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

Appeal No. E/3712/2004-3715/2004 Date 11/04/2008

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

To :
M/S KOBE SUSPENSION CO. PVT. LTD.
PLOT NO.-15, SECTOR-6, FARIDABAD (HARAYANA)
M/S KOBE SUSPENSION CO. PVT. LTD.

2. SH. KULBIR SINGH UBEROI, M.D.
3. M/S. KAVANTRY SPRINGS FABRICATION,
4. M/S. KUKKY UBEROI,

Appellant
Vs
Respondent

C.C.E. DELHI IV

I am directed to transmit herewith a certified copy of **Final order No.** 152-155/08 **Excise** dated 11-4-08 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 IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.J.P.KAUSHIK
   A-14/3, SFS FLATS, SAKET, NEW DELHI-110017
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai,60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal Nos. 3712 to 3715 of 2004

[Arising out of the Order-in-Original No. 05/RH/Adj./2004 dated 23/04/2004 passed by The Commissioner of Central Excise, Delhi IV, Faridabad (Haryana).]

For Approval and signature :

Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri M. Veeraiyan, 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?	: NO
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether their Lordships wish to see the fair copy of the order?	: Seen
4.	Whether order is to be circulated to the Department Authorities?	: Yes

1) M/s Kobe Suspension Co. Pvt. Ltd.]
2) Kulbir Singh Uberoi, M.D.] Appellant
3) M/s Kavantry Springs Fabrication Co.]
4) Mrs. Kukky Uberoi, Proprietress of]
M/s Kavantry Springs Fabrication Co.]

Versus

CCE, Delhi – IV, Faridabad Respondent

Appearance

Shri J.P. Kaushik, Advocate – for the appellant.
Shri V.K. Agrawal, Authorized Representative (JDR) – for the Respondent.

CORAM : **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. M. Veeraiyan, Member (Technical)

DATE OF HEARING : 26/02/2008.
DATE OF DECISION: 2008.

FINAL Order No. 152-155/08-EX. Dated : 11-4-08

Per. M. Veeraiyan

Appeal No. 3712 is by M/s Kobe Suspension Co. Pvt. Ltd. from whom a sum of Rs. 66,63,601/- stands demanded as duty and equal amount of penalty stands imposed under Section 11 AC. Appeal No. 3713 is by Kulbir Singh Uberoi, (M.D. of M/s Kobe Suspension Co. Pvt. Ltd. and who was also managing M/s Kavantry Springs Fabrication Co.) on whom the penalty of Rs. 10,00,000/- stands imposed. Appeal No. 3714 is by M/s Kavantry Springs Fabrication Co. from whom a sum of Rs. 23,23,349/- stands demanded as duty and equal amount of penalty stands imposed under Section 11 AC. Appeal No. 3715 is by Mrs. Kukky Oberoi, Proprietrix of M/s Kavantry Springs Fabrication Co. on whom a penalty of Rs. 5,00,000/- stands imposed.

2. Heard both sides.

3. The relevant facts, in brief, in appeal No. 3712 by M/s Kobe Suspension Co. Pvt. Ltd. are as follows :-

(a) The appellant is a manufacturer of Steel leaf springs who the supply the products to various State Government Transport Undertakings.

(b) The various State Government Transport Undertakings have a nodal agency known as ASTRU who notify the rates and quality for leaf springs to be supplied to various State Government Undertakings. ASTRU approves the sources of raw materials and their prices. For this purpose, the appellant as a manufacturer of leaf springs was required to file periodical returns to ASTRU about their sources of procurement of raw materials and the prices at which the raw materials were purchased from the approved sources.

(c) The returns submitted to ASTRU by appellant was certified by the Chartered Accountant and also signed by M.D. of the company Shri Uberoi.

(d) The officers of DGCEI conducted a search of the factory premises of the appellant and other connected premises on 29/06/2000. They also recovered from ASTRU copies of invoices issued by M/s Star Wire India Ltd., Faridabad, M/s Sun Flag Iron & Steel Co. Ltd., Bandra, M/s Modern Steel Ltd., Govindgarh and M/s Marmagoa Steel Ltd. On comparison with the Central Excise records maintained by the appellant, they noticed that quantities of material shown to have been procured from these manufacturers were not entered in the statutory records.

