Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10999 of 2018 - DB

(Arising out of OIA-VAD-EXCUS-002-APP-432-2017-18 dated 25/09/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Gulbrandsen Technologies India Pvt Ltd **.....Appellant**
Plot No. 761/a, Gidc, Jhagadia,
BHARUCH, GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Vadodara-ii **.....Respondent**
1ST FLOOR... ROOM NO.101,
NEW CENTRAL EXCISE BUILDING,
VADODARA, GUJARAT-390023

APPEARANCE:
Shri Vinay Kansara, Advocate, Appeared for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) Appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No.12049/2024

DATE OF HEARING: 10.07.2024
DATE OF DECISION: 18.09.2024

RAMESH NAIR

The issue involved in the present case is that whether Central Excise duty is required to be paid on the freight charged separately in the sale invoices of excisable goods. In other words, whether 'freight' constitute part of the transaction value of the excisable goods when shown separately in the invoice for the purpose of computation of excise duty in terms of provisions of Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation Rules, 2000.

2. Shri Vinay Kansara, Learned Counsel appearing on behalf of the appellant submits that as per the terms of the sale of excisable goods, the sale is on FOR basis. However, it is ex-factory sale, therefore in the light of the various judgments the freight shown separately in the invoice is not

includible in the assessable value. He placed reliance on the following judgments:-

- CCE V/s Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.)
- Jindal Tubular (India) Ltd. V/s CCE-(2023) 4 Centax 3 (Tri-Del)
- Eimco Elecon India Ltd. V/s CCE-2024 (4) TMI 62 CESTAT Ahmedabad
- Mira Industries V/s CCE-2023 (4) TMI 655 CESTAT Ahmedabad
- Panama Petrochem Ltd. V/s CCE-2024 (4) TMI 325- CESTAT Ahmedabad
- Gujarat Fluorochemicals Limited V/s CCE-2024 (1) TMI 883 - CESTAT Ahmedabad
- Sayaji Senthness Ltd. V/s CCE- 2024 (5) TMI 194 CESTAT Ahmedabad
- Graphite India Ltd V/s CCE-2017 (358) E.L.T. 263 (Tri - Mumbai)
- Jost's Engineering Co. Ltd. V/s CCE-2017 (7) G.ST.L. 344 (Tri. - Mumbai)
- Emerson Network Power (I) Pvt. Ltd. V/s CCE-2017 (6) G.S.T.L. 321 (Tri. Mumbai)
- Sanjivani Ssk Ltd. V/s CCE-2016 (333) E.L.T. 363 (Tri. - Mumbai)
- CCE V/s Accurate Meters Ltd.-2009 (3) TMI 1-Supreme Court
- Escorts JCB Ltd. V/s CCE-2002 (10) TMI 96-Supreme Court

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue, reiterates the findings in the impugned order.

4. On the careful consideration of the submissions made by both the sides and perusal of the record, we find that whether the freight is includible in the assessable value or transaction value for the purpose of Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation Rules, 2000, the facts of the each transaction has to be examined. Therefore, sample copy of the purchase order and corresponding invoice is scanned below:-

PURCHASE ORDER

inv - 394

NALCO WATER INDIA LTD

ECOLAB NALCO

Page: 1

PURCHASE ORDER NO: G00725182491/15-16

PO Date: 10/07/2015

Vendor:
GULBRANDSEN TECHNOLOGIES INDIA PVT LTD
PLOT NO 761/A, PO26
JHAGADIA GIDC
BHARUCH GUJARAT
BARODA GJ

Pin Code: 393110

Name Somnath Bhowmick
Phone 03326722286
Email sbhowmick@nalco.com

Delivery Address:
NALCO WATER INDIA LIMITED
PLOT NO-6, VILLAGE, PIRANGUT
TALUKA - MULSHI
DIST - PUNE - 412 108

Pin Code

Fax 03326722287

Send Invoice to:
NALCO WATER INDIA LIMITED
PLOT NO-6,VILLAGE,PIRANGUT
TALUKA-MULSHI
DIST-PUNE 412108

Pin Code:

Req No & Date 561 09-JUL-2015
Req Name ATUL SWADI
Quote No
Quote Date
Currency INDIAN RUPEES

AR No./ Project Code/ Site

Payment Terms 60 DAYS FROM THE INVOICE DATE

Purchase Order No. must be quoted on all Advices. Invoice, Challans and correspondence. The Order is subject to Terms & Conditions set out below and reverse of this form. Delivery & Invoice must be accompanied by documents listed on the reverse of this form. For Overseas shipment, documents can be sent to Bank Address mentioned on the reverse of this form.

