Customs, Excise & Service Tax Appellate Tribunal

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

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Appeal No. E/812-813,822/2012

(Arising out of OIO-30/DM/ADJN/CE/2011-2012 dated 10.01.2012 passed by the Commissioner of Central Excise - Delhi)

M/s Aar Kay Industries
Shri Harish Mehandiratta
Shri Sumit Mehandiratta : Appellant (s)

Vs

CCE-Delhi-IV : Respondent (s)

Represented by:
For Appellant (s) : Ms. S. Jaina, Advocate
For Respondent (s): Shri H. Singh, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Mr. Anil G. Shakkarwar, Hon'ble Member (Technical)

Date of Hearing: 26.10.2018

Date of Decision: 05.12.2018

ORDER No. A/63506-63508 / 2018

Per : Mr. Ashok Jindal

The appellants are in appeals against the impugned order which is as follows:-

> *"I confirm and order recovery of Central Excise duty amounting to Rs. 87,97,013/- (Rupees Eighty Seven Lakhs Ninety Seven thousands and Thirteen only) (Rs. 85,78,569/- duty + Rs. 1,71,571/- Education Cess + Rs. 46,873/- Secondary and Higher Education Cess) on the clearances of Stone crusher machines and their parts during the period 2005-06 to 2009-10 from M/s AAR KAY Industries, Anangpur Road, Gurukul Indraprastha, Sarai Khwaja, Faridabad (Harayana) under proviso to sub-section (1) of Section 11A of the Central Excise Act, 1944;*
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> *I order that the interest at the rates applicable be recovered on the above demand of duty of Rs. 87,97,013/- from M/s AAR KAY Industries, Anangpur Road, Gurukul Indraprastha, Sarai Khwaja, Faridabad (Harayana) under Section 11AB of the Central Excise Act, 1944.*
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> *I impose penalty of Rs. 87,97,013/- on M/s AAR KAY Industries, Anangpur Road, Gurukul Indraprastha, Sarai Khwaja, Faridabad (Harayana) under Section 11AC of the Central Excise Act, 1944. However, in terms of proviso to Section 11AC if the entire amount of duty and interest as due thereon is paid by the party within 30 days from the*
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date of receipt of this Order, then the amount of penalty will be equal to 25% of the total amount of duty so determined provided the reduced amount of penalty is also paid within 30 days from the date of receipt of this order. Further the no separate penalty under Rule 25 of the Central Excise Rules, 2002, as proposed in the impugned show cause notice, is required to be imposed once the penalty has been imposed under Section 11AC of the Act.

I order confiscation of the seized Jaw Crushers valued at Rs. 11,00,000/- Rs. Eleven Lakhs only) under Rule 25 of the Central Excise Rules, 2002. However, since the above seized goods have already been released provisionally on execution of B-11 Bond for Rs. 19,00,000/- and Bank Guarantee of Rs. 4,75,000/- of ICICI Bank, Nehru Place, New Delhi and is no more available for confiscation, I impose redemption fine of Rs. 4,00,000/- in lieu of confiscation of the above seized goods.

I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on Shri Sumit Mehandiratta, Proprietor of M/s Mahalaxmi Engineering Works, Anangpur Road, Gurukul Indraprashtha, Saria Khwaja, Fridabad (Haryana) under Rule 26(1) of the Central Excise Rules, 2002.

I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on Sh. Harish Kumar Mehandiratta, Proprietor of M/s Harish Engineering Works, Shop No. 31, Shopping Centre, Pali Crushing Zone, Faridabad under Rule 26(1) of the Central Excise Rules, 2002."

2. The facts of the case are that the appellants are engaged in the manufacture of Stone Crushing Machineries and intelligence was gathered that the manufacturers namely, M/s AAR Kay Industries (in short M/s AAR Kay) is clearing the said goods by using the invoices of four firms, namely, Mahalaxmi Engg Works, Harish Engg Works, DKV Enterprises and Maa Luxmi Indt Hardware Store by availing SSI exemption and not paying duty on the goods. On the basis of said intelligence, a search was made to the premises of M/s AAR Kay and Ors. During the course of search, certain bills and other details of other units were recovered and it alleged that M/s AAR Kay was manufacturing and clearing the goods from his factory on the bills of other units to remain within SSI exemption limit. All the above firms were also searched and bills/invoices and other documents relating to clearance of goods were resumed. Statements of various persons involved

