

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

REGISTERED / AD
Email : delhi@cestat.gov.in

Appeal No. E.2388 -2392 2004 EX

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

Date 10/01/2008

To :
FRONTIER ALLOY STEEL PVT LTD,
25/5, KALPI ROAD, RANIA
KANPUR DEHAT

2. SH. K.L. BHATIA,
3. SH. NEERAJ BHATIA,
4. SH. KAPIL BHATIA,
5. M/S. FRONTIER SPRINGS LTD,

25/5, KALPI ROAD,
RANIA KANPUR DEHAT

FRONTIER ALLOY STEEL PVT.LTD.

C.C.E. KANPUR

Appellant

Vs

Respondent

dated 17-7-07

I am directed to transmit herewith a certified copy of Final order No 02 - 6/08
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Single
Member


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. KANPUR

117.7. SARVODAYA NAGAR, KANPUR 208005.

2. Adv. Consult

SH. BIPIN GARG, ADV.,
B-1/1289-A, VASANT KUNJ
N. DELHI - 70

3. C.D.R.

~~4. 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

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, 1.P.Estate, new Delhi

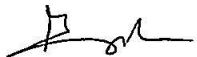
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh.

12. Co. Law Institution

13. TAX INDIA B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 2388-2392 of 2004

[Arising out of Order-in-Original No. 03/Commr/MP/2004 dated 29.1.2004
passed by Commissioner of Central Excise, Kanpur.]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

Hon'ble Mr. T.K. Jayaraman, Member (Technical)

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 should 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 :
Departmental authorities?

M/s. Frontier Alloy Steels Ltd.
Shri K.L. Bhatia
Shri Neeraj Bhatia
Shri Kapil Bhatia
M/s. Frontier Springs Ltd.

Appellants

Vs.

Commissioner of Central Excise.
Kanpur

Respondent

Appearance:

Shri Bipin Garg, Advocate for the Appellant
Shri V.K. Agarwal, DR for the Respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. T.K. Jayaraman, Member (Technical)

Date of Hearing : 19.7.07
Date of decision :

Final ORDER NO. 02 To 06/2008 EX

Per S.S. Kang:

Heard both sides. The appeals were filed against the common impugned order. The appellant M/s. Frontier Alloy Steels Ltd. (hereinafter referred as FASL) are engaged in the manufacture of spring steel rounds and other excisable goods. The other appellant M/s. Frontier Springs Ltd. (hereinafter referred as FSL-2) is engaged in the manufacture of coil springs and leaf springs out of spring steel rounds received from FASL, and leaf springs were supplied to Railways. The coil spring and leaf springs were manufactured as rounds as per drawings provided by the Indian Railways. The show cause notice was issued to the appellant that FASL manufacture allow steel rounds weighing 2622.23 MT for supply to FSL 2 without getting them entered into their RG 1 record and the same were supplied without payment of duty to FSL 2. The FSL 2 manufacture and supply the coil springs to Indian Railways out of alloy steel rounds received without payment of duty. It is also like that FASL obtained alloy steel billets from their other units for M/s. Frontier Alloy Steels Ltd. Malwan without the cover of Central Excise invoices and without payment of duty. In the show cause notice, the allegation is that FASL has suppressed the huge quantities of production of alloy steel rounds and subsequently removed the same without payment of duty to FSL 2.

2. The contention of the appellants is that M/s. Frontier Alloy Steels Ltd. (FASL) manufacture spring steel rounds which are supplied by them to Frontier Springs Ltd.(FSL 2) who are mainly engaged in the manufacture of Coil Springs and leaf springs for Indian Railways and automobile

industries; that M/s. Frontier Alloy Steels Ltd. have been approved by the Railways for manufacturing steel rounds for Railways; that the steel rounds were directly purchased by M/s. Frontier Springs Ltd. from other suppliers such as Sun Flag Iron & Steel Co. Ltd., Upper India Steels M/s. Marmago Steels, M/s. Modern Steels, etc. but test certificates were prepared by Appellant FASL for administrative convenience and to get discharge memo issued by RDSO, Lucknow; that the demand has been confirmed against them and penalties have been imposed on all the applicants on the ground that they had manufactured rounds and cleared the same to Frontier Alloy Steels Ltd. The learned Advocate, further, submitted that the Commissioner in the impugned order has given a specific finding that no allegation of clandestine removal of coil springs manufactured by Frontier Spring Ltd. has been made in the show cause notice; that if there is no clandestine manufacture and clearance by Frontier Steel Alloy Ltd. does not arise. He finally submitted that the demand pertains to the period from October, 1997 to June, 1999 during which period they were discharging the duty under Section 3A of the Central Excise Act on the basis of Annual Capacity of Production (except for the period December, 1998 to 11.5.1999); that they had sent an intimation to the Department on 25.11.98 regarding their stopping activity relating to manufacture of M.S. bars/ twisted bars w.e.f. 30.11.1998 and to start manufacturing activity for spring steel round structures; that the Chartered Engineer has given a certificate to the effect that simultaneously both the products cannot be manufactured in the rolling mill.

3. The contention of the Revenue is that when the officers visited the factory premises there is excess quantity of billet and ingots, which shows that appellants are receiving the excisable goods without payment of Central Excise duty. The revenue also submitted that as per the Railways inspection report steel rounds were manufactured by FASL and the same were inspected by the Railways and same were supplied to FSL 2 without payment of duty. Hence the demand is rightly made.

4. We find that the contention of the appellant is that steel rounds were directly purchased by M/s. FSL-2 from other suppliers such from Sun Flag Iron & Steel Co. Ltd., Upper India Steels M/s. Marmago Steels, M/s. Modern Steels, etc. on payment of duty and M/s. FSL-2 also availed credit in respect of steel rounds received from the other manufacturers on payment of duty and this fact is not in dispute. The contention of appellant is that the certificate were prepared by M/s. FASL for administration convenience and to get discharge memo issued from Railway. We find that as M/s. FSL-2 has taken credit in respect of duty paid on steel rounds received from other manufacturers and no investigation was conducted regarding the steel rounds received from other manufacturers on payment of duty and regarding the goods manufactured out of these steel rounds. Further, we find that there is no allegation against M/s. FSL 2 that out of steel rounds received from FASL without payment of duty the goods were cleared without payment of duty to Railways or to some other party. As the FSL 2 received the steel rounds on payment of duty from other manufacturers regarding which they had also availed credit it cannot be said that the same quantity has been supplied by FASL without payment of duty to M/s. FSL-2. As M/s. FSL-2

manufactures coil springs and leaf springs out of steel round received from other manufacturers on payment of duty and the same have been supplied to the railways. Therefore, the present demand on FASL is not sustainable, hence set aside. Consequentially penalties are also set aside. Appeals are allowed.

(Pronounced in the open Court on 10/1/08)

(S.S. Kang)
Vice President

(T.K. Jayaraman)
Member(Technical)

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