



आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलीफैक्स 07926305136



DIN : 20211064SW000031893C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/163/2020 / 4050 70405A
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-41/2021-22**
दिनांक Date : **11-10-2021** जारी करने की तारीख Date of Issue 21.10.2021
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **15/AC/MEH/CGST/20-21** दिनांक: **31.07.2020** issued by Assistant Commissioner, CGST & Central Excise, Division Mehsana, Gandhinagar Commissionerate
- ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**
M/s Jay Poly Fab
280/81/82, GIDC-I,
Modera Road, Mehsana-384002

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

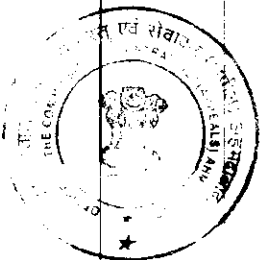
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतः तनीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जोड्यूटीक्रेडिटमान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।
- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनों के सेतीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उस के साथ खाता इ. का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न कर एक लाख रुपये या उससे कम होते रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न कर एक लाख से ज्यादा होते 1000/- की फीस भुगतान की जाए।

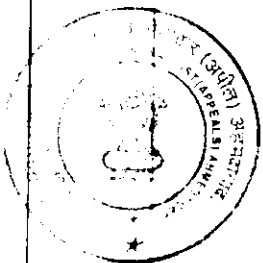
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) उक्त लिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs. 100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रु.6.50 पैसेका न्यायालय शुल्कटिकटलगाहोना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (19) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलेमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

- (i) (Section) खंड 11D केतहतनिर्धारितराशि;
- (ii) लियागलतसेनवैटक्रेडिटकीराशि;
- (iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇒ यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.

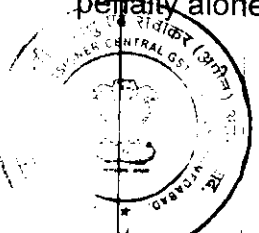
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xi) amount determined under Section 11 D;
- (xii) amount of erroneous Cenvat Credit taken;
- (xiii) amount payable under Rule 6 of the Cenvat Credit Rules.

इसइस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



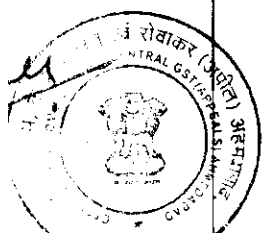
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Jay Poly Fab, 280/81/82, Modhera Road, Mehsana GIDC-I, Mehsana, Gujarat – 384 002 (hereinafter referred to as the appellant) against Order in Original No. 15/AC/MEH/CGST/20-21 dated 31-07-2020 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST & Central Excise, Division-Mehsana, Commissionerate Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. The facts of the case, in brief, is that the appellant is engaged in the manufacture of HDPE/PP Laminated/un-laminated Woven bags/sacks falling under Chapter 39 of the Central Excise Tariff Act, 1985 and are having Central Excise Registration No. AAJFJ7886LEM001. During the course of Audit conducted by the department, the reconciliation of financial records of the appellant revealed that the appellant had short paid Central Excise duty amount of Rs. 89,887/- during the F.Y. 2016-17 and F.Y. 2017-18 (upto June, 2017).

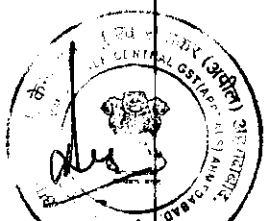
2.1 Further, it was also found on verification of the sale invoices, sale registers and purchase orders received by the appellant that they had cleared HDPE/PP Woven bags to M/s. Nirma Ltd, Nimbol, Pali, Rajasthan and collected freight/transportation charge per bag in their invoice separately. As per the terms of the purchase order, the appellant had supplied the goods at the door of M/s.Nirma Limited, Nimbol. The appellant had cleared the goods on FOR destination basis. Scrutiny of the purchase orders also indicated that freight will be paid by the buyer to the appellant for the safe delivery of goods at the buyer's premise and ownership of the goods vested with the appellant until the goods are unloaded at the buyer's premise. It was, therefore, clear that the ownership of the goods is affected at the buyer's premises. Thus, the sale of goods was effected at the premises of the buyer and therefore, the freight collected from the buyer was required to be included in the assessable value as per Section 4 of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The appellant did not agree with the observation of the Audit. It was contention of the audit that they had not paid duty amounting to Rs.10,31,462/- during the period from July, 2014 to June, 2017 on such clearances.