were recorded. Shri Ramesh Kumar Mehndiratta, Proprietor of M/s AAR Kay admitted the clearance of M/s Mahalaxmi Engg. Works, a proprietorship of his son Shri Sumit Mehndiratta and voluntarily deposited Rs. 40.00 Lacs during the course of investigation. On the basis of other various statements of proprietors of all these firms and statements of various transporters, buyers and suppliers it was proposed that the appellant M/s AAR Kay had made clearances in the name of above said firms to remain within SSI exemption limit to avoid payment of central excise duty. Therefore, a show cause notice was issued to all the above said firms to club their clearances in the clearance of M/s AAR Kay, consequently, to demand duty and for confiscation of goods seized were proposed to be held liable for confiscation and to impose penalty of all the above said firms/persons involving in clandestine removal of goods. The show cause notice was adjudicated and impugned order as above in para 1 was passed holding that the appellant M/s AAR Kay has made clearances in the name of all these firms to evade payment of duty by availing SSI exemption limit. It was also held that the goods are liable for confiscation. Consequently, redemption fine of Rs. 4.00 Lacs was imposed and penalty on the co-appellants were also imposed. Apart from the above mentioned appellants, no other co-notices is before us. Therefore, we are disposing of the appeals which are listed before us filed by the above appellants mentioned herein above.

3. Ld. Counsel appearing on behalf of the appellants submits that M/s Mahalaxmi Engg Works is stituated in the same premises of M/s AAR Kay

and SSI exemption is not available to two units using the same premises, therefore, the appellant has admitted the clearances of M/s Mahalaxmi Engg Works have to be clubbed with its clearances and after allowing SSI exemption, the total duty liability works out of Rs. 40,12,136/- and appellant has already paid Rs. 40.00 Lacs during the course of investigation. It is also submitted that the clearances may be taken as cum-duty-price, as the appellant has not recovered any amount over and above the amount shown in the invoices. It is her further submission that the main allegation against the M/s AAR Kay is that they have used invoices of four firms to clear goods manufactured by M/s AAR Kay as admitted by the appellant Shri Harish Kumar Mehndiratta, M/s DKV Enterprises and M/s Maa Luxmi Hardware Store. It is her submission that during the course of investigation one rubber stamp and two invoices of M/s Harish Engg Works were recovered from the premises of the appellant (M/s AAR Kay) and on the basis of that it was alleged that M/s AAR Kay is using the invoices of M/s Harish Engg Works. In fact, Shri Ramesh Kumar Mehndiratta never admitted to having used the invoices of M/s Harish Engg Works. It is her submission that M/s Harish Engg Works was having enough machines to manufacture the machinery sold by it to that effect an investigation was conducted in their factory premises on 10.02.2010 wherein two lathe machines, one shaper, one roller machine, one welding set, one gas cutter and three chain pulleys in the factory were found. It is also submitted that Shri Harish Kumar Mehendiratta never admitted that the invoices of M/s Harish Engg Works were used by M/s AAR Kay. She further submits that the statements of employee of M/s Harish Engg. Works i.e. Shri Mahendra and Jitendra and the statements relied upon were written by one Ravi Shankar who stated that machinery sold by M/s Harish Engg Works was not manufactured by them or machinery sold on the invoices of M/s Harish Engg Works were manufactured by M/s AAR Kay. Moreover, a statement of Shri Sumit Mehndiratta also supports the same. She further submits that the statement of transporter Shri Gopal Ahuja was recorded wherein he has stated that the firm does not have any transport vehicle and the vehicles were arranged by him as per demand and Shri Jagdish Chander was the person who actually got the goods loaded, but no statement of Shri Jagdish Chander was recorded and drivers of the vehicles were also not investigated. In that circumstances, the clearances made by M/s Harish Engg Works cannot be clubbed with the clearances made by M/s AAR Kay on the basis of the statement of Shri Gopal Ahuja, transporter. She further submits that one of the buyer M/s Techno Crafts was also visited in respect of invoices issued by M/s Harish Engg Works for sale of jaw crushers. The statement of Shri Ashwani Mehta, is not inculpatory. In fact, he has stated that there was no written order placed and payment against the machinery received by them were made to M/s Harish Engg Works. Therefore, the statement is in favour of the appellants. She also submits that another buyer M/s Mewat Grit Udyog was also investigated in respect of the invoices issued by M/s Harish Engg Works for sale of vibrating screens and the supervisor Shri Jagdish Prasad Sharma has stated that he has no knowledge regarding purchase of machinery and Shri Kishan

Lal Gupta can explain but no statement of Shri Kishan Lal Gupta was recorded. In that circumstances, the clearances made by M/s Harish Engg Works cannot be clubbed with the clearances made by M/s AAR Kay.

