(2015) 03 SC CK 0107

In the Supreme Court Of India

Case No : Civil Appeal Nos. 1742 of 2004 and 658 of 2005

Commissioner of Central Excise APPELLANT

Vs

Ispat Industries Ltd. RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Central Excise Rules, 1944 — Rule 173, Rule 25
Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 — Rule 5
Central Excises and Salt Act, 1944 — Section 11AC

Citation : (2015) 318 ELT 613

Hon'ble Judges : Rohinton Fali Nariman, J.;Arjan Kumar Sikri, J.

Bench : Division Bench

Advocate : K. Radhakrishnan, Senior Advocate, Rupesh Kumar, Sadhna Sandhu, R.K. Verma and B. Krishna Prasad, for the Appellant; S.K. Bagaria, Sr. Adv., Praveena Gautam, K. Ajit Singh and Tuhina, Advocates for the Respondent

Final Decision : Disposed Of

Judgement

1. The Respondent herein is the manufacturer of cold rolled/galvanized products of Iron and steel falling under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. The issue for consideration is as to the includability of the cost of transportation charges from the factory gate to the depot which was the place of removal in the transaction value of the goods, under the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000. The Assessee were engaged in clearance of their final product directly to the customers at the factory gate as well as stock transfer to their various depots. The Assessee had filed price declarations with the department Under Rule 173 of the erstwhile Central Excise Rules, 1944 declaring that their stock transfer price as given in the said declaration was inclusive of freight from factory gate to the depot. The revenue department issued 3 show cause notices to the Assessee amounting to Rs. 38,53,000/-, Rs. 46,24,660/- and Rs. 24,48,700/- for the period from April, 2001 to June, 2001, July, 2001 to September, 2001 and October, 2001 to

December, 2001 respectively. The Commissioner of Central Excise, Nagpur confirmed the total demand of Rs. 1,09,26,360/- vide order dated 27.05.2003. The Commissioner imposed a penalty of Rs. 10,00,000/- Under Rule 25 and a penalty of Rs. 1,09,26,360/- under 11AC of the Central Excise Act, 1944. Aggrieved by the order of the Commissioner, the Respondent filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (for short, ''the Tribunal''). The Tribunal allowed the appeal filed by the Assessee vide order dated 01.12.2003 relying upon the circular No. 354/81/2000-TRU dated 30.06.2000.

2. While allowing the appeal of the Respondent herein, the Tribunal has arrived at a categorical finding that the Respondent is not responsible to pay the cost of transport from the place of removal to the place of delivery i.e. from the factory gate to the depot separately. In terms of Rule 5 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000, such a cost of transport which is also separately shows, is not includable in the valuation for the purpose of excise duty.

3. We find no error in the judgment of the Tribunal.

4. The appeals are accordingly dismissed.