S/N	Description	UOM	QTY	Required Date	Unit Price	Amount
001	R-5042 ALUMINUM CHLOROHYDRATE Country of origin :IN INDIA Inco Terms : EXW EX WORKS **LABEL DETAILS** **Manufacturer Name** **Product Name** **Gross Weight** **Net Weight** **Batch No.** **Manufacturing Date**	33 X 272 KG	8,976.00	16/07/2015	34.1700	306,709.92

Special Instructions:
RATE ARE EX-WORKS.
BD 3.75% EXTRA
ED 12.5% EXTRA
CST @ 2% EXTRA AGAINST FORM "C"
FREIGHT EXTRA AT ACTUAL

SubTotal	306,709.92
Central Excise Duty	0.00
EDU & SHE CESS	0.00
VAT	
CST	
Delivery Charges	
Service Tax	0.00
TOTAL	306,709.92

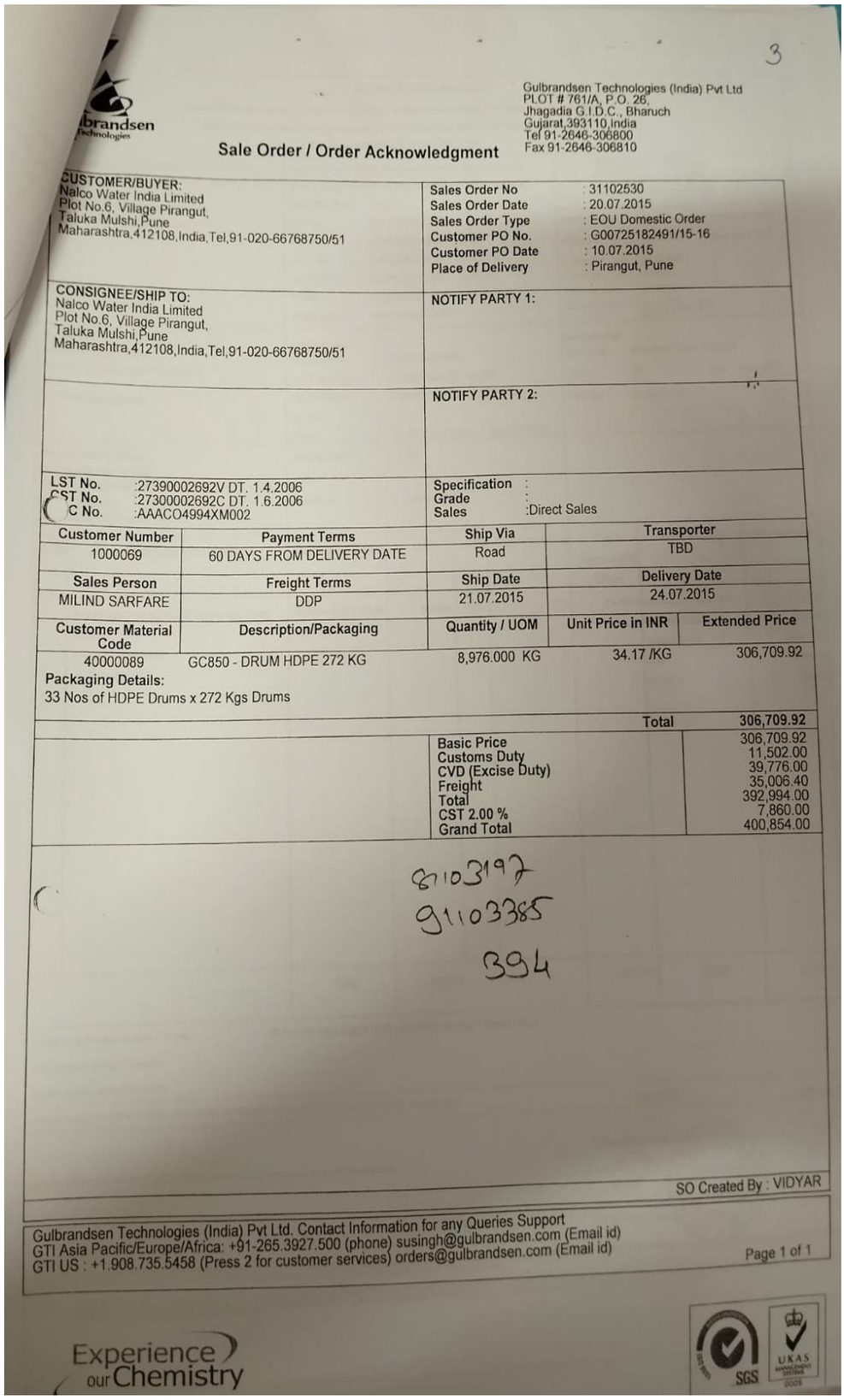
WB VAT#: 19200672062 Dt:01.04.2005 CIN NALCO: U22229PN1967PLC140332
WB CST#: 19200672278 Dt:29.07.1968
JHA JST#: JU 2455(L) Dt: 27.09.2004 MH-VAT#: 27390002692V Dt:01.04.2006
JHA CST#: JU 2052(C) Dt: 27.09.2004 MH-CST#: 27390002692C Dt:01.06.2003
TN GST#: 0852524 Dt: 30.07.2003 JSR TIN#: 20371000512 Dt:18.09.2006
TN VAT#: 33960852524 Dt: 01.01.2007 ASM VAT#: 18680072036 Dt:18.09.2006
TN CST#: 794033 Dt: 30.07.2003 ASM CST#: SBR/CST/0407

