आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhawan, Revenue Marg, Ambawadi, Ahmedabad 380015
. ☎ 07926305065- टेलेफैक्स07926305136

स्पीड पोस्ट

क फाइल संख्या : File No : V2(17)193/Ahd-South/2018-19/13067 TO 13071

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-067-2019-20**
दिनाँक Date : **20-11-2019** जारी करने की तारीख Date of Issue 25.11.2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri.**Gopi Nath**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **MP/08/Dem/2018-19** दिनाँक: **09.01.2019** issued by Assistant Commissioner, Div-V, CGST, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Sayaji Sethness ltd
Plot no.17-19,GVMM
Odhav Road
Ahmedabad-382415

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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 प्रकिया 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 मामलें 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 जो डयूटी केडिट मान्य 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 इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर 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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना 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) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील'** दाखिल करने **के लिए पूर्व शर्त बना दिया गया है .**

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:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस 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

This appeal is filed by M/s. Sayaji Sethness Limited, Plot No. 17-19, GVMM, Odhav Road, Ahmedabad- 382 415, (for short – '*appellant*'), against OIO No. MP/08/Dem/2018-19 dated 09.01.2019 (for short '*the impugned order*')passed by the Deputy Commissioner, Central GST, Division V, Ahmedabad South Commissionerate [for short -'*adjudicating authority*'] .

2. Briefly the issue involved is that based on an audit objection [FAR No. 312/2013-14, dated 8.5.2014] two show cause notices, were issued to the appellant, alleging that they had collected '*insurance charges*' and '*freight charges*', from their buyers but had not included them in the transaction value, and thereby failed to pay central excise duty in respect of the said amount, collected from the buyers. A notice dated 11.01.2018 was issued in terms of Section 11A(7A) of the Central Excise Act, 1944, covering the period from January 2016 to June 2017. This show cause notice, was adjudicated vide the aforementioned impugned OIO wherein the adjudicating authority confirmed the demand, along with interest and also imposed penalty on the appellant.

3. Feeling aggrieved, the appellant has filed this appeal mainly on the following grounds:

(a) the issue that premises of the manufacturer is "place of removal" under Section 4 of the Central Excise Act for the purpose of valuation of excisable goods is quite well settled by virtue of the law laid down by the Hon'ble Supreme Court in cases like Commissioner V/s. Ispat Industries Ltd. [2015 (324) ELT 670 (SC)] and also Commissioner V/s. Ultratech Cement Ltd. [2018-TIOL-42-SC-Cx.]. The principle of valuation that stand well settled is that the price at which goods are ordinarily sold by the assessee at the factory gate is the value for assessment of excise duty on the concerned excisable goods and the expenditure incurred for transportation of the goods, freight, transit insurance, etc. are not to be loaded in the value of excisable goods. The Government of India has issued a Circular No.1065/4/2018-CX dated 08.06.2018 referring to such judgments of the Hon'ble Supreme Court and clarified that the "place of removal" or "point of sale" were to be referred with reference to the premises of the manufacturer.

(b) the sale of goods in the present case was 'ex factory' & therefore the price of the goods at the factory gate was the assessable value of the excisable goods; that in case of ex works price, the elements like cost of transportation from the place of removal to the place of delivery and transit insurance were to be excluded;

(c) that they would like to rely on the case of Ispat Industries [2015(324)ELT 670], Accurate Meters Limited [2009(235) ELT 581], Escorts JCB Limited [2002(146) ELT 31], Indian Oxygen Limited [1988(36), Prabhat Zarda Factory [2000(119) ELT 191, Associated Strips [2002(143) ELT 131];

(d) that the Revenue has not disputed that the invoices were issued by the appellant at the factory and that the invoices under which goods were removed from the factory bore the name of the buyer; that appropriate amount of sales tax was paid when the goods were cleared by the appellant; that amount recovered by the appellant from the buyers for elements like freight and insurance is not includible in transaction value because such recovery is for additional facilities provided after the sale of the goods; that this amount was charged and recovered under a separate contract and arrangement;