4. She further submits that with regard to the allegation that invoices of M/s AAR Kay is based on the statement of Shri Vinay Batra, proprietor of M/s DKV wherein he has stated that his firm was engaged in manufacture of belt conveyors, vibrator, jaali, drum pulley etc and he never manufactured jaw crushers. He also stated that whatever crushers and rotopactors have been sold in his bill books they were manufactured by M/s AAR Kay. With regard to the said allegation, it is her submission that out of the 30 invoices only 2 invoices were for jaw crushers and one invoice is for sale of rotopactors. All other invoices for sale of parts which have admittedly been manufacture by M/s DKV Enterprises. It is her submission that by assembling of the parts, the machinery can be manufactured and there is no evidence that the appellant got parts fabricated from M/s DKV Enterprises and there is no evidence that raw material purchased by M/s DKV Enterprises was unloaded in the premises of the appellant (M/s AAR Kay). It is further submitted that the sales made on the invoices of M/s DKV Enterprises, M/s DKV Enterprises have received the payment in cheque and no money was returned to M/s AAR Kay. Therefore, the statement of Shri Vinay Batra cannot be relied upon in toto. She further submits that the statement of Shri Anup Lohia, Account Manager of M/s Sandeep Steel Traders was recorded who supported the statement of Shri Vinay Batra. To counter this allegation, it is her submission that the proprietor M/s

Sandeep Steel Traders is Shri Sandeep Lohia and not Shri Anup Lohia whose statement was never recorded and Shri Anup Lohia has also not given any inculpatory statement. Therefore the statement cannot be relied upon. It is her submission that not a single bill of purchase of raw material which was off loaded in the premises of M/s AAR Kay is on record and Shri Vinay Batra never stated that the raw material purchased from M/s Sandeep Steel was off loaded in the premises of M/s AAR Kay. She further submits that one of the buyers, M/s CHM Projects were also visited with in respect of six invoices issued by M/s DKV Enterprises. All these bills are for sale of parts of stone crushing machinery and M/s DKV has admitted and some sales were made against Form H for export of goods which were not liable to duty. She also submitted that the statements of Shri Kishore Kumar Sethi and Shri Niranjan Singh of M/s CHM Projects were also does not support the case of the Revenue. It is also submitted that the statement of Shri Ashok Kumar Arora, proprietor of M/s Anand Sports Carrier was also recorded who stated that the goods were loaded from the appellant's premises and the GR'S written by Shri Sumit Mehendiratta and all the vehicles were arranged and freight was paid by M/s CHM Projects. To counter this allegation, it is her submission that drivers/owners of the vehicles were not examined, Shri Sumit Mehndiratta was also not confronted with the statement of the transporter and transporter's statement is recorded in 2010 whereas the invoices issued in 2006. Therefore, without any corroborative evidence, the statements cannot be relied upon. Further, Shri Ramesh Mehndiratta nowhere admitted that they have used the invoices M/s DKV Enterprises for sale of goods manufactured by them. It is contended that the clearances made by M/s DKV Enterprises cannot be clubbed with the sale made by M/s AAR Kay.

5. With regard to the clearances on the bills allegedly used by M/s AAR Kay of M/s MAA Luxmi Hardware Store. The allegation has been made on the basis of the statement of Shri Dharmendra Batra, who has stated that his firm was manufacturing belt conveyors screen, drum pulley, loader which are parts of stone crushing and sale of machinery in their invoices were manufactured by M/s AAR Kay. To counter this allegation, it is her submission that a person manufacturing parts of machinery can assemble the machinery also. She further submitted that Shri Dharmendra Batra has admitted that they have received payment in cheque for the machinery sold on their invoices and did not return any money to M/s AAR Kay and he does not know the buyer of the jaw crushers. He also stated that they have fabrication for M/s AAR Kay and sending raw material purchased by it to M/s AAR Kay. To counter this allegation, it is her submission that there is no evidence that M/s AAR Kay got parts fabricated from M/s MAA Luxmi Hardware Store and no evidence on record that raw material purchased by M/s MAA Luxmi Hardware Store was unloaded in the premises of the appellant (M/s AAR Kay). She further submitted that the statement of Shri Anup Lohia, Account Manager of M/s Sandeep Steel Traders was also relied upon. To counter this statement, she took the argument which have already stated in the case of M/s Harish Engg Works. She further submitted that the statement of Shri Kishore Kumar Sethi and Shri Niranjan

Singh were also relied to allege that clearances by M/s DKV Enterprises and M/s MAA Luxmi Hardware Store are not admissible. She also submitted that the statement of Shri Gopal Ahuja transporter was also shown, it is her allegation that the statement of Gopal Ahuja contradictory as in the first statement he claims to know the firm, its proprietor and second statement he claims that he does not know the firm or its proprietor. It is contended that Shri Jagdish Chander who got the machines loaded, but no statement was recorded. Therefore, she prayed that clearances made by M/s MAA Hardware Store cannot be clubbed with the clearances made by M/s AAR Kay.