2.2 The appellant was issued a Show Cause Notice bearing No. VI/1(b)-94/Jay Poly Fab/IA/2018-19/AP-59 dated 05.07.2019 seeking to recover the Central Excise duty totally amounting to Rs. 11,21,349/- (Rs. 89,887/- + Rs. 10,31,462/-) under the proviso to Section 11A of the Central Excise Act, 1944. The notice also proposed imposition of

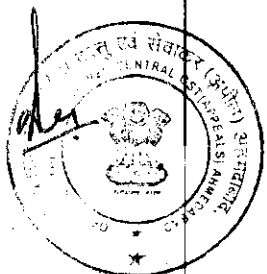


penalty under Section 11AC of the CEA, 1944 and Rule 25 of the Central Excise Rules, 2002 and also recovery of Interest under Section 11AA of the CEA, 1944.

3. The said Show Cause Notice was adjudicated vide the impugned order wherein :
 - I. The demand of Rs.11,21,349/- was confirmed Section 11A of the CEA, 1944;
 - II. Interest was ordered to be recovered under Section 11AA of the CEA, 1944;
 - III. Penalty of Rs.11,21,349/- was imposed under Section 11AC of the CEA, 1944; and
 - IV. Penalty of Rs.11,21,349/- was imposed under Rule 25 of the Central Excise Rules, 2002.
4. Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:
 - A. The duty demand of Rs.89,887/- is on the difference in sale value as declared in the financial statement vis-à-vis the sale value declared in ER-1. The difference is on account of debit notes issued by the customers on account of retention of amount due to quality issues and subsequently reversed by the customers. This does not affect the duty payment as they duty has already been paid on entire amount at the time of clearance. However, being a minor difference, they had not pressed the issue and paid the duty of Rs.5,168/- along with Interest of Rs.2,860/- for the F.Y. 2016-17 and intimated the same to the department.
 - B. The issuance of debit notes and subsequent issuance of credit note by the customer has no effect on the duty liability nor any additional duty liability arises. Therefore, the findings of the adjudicating authority for confirming the demand of Rs.84,719/- are factually incorrect and also contrary to the provisions of law.
 - C. Regarding the issue of non-inclusion of freight in assessable value, the adjudicating authority has confirmed the demand without ascertaining the actual facts of the terms and conditions of sale agreed with their buyer. They had submitted copies of the purchase order and corresponding Central Excise Invoice, bill issued by transporter and goods consignment note issued by the transporter.



- D. As per the purchase order, the terms are 'Door delivery at Nimbol site' and FOR- Ex-Mehsana/Ex.Works. The transportation charges are paid by them to the transporter.
- E. As per the purchase order, the rates are FOR : Ex-Mehsana and the transportation charges, excise duty, CST is extra at actuals, and over and above ex-works price. They are arranging transportation on the request of the customer, who is paying the transportation charges over and above the ex-Mehsana rate agreed for purchase of the goods.
- F. The sale was not FOR destination but Ex-Works and once the invoice is prepared as per sales tax provisions the title of goods is transferred to the buyers. The risk in transit does not remain with them which is evident from the fact that no insurance cover is taken by them for the goods sold. This is also not the case where goods are sold on approval basis. Therefore, only arranging the delivery at the premises of the Buyer cannot be sole ground to treat the sale as FOR destination.
- G. As per Section 4 of the CEA, 1944 and the Central Excise Valuation Rules, 2000, the Central Excise duty is to be paid on the transaction value excluding the cost of transportation from the place of removal upto the place of delivery such excisable goods.
- H. As per Section 4 (3) (c) of the CEA, 1944 the place of removal means a factory, premises of production or manufacture of excisable goods, a warehouse, a depot, premises of a consignment agent, from where the goods are removed. In the present case the goods are sold and removed at ex-factory and handed over to the transporter for onward delivery to the customer. Therefore, the place of removal is factory gate.
- I. It is a settled law by various decisions of the higher appellate authority and Courts that transportation charges are not includable in the assessable value.
- J. In the case of Ispat Industries Ltd reported in 2015 (324) ELT 670 (SC), the Hon'ble Supreme Court had clearly held that freight charges are not includible in the transaction value and that under no circumstances, buyer's premises can be the place of removal for the purpose of Section 4.
- K. As per para 4 of CBIC Circular No. 1065/4/2018-CX dated 08.06.2018, the principle referred in para 3 would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgement in the case of M/s. Emco Ltd and M/s. Roofit Industries Ltd.
- L. In the present case, the place of removal is the factory gate and as per Section 4 read with the Valuation Rules, the transportation charges are not

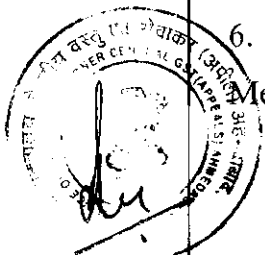


includible in the transaction value. Therefore, on merits the views taken and findings recorded by the adjudicating authority that the sale is on F.O.R destination basis is illegal, incorrect and contrary to the provisions of Excise Act and so not sustainable.

