

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 86281 OF 2016

[Arising out of Order-in-Original No: NSK/EXCUS/002/COM/021/2015-16 dated 29th February 2016 passed by the Commissioner of Central Excise & Customs, Nashik.]

Teekay Metals Pvt Ltd
Plot No. 143, Stice, Musalgaon, Sinnar, Nashik - 422103 *... Appellant*

versus

**Commissioner of Central Excise, Customs &
Service Tax**
Nashik – II
Kendriya Rajaswa Bhawan, Old Agra Road
Gadkari Chowk, Nashik - 422002 *...Respondent*

APPEARANCE:

Shri Ashwini Kumar with Ms Kranti Rathi, Advocates for the appellant
Shri Rajiv Ranjan, Assistant Commissioner (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85032/2026

DATE OF HEARING:	18/09/2025
DATE OF DECISION:	16/01/2026

PER: C J MATHEW

The issue in this appeal of M/s Teekay Metals Pvt Ltd, against

order¹ of Commissioner of Customs & Central Excise, Nashik-II which, while disposing off notices for recovery of duties of central excise amounting to ₹ 1,59,97,313 for the period from November 2019 to March 2014 and to ₹ 43,87,242 for the period from April 2014 to February 2015, confirmed liability to the extent of ₹ 60,62,214 (comprising ₹ 21,57,484 and ₹ 39,04,630 respectively), under section 11A of Central Excise Act, 1944, along with appropriate interest thereon under section 11AB/11AA of Central Excise Act, 1944, is the exclusion of freight from the assessable value despite delivery having been effected at the premises of the buyer that, according to the adjudicating authority, had been disapproved by the Hon'ble Supreme Court in *Commissioner of Customs & Central Excise, Ahmedabad v. Roofit Industries Ltd* [2015 (319) ELT 670 (SC)] in addition to inconsistency with section 4 of Central Excise Act, 1944 and Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2. The appellant is a manufacturer of 'gas cylinders' supplied to oil marketing companies (OMC) for retail sale of cooking gas etc. and are contracted for supply at 'net delivered price (NDP)' through tenders. It was contended by the appellant, M/s Teekay Metals Pvt Ltd, that they were being reimbursed for freight borne on such delivery by buyers on actual basis owing to which these charges merited reduction from the

¹ [order-in-original no. NSK/EXCUS/002/COM/021/2015-16 dated 29th February 2016]

contracted price to arrive at the ‘transaction value’, applicable to clearance from ‘factory of removal’, which was resisted by central excise authorities on the ground that such exclusion was inappropriate where the title and ownership of goods remained with the assessee until cylinders had been accepted by the buyer and risk of carriage vested in the seller.

3. Learned Counsel for appellant submitted that the adjudicating authority had placed reliance erroneously on the decision of the Hon’ble Supreme Court in *Commissioner of Customs & Central Excise, Aurangabad v. Roofit Industries Ltd* [2015 (319) ELT 221 (SC)] which had been rendered *ex parte* and lacked the deep scrutiny evident in *Commissioner of Customs & Central Excise, Nagpur v. Ispat Industries Ltd* [2015 (324) ELT 670 (SC)] and in their favour.

4. Learned Authorized Representative contended that the decision in *re Roofit Industries Ltd* is more apt on the facts material to the present dispute.

5. We take note that the two decisions, and both relating to ‘post-removal’ expenditure, were rendered contemporaneously. Doubtlessly, the former pertained to different valuation scheme applicable during the period of dispute and the latter to one of the schemes but the applicability of either on material facts should settle the dispute. In particular, our attention was drawn to

‘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.'

in the decision of the Hon'ble Supreme Court in *re Ispat Industries Ltd.*

6. In view of the decision of the Hon'ble Supreme Court in *re Ispat Industries Ltd.*, and distinguishing the findings in *re Roofit Industries Ltd.*, the issue in dispute stands settled. Accordingly, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 16/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)