6. With regard to the confiscation of the Jaw Curshers seized on 20.04.2010 on the ground of misdeclaration of size and undervaluation. It is her contention that the order was placed 8 months back at that time price was lesser and there is no investigation was conducted to allege undervaluation and to ascertain the fact that whether M/s AAR Kay received over and above the amount charged in the invoices. Therefore, the charge of undervaluation is not sustainable. Consequently, the goods are not liable for confiscation. She further submits that the transaction value is to be treated as cum duty price and transaction value is available with the department and has to be treated as the cum duty price. It is her further submission that the show cause notice has alleged undervaluation of five invoices which were issued to Technocrafts by M/s Harish Engg Works and M/s Mahalaxmi Engg Works. The said allegation is based on the statement of Shri Ashwani Mehta wherein it has been stated that the

differential amount over and above the invoices was paid in cash. It is her submission that the two invoices issued by M/s Harish Engg Works are dated 11.09.2009 and 13.01.2009, these invoices do not mention the size of the machines and three invoices are issued by M/s Mahalaxmi Engg Works wherein no size of the machines was written. Size of the machines cannot be verified as the goods are available. Moreover, Shri Sumit Mehndiratta, Shri Ramesh Mehndiratta and Shri Harish Kumar were not confronted with the statement of Shri Ashwani Mehta. Therefore, without any corroborative statement of Shri Ashwani Mehta, the charge of undervaluation is not sustainable.

7. In view of the above submission, it is submitted by the Ld. Counsel that the clearances made by Harish Engg. Works, M/s DKV Enterprises, M/s MAA Luxmi Hardware Store cannot be clubbed with the clearances made by M/s AAR Kay Industries. Therefore, no penalty is imposable on Shri Harish Mehndiratta. It is her further submission that as on the clearances made in the name of M/s Mahalaxmi Engg. Works has admitted by the M/s AAR Kay during the course of investigation and duty has been paid thereon, therefore, the penalty to be reduced to 25% of duty confirmed in terms of proviso to Section 11 AC and penalty imposed on Shri Sumit Mehndiratta is on higher size, the same is to be reduced.

8. On the other hand, the arguments advanced by the Ld. Counsel were opposed by the Ld. AR who stated that Shri Harish Kumar Mehndiratta admitted in his statement that they were involved in the repair work of parts of stone crushing machineries and he had no designs for

manufacturing of stone crushing machineries and its parts and he was not knowing about the issuance of the invoices and the statements of two employees were also recorded who stated that the work related to repair of parts of stone crusher machines was carried out by them and they had never manufactured jaw crushers and conveyors. It is his submission that Shri Ramesh Kumar Mehndiratta has admitted that the bib machines like Jaw Crusher, Rotopactor, Vibrating Screen, Conveyor and Granulator etc. Shown in the invoices of M/s Harish Engg Works were actually manufactured in his factory. Therefore, the clearances made by M/s Harish Engg Works have been rightly clubbed with the clearances made by M/s AAR Kay.

9. With regard to the investigations at M/s D.K.V. Enterprises and M/s MAA Luxmi hardware Store, it is his submission that these firms were owned by two brothers as proprietors who had categorically stated that Shri Ramesh Kumar Mehndiratta used to their bill books, the same were manufactured by M/s AAR Kay and that their firms did not manufacture those jaw crusher. They have certified that the money was received against these bills were adjusted under the fabrication work and the raw materials were purchased in their name, but, were offloaded in the premises of M/s AAR Kay and they did not know the customers and had never received any orders. Therefore, it is further submitted that investigations were conducted at the end of various buyers and M/s Techno Crafts has received machines on the bills of M/s Mahalaxmi Engg Works and M/s Harish Engg Works has admitted that they have placed the

order on M/s AAR Kay only and received all the machines from the premises of M/s AAR Kay but on the bills of M/s Mahalaxmi Engg Works and M/s Harish Engg. Works. The buyer, namely, M/s Mewat Grit Udyog have also admitted that they have made purchase order on M/s AAR Kay and received the machinery from M/s AAR Kay under the invoices of others. He also submitted that M/s CHM Projects was also visited and Shri Niranjan Singh, Accountant of the company has stated that Shri Ramesh Mehendiratta informed him that he will supply the goods to them on the bills of M/s DKV Enterprises and M/s Maa Luxmi Indl. Hardware Store and also asked them to make payments in favour of these firms only. He also submitted that the statement of Shri Gopal Ahuja, was also recorded who in consultation with his employee stated that they have received orders from Shri Sumit Mehendiratta for transportation of goods from the premises of M/s AAR Kay. Another transporter namely, M/s Anand Road Carriers stated that they had handed over blank GRs to Shri Sumit Mehendiratta and their details filled by Shri Sumit Mehendiratta or any of his employee and that he had provided the vehicles and that whatever material has been mentioned in the bills shown to him were loaded by them from the premises of M/s AAR Kay and he did not know the owners of M/s DKV Enterprises. Shri Ramesh Kumar Mehendiratta has also certified the statements of the above buyers and transporters.

