

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**  
**EXCISE APPEAL BRANCH**

Appeal No. E/178 /1995

Date 13/08/2007

Assistant Registrar  
C.E.S.T.A.T, New Delhi

To :  
M/S ESCORT LTD(TED)  
18/4 MATHURA ROAD FARIDABAD HARYANA

M/S ESCORT LTD(TED)

Appellant

Vs

Respondent

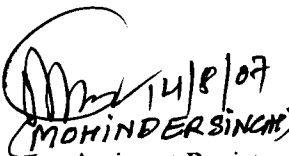
C.C.E. DELHI I

I am directed to transmit herewith a certified copy of Final order No. *442/07-EX*, dated *18-6-07* passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(Excise Appeal Branch)

**Copy to :**

1. Respondent  
C.C.E. DELHI I  
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
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3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
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(MOHINDER SINGH)  
Assistant Registrar  
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**West Block No.2, R.K.Puram, New Delhi-110066.**  
**Principal Bench, New Delhi.**

**E/APPEAL No.178/95**

[Arising out of Order-in-Original No.169/94 dt.24.11.94 passed by the Collector of Central Excise, New Delhi).

For approval and signature:

Hon'ble Mr. C.N.B.NAIR, MEMBER TECHNICAL  
 Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

- 
1. Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
  2. Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
  3. Whether their Lordships wish to see the fair : copy of the order?
  4. Whether order is to be circulated to the : Department Authorities:

*yv)*

M/s. Escorts Ltd.

Appellant

Versus

CCE, New Delhi

Respondent

Appearance

Sh. B.L.Narasimhan, Adv. For Appellant

Shri S.M.Tata, Authorised Representative(DR)For Respondent

Coram: Hon'ble Mr. C.N.B.NAIR, MEMBER TECHNICAL  
 Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

Date of decision: 18.6.07

*Final* Order No. 442/2007 EX

Per P.K.Das:

The issue involved in this appeal is valuation of tractor parts cleared for captive consumption. Ld. Advocate on behalf of the appellant fairly submits that the Tribunal in their own case by Final Order No.1348-1350/98-A dt.5.10.98 reported in 1999(113)ELT.1002(Tri.) decided on merits against the assessee. He submits that in the said case, demand of duty was raised for the normal period. He further submits that the demand of duty in the present appeal relates to extended period from 1.5.89 to 30.9.92 vide show cause notice dt.1.6.94, is barred by limitation.

2. The relevant facts of the case, in brief are that the appellants were engaged in the manufacture of various spare parts which were used captively by their Tractor Division. They were filing price list supported by costing certificate duly certified by a Chartered Accountant. It has been alleged that these goods were also sold through their other Division and therefore, it was proposed to be assessed at the same value at which these were sold in the open market in terms of Rule 6(b)(i) of Central Excise Valuation Rules,1975. A show cause notice dt.29.4.93 was issued proposing demand of duty for the period 1.10.92 to 11.3.93, confirmed by the adjudicating authority and upheld by the Tribunal vide final order dt.5.10.98. After one year of the said show cause notice, another show cause notice dt.1.6.94 was issued for demanding duty for the period from 1.5.89 to 30.9.92 on the same issue, which is the subject matter in the present appeal.

3. Ld. Advocate on behalf of the appellant submits that in the first show cause notice dt.29.4.93, there is no allegation of suppression of fact with intent to evade payment of duty. Therefore, the subsequent show cause notice dt.1.6.94 issued after one year of the earlier show cause notice with the allegation of suppression of fact for demand of duty of extended period of limitation on the same fact, cannot be sustainable. He relied upon the decision of the Hon'ble Supreme Court in the case of ECE Industries Ltd. vs CCE, New Delhi reported in 2004(164)ELT.236(SC) and Nizam Sugar Factory vs CCE, A.P. reported in 2006(197)ELT.465(SC).

3.1. He further submits that in this case the appellant cleared the spare parts to their sister unit Tractor Division for captive consumption, who has been availing Modvat credit. In any event, if the appellant would pay the amount of duty as demanded, their sister unit could avail Modvat credit. Thus, there is no intention of the appellant to evade payment of duty. He relied upon the decision of the Hon'ble Supreme Court in their own case as reported in 2004(171)ELT.145(SC). He also relied upon the Larger Bench decision of the Tribunal in the case of Jay Yuhshin Ltd. vs CCE, New Delhi reported in 2000(119)ELT.718(Tri.-LB).

3.2. He also contended that the appellants were submitting price list, which was being approved by the competent authority and there is no allegation of suppression of fact with intent to evade payment of duty in the first show cause notice dt.29.4.93. So, the allegation of suppression of fact

in the subsequent show cause notice dt.1.6.94 on the same fact is contrary to law.

4. Ld. DR reiterates the findings of the Commissioner. He submits that Hon'ble Supreme Court in the case of CCE, Mumbai vs Mahindra & Mahindra Ltd. reported in 2005(179)ELT.21(SC) held that Modvat credit entitlement cannot be basis that there is no suppression of fact with intent to evade payment of duty. He further submits that the first show cause notice was issued for normal period and therefore, there is no allegation of suppression of fact, which was invoked in the subsequent show cause notice for extended period of limitation.

5. After hearing both sides and on perusal of the record, we find that the Tribunal in the appellant's own case as reported in 1999(113)ELT.1002(Tri.) decided the issue on merits against the appellant. It is seen from the order of the Tribunal that the appellant contended in the said proceedings vide notice dt.29.4.93 that part of the demand was barred by limitation which was rejected by the Tribunal. The findings of the Tribunal are reproduced below:

“In one of the Appeals No.E/3180/93-A they have also contended that the demand was time barred prior to 29.10.92 as the show cause notice was received by them on 30.4.93. There is no substance in their submission as the demand under Section 11-A(1) of the Central Excise Act has to be issued within six months from the relevant date. Sub-section (3) to Section 11A defines relevant date according to which relevant date means, in case where a periodical return is to be filed, the date on which return is so filed or the last date on which such return is to be filed. As the said return (RT-12) is required to be filed by 5<sup>th</sup> of the succeeding month i.e. 5<sup>th</sup> November in this case in respect of October,1992, the show cause notice was well within

the time limit of six months as stipulated in Section 11A(1) of the Act as also admittedly show cause notice was received by the appellants on 30.4.93”.

6. On perusal of the show cause notice dt.29.4.93, we find that there is no allegation that the appellant suppressed material facts with intent to evade payment of duty. It has been alleged in the said show cause notice that all parts transferred from M/s. Escorts Ltd.(Tractor Equipment Division), appellant herein to M/s. Escorts Ltd.(Tractor Division), were not being used captively by Tractor Division as some of the parts were sold through Spare Parts Division another Sister Division. There is no material that the appellant(Tractor Equipment Division) had any knowledge of selling of goods by their sister unit. In any event, it is seen that in the aforesaid decision the Tribunal observed that the limitation runs from the date of filing of the R.T.12 return. Therefore, in the present case, we are unable to take different view.

7. The Hon'ble Supreme Court in the case of ECE Inds. Ltd.(Supra) held that extended period of limitation is not invocable in subsequent proceedings, when earlier proceedings on the same subject matter was decided without allegation of suppression or mis-statement. For the purpose of proper appreciation, the relevant portion of the said decision is reproduced below:

“2. However, in this case a further question arises i.e. whether in respect of the concerned show cause notice dt.27<sup>th</sup> May'94, the respondents were entitled to invoke the extended period of limitation under Section 11A of the Central Excise Act,1944.

The Tribunal negated the contention of the appellant and hold that there was suppression and therefore the extended period of limitation was available.

3. Some few facts necessary for a decision on this point are as follows:

The appellants were using parts, in respect of which the Modvat credit was availed . Even though they have not paid duty, they did not reverse the credit. The Department, therefore, issued show cause notices on 28<sup>th</sup> May,1993 and 4<sup>th</sup> November,1993. By these two show cause notices the appellants were called upon to show cause as to why duty and penalty be not levied on them for not having reversed the Modvat credit. These show cause notices were adjudicated by an order dt.2<sup>nd</sup> March,1994. Thereafter, the concerned show cause notice dt.27<sup>th</sup> May,1994 was issued. This has been adjudicated by an order dt.13<sup>th</sup> November,1997.

4. In the case of M/s. P & B Pharmaceuticals(P) Ltd. v. Collector of Central Excise reported in (2003(2)SCALE 390), the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any willful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked.

In our view, the principles laid down in above case fully apply here. As earlier proceedings in respect of same subject matter were pending adjudication, it could not be said that there was any suppression and the extended period under Section 11A was not available”.

8. The present case before us is also of similar nature inasmuch as SCN dt.29.4.93 proposing demand of duty denying the valuation claimed by the appellant. By adjudication order dt.5.10.93, the Commissioner confirmed the demand of duty and no penalty was imposed since no penal clause has been invoked in the show cause notice. After one year another SCN

dt.1.6.94 was issued in respect of the same subject matter alleging that there is a mis-statement of fact. Therefore, we most respectfully following the decision of the Hon'ble Supreme Court in the case of ECE Inds. Ltd. (Supra) hold that as there is no allegation of suppression or mis-statement in earlier proceedings and therefore, the allegation of suppression or mis-statement in the subsequent show cause notice in the present case is not sustainable and the demand of duty is barred by limitation.

9. Regarding the availment of Modvat credit, it is seen that the Hon'ble Supreme Court in appellant's own case reported in Escorts Ltd. vs CCE 2004(171)ELT.145(SC) held as under:

“8. It is to be seen that the whole purpose of Notification and the Rules is to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. Rule 57D(2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where intermediate product comes into existence, even though no duty has been paid on the intermediate product as it is exempted from whole of the duty or is chargeable to Nil rate of duty, credit would still be allowed so long as duty is paid on the final product”.

10. In the present case, the appellant cleared the goods for captive consumption to their sister unit (Tractor Division), who used the same in the manufacture of finished goods, cleared on payment of duty. So, the duty as demanded and paid by the appellant would be debited against the payment of duty on the final product at Tractor Division. In such a case, there is no reason to believe that the appellant suppressed the material fact with intent

to evade payment of duty. Ld. DR relied upon the decision of the Hon'ble Supreme Court in the case of CCE vs Mahindra & Mahindra(supra). In that case the Hon'ble Supreme Court observed that the Tribunal has not examined any other consideration except availability of Modvat credit to decide the extended period of limitation. In the present case before us, we have examined the other aspects of the matter, apart from the revenue neutrality due to availability of Modvat credit for the purpose of deciding extended period of limitation. So, the case of Mahindra & Mahindra(supra) is not applicable herein.

11. In view of the above discussions, and most respectfully following the decisions of the Hon'ble Supreme Court in the case of ECE Industries Ltd.(Supra), we find that the extended period of limitation under proviso to Section 11A of the Central Excise Act,44 cannot be applicable. So, therefore, demand of duty is not sustainable. Accordingly, the impugned order is set aside on the ground that demand is barred by limitation. The appeal is allowed with consequential relief, if any, to the appellant.

Order dictated in the open Court.

(C.N.B.Nair)  
Member Technical

(P.K.Das)  
Member Judicial

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