For NALCO WATER INDIA LTD

[signature]

Original

ORDER ACNOWLEDGEMENT



3

Gulbrandsen Technologies (India) Pvt Ltd
PLOT # 761/A, P.O. 26,
Jhagadia G.I.D.C., Bharuch
Gujarat,393110,India
Tel 91-2646-306800
Fax 91-2646-306810

Sale Order / Order Acknowledgment

CUSTOMER/BUYER:
Nalco Water India Limited
Plot No.6, Village Pirangut,
Taluka Mulshi,Pune
Maharashtra,412108,India,Tel,91-020-66768750/51

Sales Order No	: 31102530
Sales Order Date	: 20.07.2015
Sales Order Type	: EOU Domestic Order
Customer PO No.	: G00725182491/15-16
Customer PO Date	: 10.07.2015
Place of Delivery	: Pirangut, Pune

CONSIGNEE/SHIP TO:
Nalco Water India Limited
Plot No.6, Village Pirangut,
Taluka Mulshi,Pune
Maharashtra,412108,India,Tel,91-020-66768750/51

NOTIFY PARTY 1:

NOTIFY PARTY 2:

LST No. :27390002692V DT. 1.4.2006
CST No. :2730000269 2C DT. 1.6.2006
PAN No. :AAACO4994XM002

Specification :
Grade :
Sales :Direct Sales

Customer Number	Payment Terms	Ship Via	Transporter
1000069	60 DAYS FROM DELIVERY DATE	Road	TBD
Sales Person	**Freight Terms**	**Ship Date**	**Delivery Date**
MILIND SARFARE	DDP	21.07.2015	24.07.2015

Customer Material Code	Description/Packaging	Quantity / UOM	Unit Price in INR	Extended Price
40000089	GC850 - DRUM HDPE 272 KG	8,976.000 KG	34.17 /KG	306,709.92

Packaging Details:
33 Nos of HDPE Drums x 272 Kgs Drums

Total	**306,709.92**
Basic Price	306,709.92
Customs Duty	11,502.00
CVD (Excise Duty)	39,776.00
Freight	35,006.40
Total	392,994.00
CST 2.00 %	7,860.00
Grand Total	400,854.00

9103197
9103385
394

SO Created By : VIDYAR

Gulbrandsen Technologies (India) Pvt Ltd. Contact Information for any Queries Support
GTI Asia Pacific/Europe/Africa: +91-265.3927.500 (phone) susingh@gulbrandsen.com (Email id)
GTI US : +1.908.735.5458 (Press 2 for customer services) orders@gulbrandsen.com (Email id)