10. With regard to the seizure of the goods, it is his submission that it was found that the invoices were not showing weight of the machines. So the truck and the machines were got weighed and measured after bringing

brought back into factory of M/s AAR Kay and Shri Ramesh Kumar Mehendiratta admitted that the size of the Jaw Crusher mentioned in the invoice was not correct and it was actually found to be correct which was valued at Rs. 525000/- each and not Rs. 375000/- as mentioned in the invoice. Hence, the said jaw crushers were correctly confiscated and keeping in view of the intention of the appellant M/s AAR Kay, therefore, the redemption fine is rightly imposed.

11. It is his submission that from the above submission, it is clear that to remain within SSI exemption limit, cleared the goods without payment of duty by M/s AAR Kay with connivance of other units, used their bills, therefore, the clearances made by other firms have been rightly clubbed with the clearances made by M/s AAR Kay. Therefore, the impugned order is to be upheld. He also relied on the various decisions, namely, ***Kay Kay Fluid Seals Ltd. Vs. Commissioner of Central Excise, New Delhi – 2015 (327) ELT 357 (Tri.-Del.), Everest Diamond Tools vs. Commissioner of Central Excise, Visakhapatnam – 2007 (211) ELT 327 (Tri.-Mumbai)*** which was upheld by the Hon'ble High Court of Gujarat in the case of ***Everest Diamond Tools vs. Commissioner of Central Excise & Customs, Surat-I – 2015 (321) ELT 430 (Guj.)***, the same has been affirmed by the Hon'ble Apex Court reported in ***2015 (321) ELT A207 (S.C.)***. He has also relied on the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Pvt. Ltd. – 2011 (270) ELT 643 (S.C.)*** to say that when the statement contained in the procedure of

working then it cannot said to be under duress. Therefore, he prayed that the appeals are to be dismissed.

12. Heard the parties and considered the submissions.

13. On careful consideration and submission made by both sides, we find that the sole allegation against M/s AAR Kay is that they have used invoices of four firms to clear the goods manufactured by them to remain under SSI exemption limit. We find that during the course of investigation, the clearances made by M/s Mahalaxmi Engg Works under proprietorship of Shri Sumit Mehandiratta have been admitted by Shri Ramesh Kumar Mehandiratta proprietor of M/s AAR Kay as both the units are located in the same premises and SSI exemption is not available to two units using the same premises and made a payment of Rs. 40.00 Lacs. We have gone through the details of the clearances made by M/s Mahalaxmi Engg. Works, which is as follows:-

Year	Ass. Value of the goods cleared on the invoice of M/s AAR KAY	Ass. Value of the goods cleared on the invoices of M/s Maha Laxmi	*Total Ass. Value*	Ass. Value after given the initial exemption of Rs. 1Cr./1.5 Cr.	**Duty at applicable rate (Cum Duty Price)**
A	B	C	D	E	F
2005-06	5873595	5440870	11314465	1314465	184422
2006-07	10000000	9526780	19526780	9526780	1336632
2007-08	10661241	10447945	21109186	6109186	809039
2008-09	12408370	11181643	23590013	8590013	802149
2009-10	13465299	12999770	26465069	11465069	879894
TOTAL	**5,24,08,505**	**4,95,97,008**	**11,61,14,713**	**39033393**	**4012136**

On going through the said details, we find that if the clearances of M/s Mahalaxmi Engg Works are clubbed with the clearances of M/s AAR

Kay then the total duty works out of Rs. 40,12,136/. The said demand of duty is to be considered as cum duty price. Therefore, the said benefit is to be given and after giving the benefit to the appellant, the demand of interest is to be calculated and adjusted against the said amount of Rs. 40.00 Lacs. If any amount is pending then the same is to be paid by the appellant within 30 days of the receipt of this order and in said circumstances, the appellant M/s AAR Kay is entitled for reduced penalty to 25% confirmed if the same is paid within 30 days of receipt of this order as per the proviso to Section 11AC of the Act.