- M. The SCN issued on 5.7.2019 for the period 2014-15 to 2017-18 (upto June, 2017) is not sustainable on limitations alone. They were earlier audited by the department and Audit Report No. 824/2016-17 (Excise) and Report No. 936/2016-ST covering the period March, 2014 to March, 2016 was issued. There was no objection to non-inclusion of outward freight in the transaction value. However, non-payment of Service Tax on outward GTA services was pointed out. This means the department was well aware of the transportation charges being collected from customers.
- N. It is settled law by various decisions that when regular audits are conducted by the department and all required details are submitted to the department and available with department, suppression cannot be alleged at a later date.
- O. Confirmation of demand for longer period is not sustainable on grounds of revenue neutrality. Central Excise duty paid on value including transportation charges would be available as Cenvat Credit to the buyer.
- P. For imposing penalty under Rule 35 of the CER, 2002 and Section 11AC of the CEA, 1944 fraud, collusion, suppression etc are required to be proved by the department. Mens-rea is essentially required to be proven to invoke penal provisions. The present issue was a matter of litigation and decided recently by the Hon'ble Supreme Court. The Board had also issued instruction dated 08.06.2018 to not invoke extended period of limitation. Therefore, it cannot be said that the appellant had suppressed facts with intent to evade duty. So imposition of equal amount of penalty is wholly illegal and required to be quashed.
- Q. Separate penalties cannot be imposed under Section 11AC and Rule 25 of the CER, 2002. Rule 25 is subject to Section 11AC and once it has been invoked, separate penalty cannot be imposed under Rule 25.

5. Personal Hearing in the case was held on 16.09.2021 through virtual mode. The appellant was represented by Shri Vikram Singh Jhala for the hearing. He reiterated the submissions made in appeal memorandum and stated that the case is squarely covered by the decision of the Hon'ble Supreme Court in Ispat Industries.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum and those made during the course of the personal hearing as well as



evidences available on record. I find that there are two issues on which Central Excise duty has been demanded and confirmed vide the impugned order. The first pertains to demand of Central Excise duty amounting to Rs. 89,887/- which is alleged to have been short paid on account of the difference in the reconciliation of the financial records with the ER-I returns filed by the appellant. In this regard I find that the appellant have accepted short payment of Central Excise duty amounting to Rs.5,168/- for F.Y. 2016-17 and paid the same along with interest of Rs.2,680/-. I find that the appellant are also liable to pay the amount of penalty in terms of Section 11AC of the Central Excise Act, 1944.

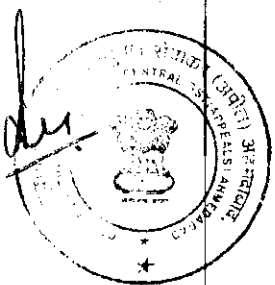
6.1 In so far as the remaining Central Excise duty amounting to Rs.84,719/- is concerned, the appellant have contended that the same has been calculated on the differential value of Rs.5,64,796/-. This difference is on account of the debit notes issued by their customers initially on account of quality issues. Once the quality control report is received, the customer reverses the debit note and issued credit note for the same amount. The appellant have submitted copies of the relevant debit and credit notes and on examination of the same, I find that the amounts debited initially were reversed by issuance of credit notes. I, therefore, do not find any merit in the demand and confirming of Central Excise duty amounting to Rs.84,719/-. The impugned order in this regard is required to be set aside as being not legally tenable.

7. The other issue involved in the present appeal is the short payment of Central Excise duty on account of non-inclusion of freight collected by the appellant from their buyers. The adjudicating authority has confirmed the demand for Central Excise duty by holding that the ownership of the goods is transferred to the buyer at their premise only and the sale actually takes place at the destination and the place of removal is the buyers premises.

