as it was held by Hon'ble Apex Court in the case of Escorts JCB Ltd. vs CCE, Delhi reported as [2002 (146) ELT 31 (SC)]. In the Escorts case the price charged from the buyer was 'ex-work' and was exclusive of freight insurance. The Hon'ble Apex Court observed that since the transit insurance was arranged by the assessee, the Tribunal inferred with the ownership of the goods so retained by the assessee only. It was delivered to the buyers on the reasoning that otherwise there would be no occasion for seller namely the assessee to take the risk of any kind of damage to the goods during transportation. The Hon'ble Supreme Court while relying upon Bombay Tyre International (supra) case has held that insurance of goods *during transportation cannot possibly be the sole consideration to decide the ownership or the point of sale of goods. ....*

14. In the light of the entire above discussions of the relevant provisions and the various decisions mentioned above, when we revert to the facts of the present case, we observe that undisputed fact remains is that appellants are mentioning the freight charges as separately in the invoices issued by them to the purchasers, there is nothing in the invoices or any other documents which shows that sales are on FOR destination basis, though the authorities below have given the finding that sales were on FOR destination basis but no evidence in this regard has been discussed. The distinguished fact of the present case is that manufactured liquid CO2 was to be transported by specified tanker and the appellant itself owns fleet of such tankers because of this, the appellant was arranging transportation of the liquid CO2 gas to their customers at their premises, however the fact remains that there is no evidence in the present case that liquid CO2 was to be sold at the buyer's place. The invoices were issued on the basis of purchase orders at the premises of appellant-manufacturer itself. No question of retaining the ownership in such 'sold out' product arises to still retain with the manufacturer. Accordingly we hold that the cost of transportation in the given circumstances is the one which has expressly been excluded in terms of Rule 5 of Valuation Rules."

4.10 In view of the above decisions, we do not find any merits in the impugned order.

5.1 The impugned order is set aside and the appeal allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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