14. Now, we consider the clearances of M/s Harish Engg Works sought to be clubbed with the clearances of M/s AAR Kay. The allegations are on the basis of the investigation wherein one rubber stamp and two invoices of M/s Harish Engg Works were found in the premises of M/s AAR Kay, the statements of Shri Mahendra, Shri Jitendra (both employees) and the statement of Transporter Shri Gopal Ahuja, and the statement of Buyers, namely, M/s Techno Crafts, M/s Mewat Grit Udyog and corroborative of statements Shri Ramesh Mehndiratta.

15. We have examined the statements whereas the Ramesh Mehndiratta has stated that the rubber stamp and the invoices must have been left by Shri Harish Kumar his brother in his premises by mistake and the invoices has been written by Shri Sumit Mehendiratta and the statement of Shri Harish Kumar who states that they were engaged in repair as well as manufacture of Stone Crushing Machinery like Jaw Crusher, Rotopactor etc. We find that when Shri Harish Mehendiratta in

his statement as stated that is engaged in repairs as well as manufacturing of stone crushing machinery like jaw crusher, rotopactor etc, and having sufficient machinery in the manufacture of said goods i.e. two lathe machines, one shaper, one roller machine, one gas cutter and three chain pulleys in the factory. These facts have not been contraverted by any evidence by the Revenue. As M/s Harish Engg Works is having sufficient machinery to manufacture the goods in question and Shri Harish Mehendiratta have never stated that is not engaged in the business of manufacturing of stone crushing machinery, therefore, the said statement is having a piece of evidence to relied upon. Merely, rubber stamp and invoices were found in the premises of M/s AAR Kay is not sufficient to rely that M/s AAR Kay has used the invoices of M/s Harish Engg Works for clearance of their goods. Moreover, we have gone through the statement of Shri Mahendra and Jitendra who were the employees of M/s Harish Engg Works, we find that these statements made by them and were not written by them, but written by one Shri Shanker and identity of Shri Shanker is not known, therefore, the statement of Shri Mahendra and Shri Jitendra are not a piece of evidence to be relied upon. We have also seen the statement of Shri Sumit Mehndiratta, the said statement is not inculpatory. In fact, he has stated in the absence of or on the request of his uncle Shri Harish Mehndiratta, he prepared the invoices of M/s Harish Engg Works. Shri Sumit Mehndiratta never admitted that the machinery sold on the invoices of M/s Harish Engg Works was manufactured by M/s AAR Kay in their premises. The revenue has heavily relied upon the statement of Shri Gopal Ahuja. We have gone through the statement of Shri Gopal Ahuja, he has stated that his firm does not have any transport vehicle and arranged the vehicles from outside and one Shri Jagdish Chander was providing of vehicles to M/s Harish Engg Works, but, unfortunately the statement of Shri Jagdish Chander who is the actual person dealing with the transportation was never recorded. This puts a question-mark on the investigation when a person who was dealing with the transportation was not examined, how the statement of Shri Gopal Ahuja can be relied. Moreover, drivers of the vehicles were also not examined. In that circumstances, the statement of Shri Gopal Ahuja is cannot be the basis to allege the clubbing of clearances of M/s Harish Engg Works with M/s AAR Kay. We have also gone through the statement of the buyer Shri Ashwani Mehta, Proprietor of M/s Techno Crafts who has stated that they have placed a verbally order on M/s AAR Kay and received the machinery on the invoices of M/s Harish Engg Works and M/s Mahalaxmi Engg Works. Admittedly, the purchase order was placed verbally and the invoices were issued by M/s Harish Engg Works, who received the payment through cheque and no cash transaction were taken place. There is no evidence to show that the machinery cleared on the invoices of M/s Harish Engg. Works were manufactured by M/s AAR Kay. We also take a note of the fact that another statement of buyer M/s Mewat Grit Udyog was recorded to allege that the goods were manufactured by M/s AAR Kay. In fact, the statement of Supervisor Shri Jagdish Prasad Sharma was recorded who stated that he has no knowledge regarding purchase of machinery and

Shri Kishan Lal Gupta can explain. No statement of Shri Kishan Lal Gupta was ever recorded, therefore, it cannot be alleged that the machinery cleared to M/s Mewat Grit Udyog was manufactured by M/s AAR Kay. Revenue has relied upon the various statement of Shri Ramesh Kumar who never admitted that they have used any invoices to clear the goods clandestinely manufactured by them. We have also gone through the statement dated 30.09.2010 of Shri Ramesh Kumar Mehndiratta, the statement which was typed on the computer installed in the Anti Evasion Branch of Commissionerate as they were contrary statement of Shri Ramesh Mehndiratta during the course of investigation, therefore, the said statement cannot be relied upon in the absence of any positive evidence on record.