(e) that the reasons and grounds given by the adjudicating authority in the present case to hold that the title in the goods was transferred to the buyer at the buyers premises are therefore factually and legally incorrect;

(f) that it is not clear how condition no. 2,9,17 & 26 of the agreement with M/s. Coca Cola India P Ltd established that the title in the goods was transferred only at the premises of the buyers;

(g) that it is a settled legal position that charges of transportation of goods, transit insurance outward handling etc though not on actual basis and recoveries for other elements like handling insurance etc were not includible in the value of the excisable goods;

(h) that in the present case place of removal is the factory gate and accordingly the price charged at the factory gate is the Transaction Value; that Rule 5 of the Valuation Rule has not application in this case;

(i) that just because insurance charges were initially paid by the appellant, for and on behalf of the appellant's purchaser, would not mean that the ownership of the goods would shift at the buyers premises;

(j) the invoices issued by the appellant in the name of purchaser also indicate that freight charges paid by them for and on buyer's behalf and that risk and responsibility of the goods cease as soon as the goods leave appellant's factory;

(k) that the documents on record of the case clearly establish that the goods were sold on ex factory basis; that the amount of freight and insurance was required to be included in the assessable as the place of sale was the buyers premises is clearly without any evidence;

(l) that the imposition of penalty on the appellant is unreasonable.

4. A hearing in the matter was held on 11.09.2019. Shri Aditya S. Tripathi, Advocate, appeared on behalf of the appellant and reiterated the submissions and grounds of appeal memo for consideration.

5. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing.

6. The short question to be decided is whether the *freight* and *insurance charges* are to be included in the Transaction Value, for the purpose of computing excise duty.

7. Since the issue revolves around valuation of goods, the extracts of the relevant Section, Rules, Circulars, are reproduced below for ease of reference:

THE CENTRAL EXCISE ACT, 1944

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, 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

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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;]
[(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;

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CENTRAL EXCISE VALUATION (DETERMINATION OF PRICE OF EXCISABLE GOODS) RULES, 2000

[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.]*

Circular No. 999/6/2015-CX, dated 28-2-2015

Attention is invited to Circular No. 988/12/2014-CX, dated 20-10-2014 issued from F. No. 267/49/2013-CX.8 [2014 (309) E.L.T. (T3)] on the above subject wherein it was clarified that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

Circular No. 988/12/2014-CX, dated 20-10-2014

(3) The operative part of the instruction in both the circulars give similar direction and are underlined. They commonly state that the place where sale takes place is the place of removal. The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer. This can be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon'ble Tribunal in case of Associated Strips Ltd. v. Commissioner of Central Excise , New Delhi [2002 (143) E.L.T. 131 (Tri.-Del.)]. This principle was upheld by the Hon'ble Supreme Court in case of M/s. Escorts JCB Limited v. CCE, New Delhi [2002 (146) E.L.T. 31 (S.C.)].

(5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act , 1930 which has been referred at paragraph 17 of the Associated Strips Case (supra) reproduced below for ease of reference -

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that 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. ***Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case.*** *Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."*

(6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

[emphasis supplied]

Circular No. 1065/4/2018-CX., dated 8-6-2018

Attention is invited to Boards Circular No. 97/8/2007-CX., dated 23-8-2007 [2007 (215) E.L.T. (T24)], 988/12/2014-CX., dated 20-10-2014 [2014 (309) E.L.T. (T3)] and 999/6/2015-CX., dated 28-2-2015 [2015 (317) E.L.T. (T7)]. Attention is also invited to the judgment of Hon'ble Supreme Court in the case of CCE v. M/s. Roofit Industries Ltd. - 2015 (319) E.L.T. 221 (S.C.), CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.), CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE & ST v. Ultra Tech Cement Ltd. dated 1-2-2018 in Civil Appeal No. 11261 of 2016 [2018 (9) G.S.T.L. 337 (S.C.)]. In this regard, references have been received from field formations seeking clarification on implementation of aforesaid circulars of the Board in view of judgments of Hon'ble Supreme Court.

