Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/83-84,97-105/2012

Sr. No	Case No	Impugned Order Detail's	Date of Impugned Order	Passed By	Appellant	Respondent
1	E/83/2012-DB	OIA- 141-142/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	EAGLE GLIDE EXIM PVT. LTD.	-C.C.E. DELHI IV
2	E/84/2012-DB	OIA- 141-142/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	S.K. AUTO INDUSTRIES,	-C.C.E. DELHI IV
3	E/97/2012-DB	OIA- 137-138/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	EAGLE GLIDE EXIM PVT. LTD.	-C.C.E. DELHI IV
4	E/98/2012-DB	OIA- 139-140/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	EAGLE GLIDE EXIM PVT. LTD.	-C.C.E. DELHI IV
5	E/99/2012-DB	OIA- 132-133/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	EAGLE GLIDE EXIM PVT. LTD.	-C.C.E. DELHI IV
6	E/100/2012-DB	OIA- 143-145/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	EAGLE GLIDE EXIM PVT. LTD.	-C.C.E. DELHI IV
7	E/101/2012-DB	OIA- 143-145/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	MARSHALL AGRO TECH PVT. LTD.	-C.C.E. DELHI IV
8	E/102/2012-DB	OIA- 143-145/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	DR. DEWAN D.LAL CHOPRA, DIRECTOR OF	-C.C.E. DELHI IV
9	E/103/2012-DB	OIA- 134-136/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	EAGLE GLIDE EXIM PVT. LTD.	-C.C.E. DELHI IV
10	E/104/2012-DB	OIA- 134-136/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	MARSHALL AUTO ANCILLARIES PVT. LTD.	-C.C.E. DELHI IV
11	E/105/2012-DB	OIA- 134-136/CE/APPL/DLH-IV/2011	04/10/2011	Commissioner of Central Excise-Delhi-IV	DR. DEWAN D.LAL CHOPRA, DIRECTOR OF	-C.C.E. DELHI IV

Represented by:
For Appellant (s) : Shri A. K. Saini, Advocate
For Respondent (s): Shri Harvinder Singh, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Mr. Bijay Kumar,, Hon’ble Member (Technical)

Date of Hearing/Decision: 19.02.2019

ORDER No. A/60270-60280 / 2019

Per : Mr. Ashok Jindal

The appellants are in appeals against the impugned orders wherein duty has been demanded from the appellants, namely, S. K. Auto Industries, Marshall Agrotech Pvt. Ltd. And Marshall Auto Ancillaries Pvt
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Ltd., and penalties have been imposed on all the appellants. All the appeals are arising out of a common order, therefore, all are disposed of by way of common order.

2. The facts of the case are that M/s Eagle Glide Exim Pvt. Ltd a trading firm who entered into an agreement with M/s LUK India Pvt Ltd, to supply clutch plate assembly and cover assembly for motor vehicles. For supply of these goods M/s Eagle Glide Exim Pvt. Ltd used to procure inputs and raw materials from manufacturers of auto parts and get the assemblies done on job-work basis from various manufacturing unit. Some of the firms are namely, Marshall Agrotech Pvt. Ltd and Marshall Auto Ancillaries Pvt. Ltd, to whom these manufactured auto parts sent for packing on job work and packing material supplied free of cost by M/s LUK India Ltd. The packing material carried the brand name LUK belonging to M/s LUK India Ltd. The manufacturers were not paying any duty who manufactured these assemblies are not paying duty by availing SSI exemption and not manufacturing any branded goods. Revenue entertained a view that as the manufacturers are manufacturing assemblies having the brand name Luk which belongs to M/s Luk India Ltd., therefore, they are not entitled for SSI exemption. Consequently, they are liable to pay duty and M/s Eagle Glide Exim Pvt. Ltd is dealing the said goods is to be penalized under Rule 26 of the Central Excise Rules, 2002. Therefore, the proceedings were initiated against all the appellants and which was concluded against the appellants and duty is accordingly demanded alongwith interest and penalties on all

the appellants were imposed. Against the said orders, the appellants are before us.

3. Ld. Counsel appearing on behalf of the appellants submits that the manufacturers are not manufacturing any branded goods. Moreover, the Revenue relied on the statement of two employees of M/s Luk India Ltd, whose statements has stated that the brand name Luk has been embossed on these assemblies, but no samples were drawn to ascertain the truthness of the said statements and no cross examination was allowed to the appellants of these witnesses whose statements have been heavily relied upon by the Revenue. Apart from that, no evidence on record to show that the appellants were manufactured any branded goods. He further submitted that the job workers who were engaged in the activity of packing only were not the manufacture of the said goods during the impugned period. There was no deeming provision of packing of the goods amounts to manufacture during the impugned period for assembly parts, in that circumstances, the demand of duty is not sustainable. Consequently, the penalties are also not sustainable.

4. On the other hand, the Ld. AR relied on the impugned orders and submits that it is an admitted fact that the goods in question were having a brand name, therefore, the manufacturers are not entitled to the benefit of SSI exemption notification as they are manufacturing branded goods whereas the brand name belongs to third party i.e. M/s Luk India Ltd.

5. Heard the parties.

6. On careful consideration of the arguments advanced before us, the fact of the case are in dispute whether these assemblies were having embossed brand name LUK thereon or not?

The said fact could have been ascertain only by drawing the samples of the said goods and no samples were drawn during the course of investigation to ascertain the fact that whether these assemblies were having embossed the brand name LUK thereon or not? Therefore, the statement of these witnesses cannot be relied upon in terms of Section 9D of the Central Excise Act, 1944. There is no evidence available on record to show that the job workers in question are manufacturing LUK brand, Clutch assembles. In that circumstances, demand against the manufacturers are not sustainable. Moreover, the packing activity has been undertaken on job works who were packing these assemblies in the Polythene boxes branded by M/s Luk India Ltd. Merely, packing of these assemblies does not amount to manufacture as there was no deeming provision during the relevant time. Therefore, we hold that the appellants are not manufacturing the goods having brand name of third party. Therefore, the allegation against the appellants is not sustainable in the absence of any cogent evidence. Therefore, we hold that the appellants are entitled for exemption under Notification No. 8/2003 dated 01.03.2003 and no demand is sustainable against them. As demands against the manufacturers are not sustainable, therefore, no penalties imposed against all the appellants.

7. In view of above analysis, we set-aside the impugned orders and allow the appeals filed by the appellants with consequential relief, if any.

(Operative part of the order pronounced in the Court)

(Bijay Kumar)	**(Ashok Jindal)**
Member (Technical)	Member (Judicial)

G.Y.