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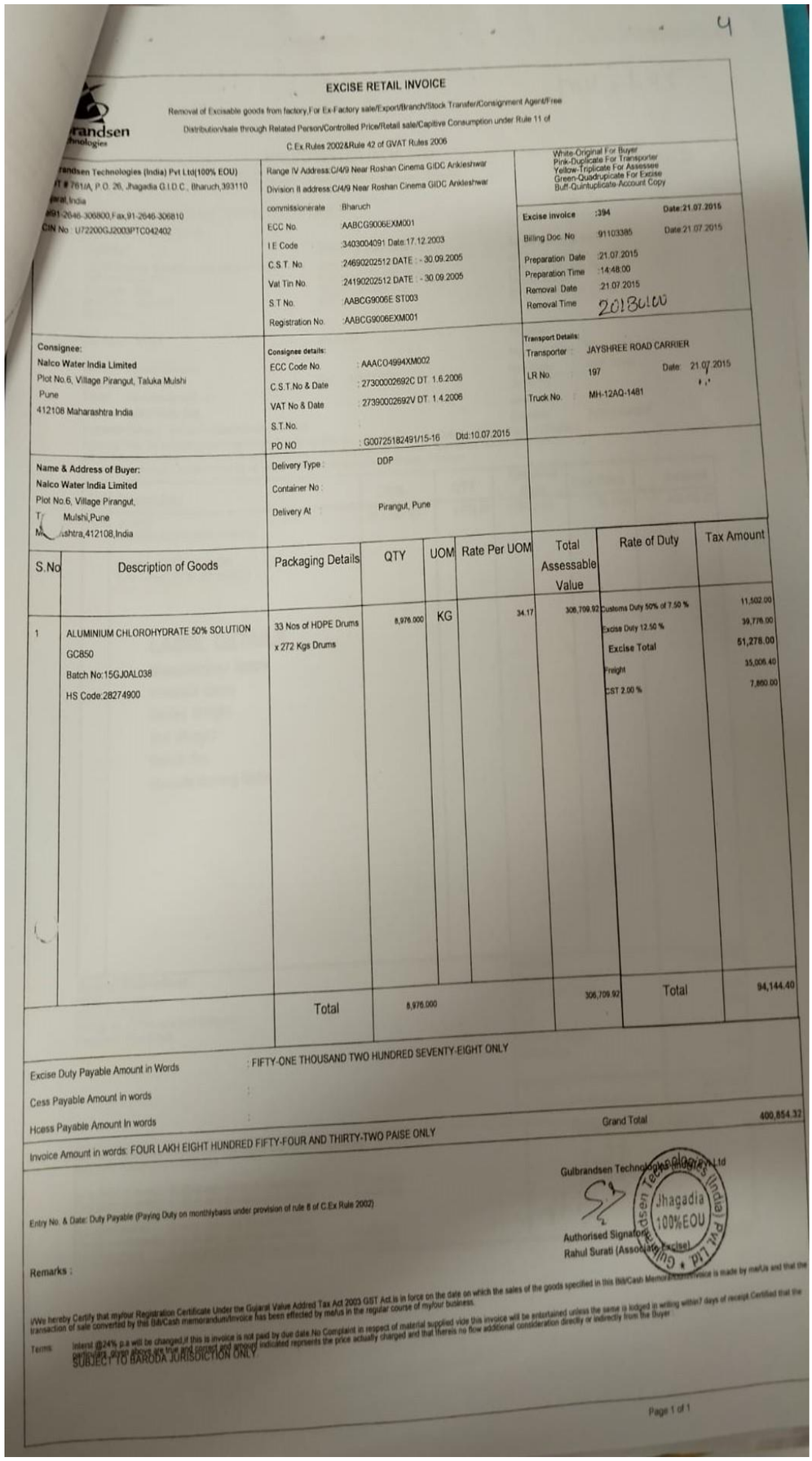
Experience our Chemistry