16. We also take a note of the fact that the buyers/sellers were not issued any show cause notice for aiding and abating the payment of duty, therefore, the statements of buyers/sellers are doubtful and can't be relied upon.

17. On the basis of above discussion, <u>we hold that the clearances made by M/s Harish Engg Works cannot be clubbed with the clearances made by M/s AAR Kay.</u> Therefore, the demand of duty on that account is set-aside and no penalty is imposable on M/s AAR Kay and Shri Harish Mehndiratta for the clearances made by M/s Harish Engg Works.

18. Demand sought to be confirmed on the clearances made by M/s DKV Enterprises alleging that the invoices of M/s DKV Enterprises have been used by M/s AAR Kay. We find that the main evidence relied upon by the

Revenue is the statement of Shri Vinay Batra, Proprietor of M/s DKV Enterprises, Shri Anup Lohia, Account Manager of M/s Sandeep Steel Traders, the statement of one buyer M/s CHM Projects and the statement of Transporter, Shri Ashok Kumar Arora, Proprietor of M/s Anand Sports Carrier, also the statement of Shri Ramesh Mehndiratta Proprietor of M/s AAR Kay Industries.

19. Shri Vinay Batra, in his statement has stated that they were engaged in manufacture of belt conveyors, vibrator, jaali, drum pulley etc (parts of stone crushers plants), but he never manufactured jaw crushers. We find that 30 invoices were alleged to be used by M/s AAR Kay for clearances. Out of these 30 invoices, only two invoices are for jaw crushers and one invoice is for sale of Rotopactors. All other invoices are for sale of parts, therefore, the said clearances of parts which have been admitted by Shri Vinay Batra have manufactured by him cannot be clubbed in the clearances of M/s AAR Kay. We also take a note of the fact that these jaw crushers and rotopactors have been cleared on the invoices of M/s DKV Enterprises and payment thereon have been received by M/s DKV Enterprises through cheque and no cash was returned back to M/s AAR Kay, but, Shri Vinay Batra in his statement as stated that they have compensated by doing fabrication for the appellant M/s AAR Kay and sending raw material purchased by it to the appellant. In support of this statement, there is no evidence on record to show that raw material purchased by M/s DKV Enterprises have been unloaded in the premises of M/s AAR Kay. Moreover, no evidence has been brought on record in support of the

statement of Shri Vinay Batra that they have done any job work or fabrication work on behalf of the M/s AAR Kay. Merely, on the basis of the statement of Shri Vinay Batra clearances of M/s DKV Enterprises cannot be clubbed with the clearances to the M/s AAR Kay in the absence of corroborative evidence. We have also gone through the statement of Shri Anup Lohia, Account Manager of M/s Sandeep Steel Traders, in fact Shri Anup Lohia has merely admitted the statement of Shri Vinay Batra. As we have rejected the statement of Shri Vinay Batra, therefore, the statement of Shri Anup Lohia cannot be relied upon. Moreover, the statement of the proprietor of M/s Sandeep Steel Traders was never recorded. Therefore, the said statement is not admissible. We also take a note of the fact that the buyers/sellers were not issued any show cause notice for aiding and abating the payment of duty, therefore, the statements of buyers/sellers are doubtful and can't be relied upon.

20. In view of the above discussion, <u>we hold that the clearances made on the invoices of M/s DKV Enterprises can't be clubbed with the clearances made by M/s AAR Kay. Therefore, the demand of duty is sustainable on that account.</u>

21. The clearances of M/s Maa Laxmi Hardware Store sought to be clubbed with the clearances made by M/s AAR Kay on the basis of the statement of Shri Dharmendra, Shri Jitendra and Shri Anup Lohia supplier and one buyer M/s CHM Projects.

22. We have gone through the statement of the one of the buyer M/s CHM Projects wherein the statement of Shri Kishore Kumar Sethi was

recorded who stated he has no knowledge and Shri Niranjan Singh can explain, who stated he placed order to Ramesh Kumar Mehendiratta who informed him that goods will be supplied on invoices of M/s DKV Enterprises and M/s Maa Laxmi Enterprises. In fact, the statement of Shri Niranjan Singh is not inculpatory. The said statement merely says that the goods will be delivered on the invoices of M/s DKV Enterprises, which does not mean that the goods shall be manufactured by M/s AAR Kay and shall be delivered on the invoices of M/s DKV Enterprises. Therefore, the said statement cannot be relied upon. With regard to the statement of transporter of Shri Ashok Kumar Arora, we find that he has stated that he has given GRs to Shri Sumit Mehndiratta and all these GRs have been written by Shri Sumit Mehndiratta or the employee. The goods were transported by the vehicles arranged by him and not owned by him, we find that no statement of any owner of the vehicles or the drivers of the vehicles have been recorded to prove that the machines have been supplied by M/s AAR Kay or machines have been loaded from the premises of M/s AAR Kay. In fact, the driver of the vehicle is the person who can reveal the truth, but, the same has not been examined, therefore, the transporter's statement is not admissible evidence. With regard to the statement of Shri Ramesh Mehndiratta, we have dealt the same in the case of M/s Harish Engineering Works and same observations are to be taken here as it is. We also take a note of the fact that the buyers/sellers were not issued any show cause notice for aiding and abating the payment of duty, therefore, the statements of buyers/sellers are doubtful and can't be relied upon.

23. In view of the above analysis, <u>we hold that the clearances made M/s Maa Laxmi Indt. Hardware Store cannot be clubbed with the clearances of M/s AAR Kay</u> in the absence of any positive evidence on record.

24. We further take a note of the fact that the redemption fine of Rs. 4.00 Lacs has been imposed on M/s AAR Kay industries alleging that misdeclaration of size and value of the jaw crushers seized on 20.04.2010. We find that the allegation is of undervaluation based on the clearances of other jaw crushers cleared by M/s AAR Kay during the relevant time. No investigation was conducted with the buyer whether the buyer has agreed on the said price or has paid any amount over and above the invoices price shown by M/s AAR Kay. Moreover, the appellant has contended that the appellant received the order for the said machines was given by the buyer eight months back and the machines could not be supplied in time, therefore, they have charged less price to compensate the buyer. The said defence taken by the appellant has not been contraverted by investigating the buyer. In that circumstances, <u>the charge of undervaluation has not been proved with tangible evidence</u>. In that circumstances, the charge of undervaluation is not sustainable. Consequently, no redemption fine can be imposed on M/s AAR Kay Industries. Consequently, the redemption fine of Rs. 4.00 Lacs is set-aside.

25. We further take a note of the fact that the allegation has been made of the undervaluation on the invoices cleared by M/s Harish Engg Works

and Mahalaxmi Engg Works, we find that as the clearances made by M/s Harish Engg Works cannot be clubbed with the clearances of M/s AAR Kay and all the clearances made by M/s Harish Engg Works remained with SSI exemption limit. Therefore, the charge of undervaluation on the invoice M/s Harish Engg Works is not sustainable. With regard to the three invoices issued by M/s Mahalaxmi Engg Works, we find that the charge of undervaluation has been made only on the basis of the statement of buyer Shri Ashwani Mehta, Proprietor of M/s Techno Crafts, but no evidence has been brought on record to prove that the said charge of undervaluation. Moreover, the appellants were never confronted with the statement of Shri Ashwani Mehta to corroborate the charge of undervaluation and Shri Ashwani Mehta was not issued any show cause notice to allege aiding and abating the payment of duty, the statement of Shri Ashwani Mehta is doubtful and can't be relied upon. In that circumstances, due to lack of evidence on record, the charge of undervaluation is not sustainable.

26. We take a note of the fact that a penalty of Rs. 10,00,000/- has been imposed on Shri Sumit Mehndiratta which is on higher side. In view of the above discussion, the same is reduced to Rs. 1,00,000/-.

27. In view of the above discussion, we pass the following order:-

(a) The clearances made M/s Mahalaxmi Engg Works are clubbed with the clearances of M/s AAR Kay and cum duty benefit is to be given to the appellant (M/s AAR Kay). M/s AAR Kay has paid a sum of Rs. 40.00 Lacs during the course of investigation, therefore, the said amount shall be appropriated and the remaining demand of interest shall be paid by the appellant alongwith 25% of duty as penalty under Section 11 AC of the Act within 30 days of the receipt of this order.

(b) The clearances made by M/s Harish Engg Works, M/s DKV Enterprises and M/s Maa Laxmi Hardware Store cannot clubbed with the clearances of M/s AAR Kay. Therefore, the demand by clubbing the clearances of above said firms is set-aside.

(c) No penalty is imposable on Shri Harish Kumar, Proprietor of M/s Harish Engg. Works.

(d) No redemption fine is imposable on the appellant.

(e) The penalty on Shri Sumit Mehndiratta, Proprietor of M/s Mahalaxmi Engg Works is on higher side, the same is reduced to Rs. 1,00,000/-.

28. In view of the above, the appeals are disposed of.

(Order Pronounced on 05.12.2018)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.