2. In order to bring clarity on the issue it has been decided that Circular No. 988/12/2014-CX., dated 20-10-2014 shall stand rescinded from the date of issue of this circular. Further, clause (c) of para 8.1 and para 8.2 of the Circular No. 97/8/2007-CX., dated 23-8-2007 are also omitted from the date of issue of this circular.

3. ***General Principle :*** *As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.) may be applied. Apex Court, in this case has upheld the principle laid down in M/s. Escorts JCB (supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. The observation of Hon'ble Court in para 16 in this regard is significant as reproduced below :*

"16. It will thus be seen 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

normal value thereof. Sub-clause (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 the premises is referable only the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place of premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the sub-section. The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer. If we were to accept contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises."

4. ***Exceptions :***

The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE v. M/s. Roofit Industries Ltd. 2015 (319) E.L.T. 221 (S.C.). To summarise, in the case of FOR destination sale such as M/s. Emco Ltd. and M/s. Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.

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8. For goods not notified under Section 4A of the Central Excise Act, 1944 [for short the Act], and where there is no tariff value fixed under section 3(2) of the Act, assessment is as per transaction value, determined under Section 4 of the Act. As per the definition under section 4(3)(d) read with subsection 4(1) of the Act, for applicability of transaction value for assessment purpose, [a] the goods are to be sold by an assessee for delivery at the time and place of removal, [b] the assessee and the buyer are not related; and [c] the price is the sole consideration for the sale. If any of the requirements are not satisfied then the transaction value shall not be the assessable value and the value in such case has to be arrived under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 [for short – 'Valuation Rules'] .

9. The department's contention is that the place of removal, in the present case was not the one which is mentioned in Section 4 wherein the term 'place of removal' is defined. In-fact the adjudicating authority has held that the goods were to be delivered at the place of the buyer where the acceptance of supplies was to be effected; that the terms and conditions clearly stated that title of the goods was transferred to the buyer only when the buyer receives the goods; that the purchase orders did not suggest that the transporters will take delivery on behalf of the buyer; that the ownership of the goods lay with the appellant till the goods reached the destination, as the sale actually takes place at the destination. The department's contention therefore, is that the place of removal in this case was the buyer's premises. It is on this basis, that the department has proposed addition of the transport

charges and the insurance charges to the transaction value, in terms of Rule 5 of the Valuation Rules, 2000 [the extracts of which is reproduced above].

10. On the other hand the appellant's contention is that the payment of insurance charges/transport charges by them on behalf of their buyers was just an additional facility; that the goods were sold ex-factory; that their risk and responsibility ceased as soon as the goods left the factory; that only on the basis of factum of transfer of title at the place of delivery, it was erroneously concluded by the department that the buyers premises was the place of sale.

11. In this regard, I find that the issue under dispute, as to whether the *freight* and *insurance charges* are to be included in the Transaction Value, for the purpose of computing excise duty, has been examined by the Hon'ble Supreme Court of India vide their judgments in the case of CCE v. M/s. Roofit Industries Ltd. - 2015 (319) E.L.T. 221 (S.C.), CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.) and CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.). Based on these judgments, the Central Board of Indirect Taxes & Customs has issued Circular No.1065/4/2018-Cx. dated 08.06.2018 clarifying the principle to be followed for determination of 'place of removal' in general and exceptional cases. As per the Circular, in general the principle laid by Hon'ble Supreme Court in the case of CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.) has to be applied as per which 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. It is clarified that the said general principle would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE v. M/s. Roofit Industries Ltd. 2015 (319) E.L.T. 221 (S.C.) and in the case of FOR destination sale such as M/s. Emco Ltd. and M/s. Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, the 'place of removal' is to be determined in terms of the said judgments. As per the said judgements, the 'place of removal' on such cases would be place of buyer as 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.

12. Thus, the issue on hand is to be decided in terms of principle laid down by the above referred Supreme Court judgments which emphasized that the 'place of removal' depends on the facts of each case.

13. In the present case, after going through the records I find that the 'Terms and Conditions of Purchase' of the Purchase Order [Purchase Order No.4507135501 dated 24.03.2017] with Coca Cola India Private Limited, one of the buyer of the appellant, states as follows:

> *Coca Cola India Private Limited*
> *2. Price. All prices are firm, cannot be increased during the effectivity of this order without Buyer's written consent and will be as low or lower than any prevailing net prices quoted or made available by seller to any other customer purchasing in equal or lesser volume for comparable goods or services. Unless otherwise stated in an Order, prices include all costs and charges incurred by seller, including without limitation, for all installation and other services, taxes and duties; wages and fees, transportation, packing and packaging; storage, design, engineering and development; samples and prototypes and tooling, dies, moulds and similar property used in fulfilling an Order.*
>
> *8. Packaging and shipping : Risk of Loss. All packing, packaging, deliveries and shipments must comply..... Delivery will be complete only when Buyer or the person to whom the goods were delivered has actually received and accepted the goods. Seller will bear the risk of loss of the goods until delivery is completed. In the event of damage or loss of materials under this Order, the Seller and its assurers agree to waive any Salvage Rights.*
>
> *9. Delivery or Performance: Schedule/Place/Quantities. Time is of the essence under this Order and Seller shall deliver the goods ordered to the place designated in the Order at his own expense, unless otherwise specified. .....*
>
> *17. Insurance. If and as requested, seller will obtain and maintain in force adequate insurance satisfactory to buyer (i)to cover the hold harmless provision of section 7and (ii) the replacement value of property and paid stock under section 15. Seller, upon request, will furnish certification evidencing such insurance in a form acceptable to buyer.*
>
> *26. Transfer of Title. Title of goods ordered will pass to the buyer upon the earlier of (i) receipt and acceptance by buyer or buyers designee, or (ii) payment. This is without prejudice to any right of rejection or other right which buyer may have in this order.*

The above referred terms and conditions of purchase clearly indicates 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. Further, the price of the goods was inclusive of all costs and charges incurred by seller, including without limitation, for all installation and other services, taxes and duties; wages and fees, transportation, packing and packaging; etc. The condition that seller will bear the risk of loss of the goods until delivery is completed would clearly imply that ownership in the goods remains with the seller namely the appellant till the goods reach the destination. As per the ''Payment terms' contained in the procurement order, payment is due net 30 days from invoice date, which means that the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. Further, as per purchase order it is easy to conclude that the title in the goods were transferred only at the premises of the buyer. This is what was intended by the parties in the contract. All these facts, in my view, conclusively establishes that the sale of goods in the case did not take place at the factory gate of the appellant but at the place of the buyer on

the delivery of the goods in question. That being so, the place of removal of goods in the case undisputedly would be the 'buyer's premises' in view of the principle laid down by Hon'ble Supreme Court in the case of CCE v. M/s. Roofit Industries Ltd. 2015 (319) E.L.T. 221 (S.C.) and CCE, Mumbai-III v. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) as clarified by the Central Board of Excise and Customs vide Circular No.1065/4/2018-CX. dated 08.06.2018. I, therefore, concur with the findings of the adjudicating authority that the place of removal in this case is the buyers premises and therefore the insurance charges and freight charges, collected from the buyers are to be included in the transaction value for computation of Central Excise duty, etc.."

14. In view of the foregoing, I uphold the confirmation of the demand along with interest. As far as imposition of penalty goes, I find that the adjudicating authority has imposed penalty under Rule 25(1) of the Central Excise Rules, 2002 read with Section 11AC(1)(s) of the Central Excise Act, 1944. The appellant has not raised any contention which forces me to interfere with the penalty imposed and hence, the penalty imposed is also upheld.

15. Hence, the appeal is rejected and the impugned OIO dated 09.01.2019 is upheld.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

20/11/19

(Gopi Nath)
Commissioner (Appeals)
Date: 20.11.2019.

Attested:

25/11/2019

(Anilkumar P.)
Superintendent (Appeals)
Central Excise, Ahmedabad.

By Speed Post

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4. The Deputy/Assistant Commissioner, Central Tax, Division V, Ahmedabad South.
5. Guard file.
6. P.A