(e) When they visited the factory, they found shortage of 73,000 Kgs. of raw material and the Cenvat credit availed amounting to Rs. 1.86 lakhs approximately stands paid. There was also shortage of 7,295 pieces of finished goods . There were also certain private chits recovered from P.A. to the M.D. indicating unaccounted clearance of excisable goods valued about Rs. 1.4 lakhs.

(f) Some dealers like M/s Hemkund Motors and M/s Kripal Motors admitted to purchase of goods from the appellant with out bills and on payment of cash.

(g) The Commissioner has held that the quantity of raw materials shown to have been purchased from the four parties as found in the invoices of ASTRU would have been used in the manufacture of leaf springs and the same have been cleared without bringing into accounts and without payment of duty and accordingly demanded duty of Rs. 66,63,601/-.

4. The relevant facts, in brief, in appeal filed by M/s Kavantry Springs Fabrication Co. are as follows :-

(a) The appellant is a Proprietory concern of Mrs. Kukky Uberoi. Her husband is the Managing Director of M/s Kobe Suspension Co. Pvt. Ltd. The firm was functioning from the same premises as that of Kobe Suspension Co. Pvt. Ltd. and was being looked after by Shri Uberoi.

(b) The appellant was manufacturing leaf springs till 1990 and thereafter was trading in leaf springs and other Iron and Steel products till March 1998.

(c) They claimed that they have got leaf springs manufactured on job work basis from one M/s V. Jai Auto Industries.

(d) The Commissioner has held that M/s Kavantry Springs Fabrication Co. have actually manufactured leaf springs and

M/s V. Jai Auto Industries have only undertaken heat treatment of the leaf springs sent by M/s Kavantry Springs Fabrication Co. and the claim that they were sending the entire raw material for manufacture of leaf springs by the same job worker was not correct and accordingly demanded the duty of Rs. 23,23,349/- from the appellant.

5. The other appeals are by Mr. Uberoi, M.D. of M/s Kobe Suspension Co. Pvt. Ltd. and Mrs. Uberoi, Proprietor of M/s Kavantry Springs Fabrication Co. against the penalties imposed on them.

6. Learned advocate Shri J.P. Kaushik, on behalf of M/s Kobe Suspension Co. Pvt. Ltd. submitted the following :-

(a) The demand against M/s Kobe Suspension Co. Pvt. Ltd. is based on returns submitted by them to ASTRU. The invoices submitted by them to ASTRU were manipulated ones. They were not related to actual purchase of raw materials from the said parties. The quantity, the value and the date of invoice were manipulated with a view to get an inflated price for their supply of final products to the various transport companies.

(b) He submits that based on the same investigation show cause notices were issued alleging clandestine removal in respect of M/s Sun Flag Iron & Steel Ltd., M/s Star Wire (I) Ltd., M/s Modern Steel Ltd. and the appellant was a co-noticee in the said proceedings. The Commissioners (Appeals) in whose jurisdiction three units fall have held that the allegations of clandestine removal by the said units were not sustainable. In fact, in respect of M/s Sun Flag Iron & Steel Ltd., the Tribunal vide their order No. A/899-901/C-IV/SMB/2007 dated 27/06/07 has upheld the order of the Commissioner (Appeals) which was favorable to the parties. He submits that in respect of other supplier M/s Marmagoa Steel Ltd., the department did not conduct any investigation and no notice was issued to them for demand of duty. In as much as the basis of the demand against the appellant is receipt of unaccounted raw materials from the above-mentioned four parties and in respect of none of the parties, the allegations are held to be true, the confirmation of demand and imposition of penalty are not warranted.