CORRESPONDING SALE INVOICE



EXCISE RETAIL INVOICE

Removal of Excisable goods from factory,For Ex-Factory sale/Export/Branch/Stock Transfer/Consignment Agent/Free Distribution/sale through Related Person/Controlled Price/Retail sale/Capitive Consumption under Rule 11 of C.Ex.Rules 2002&Rule 42 of GVAT Rules 2006

White-Original For Buyer
Pink-Duplicate For Transporter
Yellow-Triplicate For Assessee
Green-Quadrupicate For Excise
Buff-Quintuplicate-Account Copy

Gulbrandsen Technologies (India) Pvt Ltd(100% EOU)
PLOT # 761/A, P. O. 26, Jhagadia G.I.D.C., Bharuch,393110
Gujarat,India
+91-2646-306800,Fax,91-2646-306810
CIN No : U72200GJ2003PTC042402

Range IV Address:C/4/9 Near Roshan Cinema GIDC Ankleshwar
Division II address:C/4/9 Near Roshan Cinema GIDC Ankleshwar
commissionerate : Bharuch
ECC No. : AABCG9006EXM001
I E Code : 3403004091 Date:17.12.2003
C.S.T. No. : 24690202512 DATE : - 30.09.2005
Vat Tin No. : 24190202512 DATE : - 30.09.2005
S.T No. : AABCG9006E ST003
Registration No. : AABCG9006EXM001

Excise Invoice : 394 Date:21.07.2015
Billing Doc. No : 91103385 Date:21.07.2015
Preparation Date : 21.07.2015
Preparation Time : 14:48:00
Removal Date : 21.07.2015
Removal Time : 20:30:00

Consignee:
Nalco Water India Limited
Plot No.6, Village Pirangut, Taluka Mulshi
Pune
412108 Maharashtra India

Consignee details:
ECC Code No. : AAACO4994XM002
C.S.T.No & Date : 27300002692C DT 1.6.2006
VAT No & Date : 27390002692V DT 1.4.2006
S.T.No.
PO NO : G0072518249 1/15-16 Dtd:10.07.2015

Transport Details:
Transporter : JAYSHREE ROAD CARRIER
LR No. : 197 Date: 21.07.2015
Truck No. : MH-12AQ-1481

Name & Address of Buyer:
Nalco Water India Limited
Plot No.6, Village Pirangut,
T... Mulshi,Pune
M...shtra,412108,India

Delivery Type : DDP
Container No :
Delivery At : Pirangut, Pune

S.No	Description of Goods	Packaging Details	QTY	UOM	Rate Per UOM	Total Assessable Value	Rate of Duty	Tax Amount
1	ALUMINIUM CHLOROHYDRATE 50% SOLUTION GC850 Batch No:15GJ0AL038 HS Code:28274900	33 Nos of HDPE Drums x 272 Kgs Drums	8,976.000	KG	34.17	306,709.92	Customs Duty 50% of 7.50 % Excise Duty 12.50 % Excise Total Freight CST 2.00 %	11,502.00 39,776.00 51,278.00 35,006.40 7,860.00
		Total	8,976.000			306,709.92	Total	94,144.40

Excise Duty Payable Amount in Words : FIFTY-ONE THOUSAND TWO HUNDRED SEVENTY-EIGHT ONLY
Cess Payable Amount in words :
Hcess Payable Amount In words :
Grand Total 400,854.32

Invoice Amount in words: FOUR LAKH EIGHT HUNDRED FIFTY-FOUR AND THIRTY-TWO PAISE ONLY

Gulbrandsen Technologies (India) Pvt Ltd
Jhagadia 100%EOU
Authorised Signatory
Rahul Surati (Associate Manager-Excise)

Entry No. & Date: Duty Payable (Paying Duty on monthlybasis under provision of rule 8 of C.Ex Rule 2002)

Remarks :

We hereby Certify that my/our Registration Certificate Under the Gujarat Value Added Tax Act 2003 GST Act is in force on the date on which the sales of the goods specified in this Bill/Cash Memo/Invoice is made by me/Us and that the transaction of sale converted by this Bill/Cash memorandum/invoice has been effected by me/us in the regular course of my/our business.

Terms: Interst @24% p.a will be charged,if this is invoice is not paid by due date.No Complaint in respect of material supplied vide this invoice will be entertained unless the same is lodged in writing within7 days of receipt.Certified that the particulars given above are true and correct and amount indicated represents the price actually charged and that thereis no flow additional consideration directly or indirectly from the Buyer
SUBJECT TO BARODA JURISDICTION ONLY.