7.1 It is observed that the Valuation of excisable goods in terms of Section 4 of the Central Excise Act, 1944 and sub-section (1) reads as under :

“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 removal, the assessee and the buyer are not related and the price is the sole consideration, be the transaction value;



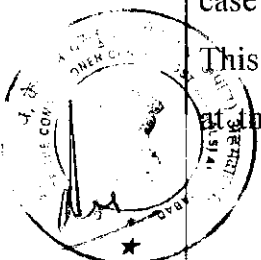
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed."

7.2 It would also be relevant to refer to Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, which reads as :

"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."

7.3 I find that for determining the includibility or otherwise of freight charges in the assessable value, it is crucial to determine the place of removal of the goods i.e. the place where the goods are sold. The appellant have submitted copies of a few purchase orders on sample basis for each of the financial years for which demand has been raised. On examination of these purchase orders, I find that the terms are 'FOR- EX MEHSANA' or 'FOR-EX-WORKS'. Further, in terms of the purchase orders, the delivery is 'Door Delivery at Nimbol Site'. I further find that the purchase orders clearly indicate the price at which the goods are sold by the appellant to the buyer. In addition to the price of the goods, the purchase order also separately indicates the amount of Central Excise duty, Local Entry Tax and amount of CST involved in the goods ordered.

7.4 I find from the terms of the purchase order that there is no room for any doubt as to the place of removal of the goods from where they are sold. The term 'FOR' stands for 'Free on Road' and FOR – Ex Works indicate that the goods are sold Free on Road at the factory gate. Therefore, the goods in terms of the purchase orders between the appellant and his buyer, are sold at the factory gate of the appellant. Merely because there is an additional condition of door delivery at the buyer's site would not change the nature of the sale from 'FOR-Ex Works' to 'FOR –Buyers Destination'. I further find that as per the Condition No.7 of the Terms and Conditions of the Purchase Orders, the transit insurance of the goods will be arranged by the company i.e. buyer and the appellant is required to provide dispatch particulars to the buyer atleast one week in advance and in case of failure to do so, the appellant would be liable for all losses and consequences. This makes it abundantly clear that the title of the goods has been acquired by the buyer at the factory gate of the appellant. Consequently, the question of inclusion of freight



charges, in the assessable value of the goods, beyond the point of sale/place of removal of the goods does not arise.

8. I find that the present issue is covered by the decision of the Hon'ble Supreme Court in the case of Commissioner of Cus. & C.Ex., Nagpur Vs. Ispat Industries Ltd reported at 2015 (324) ELT 670 (SC) wherein the Hon'ble Supreme Court had held that :

"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.

....

....

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."

9. I find that facts involved in the present appeal are similar to that involved in the case before the Hon'ble Supreme Court. The goods in the present case have been sold by the appellant on 'FOR-Ex Works' basis and cleared on the basis of Central Excise Invoices and also Central Excise duty, VAT and CST have been paid by the appellant. The goods were handed over to the transporter suggested/nominated by their buyer and in terms of the purchase orders, the transit insurance was made by the buyer of the goods. Therefore, it is amply clear that the title of the goods has passed onto to buyer of the goods at the factory gate of the appellant. In view thereof, the freight charges for transportation of the goods from the place of removal to the destination of the buyer where the goods are to be delivered are not includible in the assessable value of the goods.

10. In view of the provisions of Section 4 of the Central Excise Act, 1944, Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000,

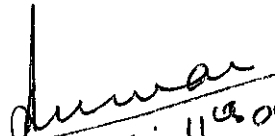


the evidences on record and the judgement of the Hon'ble Supreme Court, I am of the considered view that the adjudicating authority has erred in ordering inclusion of freight charges in the assessable value and consequently confirming the demand for Central Excise duty.

11. In view of the above discussions, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant. The appellant are however, required to pay penalty in terms of Section 11AC of the Central Excise Act, 1944 on the amount of Central Excise duty amounting to Rs.5,168/- admitted and paid by them along with interest of Rs.2,680/-.

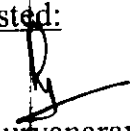
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: .10.2021.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To
M/s. Jay Poly Fab,
280/281/282, GIDC-I,
Modera Road,
Mehsana, Gujarat – 384 002.

Appellant

The Assistant Commissioner,
CGST, Division : Mehsana
Commissionerate : Gandhinagar

Respondent

Copy to:

- 1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- 2) The Commissioner, CGST, Gandhinagar.
- 3) The Assistant Commissioner (HQ System), CGST, Gandhinagar.

(for uploading the OIA)

- 4) ☒ Guard File.
- 5) P.A. File.