7. Shri J.P. Kaushik on behalf of M/s Kavantry Springs Fabrication Co. submits the following :-

(a) M/s Kavantry Springs Fabrication Co. was dealing not only with leaf springs but also sale of other Iron and Steel products. The Commissioner has treated every sale of raw materials also as sale of springs. Out of the several buyers to whom they sold, some of the buyers were not contacted by the investigating officers on the ground that they were not available in the given address; that the some of the buyers have denied any transaction with M/s Kavantry Springs Fabrication Co. However, three of them accepted transactions as per the records maintained by M/s Kavantry Springs Fabrication Co.

(b) M/s Kavantry Springs Fabrication Co. have sent under the delivery challans to the job worker only the raw materials and the details regarding the number and variety of leaf springs mentioned in such delivery challans were basically in the nature of orders placed for the final product. They have received the leaf springs manufactured by the job worker along with scrap. The appellant had no manufacturing facility; if duty has to be demanded, the same should be from V. Jai Auto Industries who are the actual manufacturer.

(c) Alternatively, he submits that even if V. Jai Auto Industries were held to have undertaken only the process of heat treatment, whatever was sent by them for the purpose of job work cannot be considered as leaf springs till they were subjected to heat treatment which process gives the essential characteristics to the leaf springs.

(d) Alternatively, he also submitted that the demand has been made in respect of clearances attributed to M/s Kavantry Springs Fabrication Co. based on the average weight of 7.484 Kgs. and 7.58 Kgs. for different years and adopting average price of 234.73 per leaf springs which relate to products actually manufactured by M/s Kobe Suspension Co. Pvt. Ltd. Since, M/s Kavantry Springs Fabrication Co. themselves were selling the product and the average price and average weight were available, the same should have been adopted. The allegation that they were manufacturing with the brand name of Fantum was not substantiated.

(e) If duty demand is confirmed against M/s Kavantry Springs Fabrication Co. then the benefit of Cenvat credit on the raw materials which has been used in the manufacture of such springs should be granted to them. The sale value of M/s Kavantry Springs Fabrication Co. should be treated as cum duty price and demand should be re-worked.

8. Learned D.R. in respect of M/s Kobe Suspension Co. Pvt. Ltd. submits that notwithstanding dropping of proceedings against three of the suppliers, the findings of the Commissioner against them is based on other evidence such as shortage of raw materials, shortage of finished goods at the time of commencement of investigation, private documents indicating unaccounted clearance of finished goods and admission statements of some of the dealers indicating that the goods have been received without bills and on payment of cash.

9. As regards, M/s Kavantry Springs Fabrication Co. he submits that the delivery challans under which goods were cleared indicate the movement of leaf springs only. When the Managing Director was asked about sending leaf springs for heat treatment, he has not categorically denied that leaf springs were sent and has not claimed that only the raw materials were sent. Plant and machinery was very much there till March 1998 when they are disposed of. Further, M/s Kavantry Springs Fabrication Co. operated from the same premises as that of M/s Kobe Suspension Co. Pvt. Ltd.and looked after by the MD of the latter. As regards benefit of Cenvat credit, he submits that during the relevant time, the credit should have been taken within six months from the date of receipt of the material.

10. We have carefully considered the submissions from both sides.

11. In so far as M/s Kobe Suspension Co Pvt Ltd is concerned, the Commissioner has held that the quantity of raw materials shown to have been purchased from the four parties as found in the invoices submitted to ASTRU would have been used in the manufacture of leaf springs and the same should have been cleared without bringing into accounts and without payment of duty and accordingly demanded duty of Rs. 66,63,601/-. This is only a presumption and the same cannot form the basis for demand of duty unless there are other evidences. We also find that based on the same investigation show cause notices were issued alleging clandestine removal in respect of M/s Sun Flag Iron & Steel Ltd., M/s Star Wire (I) Ltd., M/s Modern Steel Ltd. and the appellant was a co-noticee in the said proceedings and the charges were found to be unsustainable by the Commissioner (Appeals)and in respect M/s Sun Flag Iron & Steel Ltd. Also by the Tribunal. Further it is noticed that in respect of other supplier M/s Marmagoa Steel Ltd., the department did not conduct any investigation and no notice was issued to them for demand of duty. In as much as the basis of the demand against the appellant is receipt of unaccounted raw materials from the above-mentioned four parties and in respect of none of the parties, the allegations are held to be true, the confirmation of demand and imposition of penalty are not warranted. Also, the imposition of penalty on Shri K.S. Oberoi for his alleged role in evasion by M/s Kobe Suspension Co Pvt Ltd. can not be sustained.

12. 1. M/s Kavantry Springs Fabrication Co. claims that they have been only into trading and that they have sent materials to a job worker and got

finished goods and traded them. We are unable to accept that M/s Kavantry Springs Fabrication Co. have sent under the delivery challans to the job worker only the raw materials and the details regarding the number and variety of leaf springs mentioned in such delivery challans were basically in the nature of orders placed for the final product. We have carefully examined the delivery challans which are basically meant for sending goods specified therein and to get acknowledgment for receipt of the same from the recipient's end. The claim that it specified the end product sought to be manufactured out of the materials send by them appears to be an after thought. The amount indicated as job charges also admittedly do not correspond to charges payable for full-fledged manufacture as claimed by the appellants. When Shri Kulbir Singh Oberoi was asked about sending to M/s V. Jai Auto Industries for heat treatment is vague and does not deny that the goods have been sent only for heat treatment. On the other hand the representative of M/s V. Jai Auto Industries has clearly stated that they have done only heat treatment. We hold that M/s Kavantry Springs Fabrication Co. have actually manufactured leaf springs and M/s V. Jai Auto Industries have only undertaken heat treatment of the leaf springs sent by M/s Kavantry Springs Fabrication Co. There is an alternative claim that even if the job worker was held to have done only heat treatment, then also only after the heat treatment duty becomes payable and should have been demanded from the job worker. This submission is not acceptable. Even before heat treatment the goods are excisable. The appellant should have followed the prescribed procedure for removing the goods for job work.

12.2. We find that the demand has been made in respect of clearances attributed to M/s Kavantry Springs Fabrication Co. based on the average weight of 7.484 Kgs. and 7.58 Kgs. for different years and adopting average price of 234.73 per leaf springs which relate to products actually manufactured by M/s Kobe Suspension Co. Pvt. Ltd. The submission by the Ld Advocate that since, M/s Kavantry Springs Fabrication Co. themselves were selling the product and the average price and average weight were available, the same should have been adopted merits acceptance.

12.3. We also agree to the contention of the Ld Advocate that the sale value of M/s Kavantry Springs Fabrication Co. should be treated as cum duty price and demand should be re-worked.

12.4. In the present facts and circumstances of the case, we are not in agreement with the submission by the Ld D.R. that credit should have been taken within six months. We, therefore, hold that while duty demand is confirmed against M/s Kavantry Springs Fabrication Co., the benefit of Cenvat credit on the raw materials which has been used in the manufacture of such springs should be granted to them.

12.5. We also that there is no justification for a separate penalty on the proprietor in addition to penalty on the firm. Since the duty demand requires re-working, the penalties on the appellant firm and Shri K.S. Oberoi who was actually managing the appellant requires to re considered based on the actual duty evasion worked out.

13. The other submissions by the Ld Advocate were considered and found not acceptable.

14. In view of the above, the appeals are disposed off as follows.

(a) Appeal of M/s Kobe Suspension Co. Pvt Ltd is allowed.

(b) Appeal of M/s Kavantry Springs Fabrication Co is allowed by way of remand on the above terms.

(c) Appeal by Shri K.S. Oberoi is partly allowed by not sustaining the penalty in so far the same relates to his role in the case relating to M/s Kobe Suspension Co. Pvt Ltd.,

(d) Appeal by Ms Kukky Oberoi is allowed by setting aside the separate penalty on her. (The penalty on the firm requires to be re-determined in the light of observations made earlier.)

(Pronounced in open court on ____________)

(S.S. Kang)
Vice President

(M. Veeraiyan)
Member (Technical)

PK