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From the above sample purchase order, the order acknowledgement and corresponding sales invoice it can be seen that the freight was charged separately over and above the sale price of the goods and it is also undisputed that the bill clearly shows that the goods were sold directly to the customers without taking to depot or any other place from where the goods are sold, therefore, in this fact it is ex-factory sale and the freight charges is not includible in the assessable value. This issue has been considered time and again. In the case of Ispat Industries Limited (supra) the Hon'ble Supreme Court observed as under: -

> ***"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.

34. *In the view of the law that we have taken as well as the facts detailed above, the statement made by Shri S.P. Dahiwade pales into insignificance as has been correctly held by the Tribunal. We, therefore, dismiss this appeal with no order as to costs.*

Following the aforesaid Apex Court judgment this Tribunal in the case of Eimco Elecon India Ltd (supra) taken the same view as under:-

"4. We have considered the rival submissions and perused the material available on record. The issue involved in the present case *is that whether the freight charged separately in the sale invoices of excisable goods is includible in the assessable value of such excisable goods.*

4.1 Having considered the rival contention we find that freight have been charged separately and received separately. We also take notice that the buyers of the goods-Western Coalfields Ltd., Nagpur and M/s Bharart Coking Coal Ltd. (A Subsidiary of Coal India Ltd.) have issued purchase order specifying the price for the goods separately and also specifying the transportation cost for the supply of goods. Accordingly, appellant have supplied the goods and raised invoices for the price of goods and the transportation. Thus, it amounts to showing the cost of transport separately in the invoices.

4.2 The relevant Rule 5 of the Valuation Rules is reproduced below:-

> *"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".*

From the above rule it can be seen that when goods are sold for delivery at a place other than place of removal, transaction value of excisable goods shall not include actual cost of transportation from the place of removal up to the place of delivery of such excisable goods. As per the rule reproduced above, in order to allow the deduction of the cost of transportation following criterion should be fulfilled :

> *(a) The goods should be sold for delivery at a place other than place of removal.*
>
> *(b) Cost of freight should be in addition to the price for the goods.*

(c) Cost of transportation should be shown separately in the invoices.

4.3 As regards the first criterion, the place of removal is factory gate, however the goods were delivered at customer place. Therefore goods were sold for delivery not at the place of removal (i.e. factory gate) but at other place i.e. customer door step. We have perused copies of the purchase orders placed by the M/s Western Coalfields Ltd., Nagpur and M/s Bharat Coking Coal Ltd. and invoices issued by the Appellant. From the invoices it is seen that the freight shown in the invoices is in addition to basic price of the goods. It is clear from the terms of the purchase order that basic price and other components have to be indicated separately. Therefore, there is no dispute that basic price and the freight components are clearly indicated separately in the invoices and therefore criterion i.e. cost of transportation should be in addition to the basic price of the goods stand fulfilled.

4.4 In the light of these facts and legal provisions, we find no valid reason for disallowing the deduction for the freight paid inasmuch as the sales are FOR destination. We also find that a coordinate Bench of CESTAT in the case *of Sterlite Optical Technologies Ltd. v. CCE & C, Aurangabad - 2015 (329) E.L.T. 341 (Tri.-Mumbai) has taken a view in identical facts that freight will be allowable as a deduction from the composite price. Thus, the contention of the Department to include the freight amount in the assessable value does not meet the test of law and hence not legally sustainable. Hence, we find no merit in order passed by the appellate authority.*

4.5 We also find that in view of the various judgments cited by the Ld. Advocates, freight amount is not includable in the assessable value of the goods for charging excise duty. Since we have decided the matter on merits of the case*, we are not going to the issue of limitation raised by Ld. Advocate.*

5. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law."

In another case of Mira industries (supra) this Tribunal passed the following order:-

"04. We have carefully considered the submission made by both sides and perused the records. The issue required to be decided in this matter is that whether the amount shown separately as freight and handling charges in the invoices can be included in the assessable value u/s 4 of the Central Excise Act, 1944 or not. We find that Revenue's case *has no merits as during the disputed period duty liability has been discharged by the appellant on the basis of transaction value. We have seen the specimen invoice copy produced by the learned Counsel and note that duty paying documents were indicating separately the value for the freight and handling charges.*

4.1 It is the case *of the department that price of the goods so recovered should include elements of freight and handling charges which cannot be considered as transportation/handling cost but it is additional consideration. In this regard this Bench is of the view that during transportation of goods from the factory gate to the destination there can be certain charges incurred for handling of finished goods which the appellant has recovered only as cost of freight and handling. There is no evidence on record to show by the department that said charges are nothing but arrangement for reducing the assessable value of goods. In the absence of any such evidence it has to be held that the entire element of freight and handling charges shown separately in the invoices is nothing else but freight and handling charges. It is now a settled law as per the relied upon judgments cited supra by the Learned Counsel that any amount collected separately as freight in the invoices cannot be included in the assessable. CESTAT, West Zonal Bench, Mumbai in the* case *of CCE, Nagpur v.*

Ram Krishna Electrical Pvt. Ltd.2011 (272) E.L.T. 149 (Tribunal) (supra) has also held as follows : -

> *"5.1 The Hon'ble Apex Court in the* case *of Commissioner of Central Excise v. Accurate Meters Ltd. 2009 (235) E.L.T. 581 (S.C.) considered a similar situation wherein the goods were supplied by the assessee to the State Electricity Boards and two separate contracts were entered into, one for sale of meters and another for transportation and transit insurance thereof. As per the terms of the contract, the assessee was bound to transport the goods from the factory-gate to the place of State Electricity Boards at the rates specified in the tender. In the said* case *the Apex Court held that the place of removal remains the factory-gate and the cost of transportation from the place of removal to the place of delivery cannot be included in the assessable value even though the cost of transportation has been calculated on average basis and not on actual basis. The ratio of the said judgment apply squarely to the facts of the present* case*.*
>
> *5.2 Similarly, this Tribunal in the* case *of Majestic Auto v. CCE cited supra, had held that the equalised cost of freight shown separately in the invoices cannot be included in the assessable value even after 1-7-2000 when the place of removal remains the factory-gate."*

4.2 We also find that in the matter of Lamina Suspension Products Pvt. Ltd. Vs. Commissioner of C.Ex. Mangalore - 2018 (17) G.S.T.L. 296 (Tri. - Bang.) the tribunal dealing with the identical issue held as under : -

> *"4. By considering the total facts of the* case*, it appears that the appellant is a manufacturer of leaf spring which attracts the Central Excise duty under the heading 85 of CETA, 1985. The appellant clears the goods from their factory and through their depots situated in different parts of the country. The appellant has shown the handling charges collected @ 1% of the value as a part of the transaction cost by raising separate bills. So, the Department has demanded the duty of Rs. 64,660/- with equal penalty under Section 11AC of the Central Excise Act, 1944 as handling charges.*
>
> *5. It may be mentioned that the cost of transportation from the place of removal up to the place of delivery of such goods is not includible in the assessable value under Section 4 of the Central Excise Act, 1944 and not chargeable to Central Excise duty under Section 3 of the Act. In the instant* case*, the appellant has claimed the handling charges of 1% of the value as part of the transportation cost. Therefore, it is not includible in the assessable value.*
>
> *6. In view of the above, we set aside the impugned order and allow the appeal.*

4.3 In the above judgments it is held that amount charged as freight & handling charges and separately shown in the invoices cannot be included in the assessable value u/s 4 of the Central Excise Act, 1944. Therefore being the same facts and issue involved in the present case *also, the freight and handling charges shown separately in the invoice of the appellant is also not includable in the assessable value of the excisable goods, consequently, duty demand on the said elements is not sustainable.*

05. Accordingly, the impugned order is set aside. The appeal filed by the appellant is allowed."

In view of the above decisions including the Apex Court judgment in Ispat Industries Limited it is settled that in case of factory gate sale even though

sale is on FOR basis the freight charges shown/ collected separately in the invoice shall not be included in the transaction value of excisable goods. Thus, demand on the said freight charges is not sustainable.

5. Accordingly, the impugned order is set aside, the appeal is allowed with the consequential relief.

(Pronounced in the open court on 18.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi