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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/319 /2007 &190/08 Date 25/06/2008

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

To :
M/S BRAKES INDIA LTD
PLOT NO 874, PHASE-V, UDYOG VIHAR, GURGAON.

M/S BRAKES INDIA LTD Appellant
Vs
C.C.E.DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.**377-78/2008 **Excise** dated 05-6-08

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 III
   UDYOG VIHAR, UDYOG MINAR, VANIJYA NIKUNJ, PHASE-V, GURGAON.
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal Nos. 190 of 2008 & 319 of 2007

[Arising out of Order-in-Original No. 18/CE/JM/2007 dated 28.9.2007 & No. 17 to 20/PP/C E/2006 dated 12.12.2006 passed by Commissioner of Central Excise (Appeals), Gurgaon and Commissioner of Central Excise, Delhi III.]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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 should 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 Departmental authorities? : Yes

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M/s. Brakes India Ltd. — Appellants

Vs.

Commissioner of Central Excise Delhi III — Respondent

Appearance:

Mr. Ravi Raghavan, Advocate for the Appellant
Mr. H.K. Thakur , Jt. CDR for the Respondent

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 5.6.2008
Date of Decision : 5.6.2008

FINAL **ORDER NO.** 377-378/08-EX

Per M. Veeraiyan (for the Bench):

These two appeals filed by the same appellant involve a common issue relating to different periods and, therefore, they are being disposed of by a common order.

2. Heard both sides.

3. The relevant facts in brief are as follows:

a) The appellant has several manufacturing units. The dispute relates to valuation of goods which are transferred inter-units and consequent availment of Cenvat credit by the recipient units. The appellant has two of their units at Padi and Polambakkam (both near Chennai), wherein they manufacture items like lined shoe assembly, servo sub-assembly, TMC assembly, back plate assembly, wheel cylinder assembly and calliper sub-assembly. They are transferring these goods to their factories in Gurgaon where they manufacture brake assembly and calliper assembly. The entire production of the said finished goods from the Gurgaon units was being sold to M/s. Maruti Udyog Ltd.

b) While clearing the goods from their Chennai units, they ought to have taken the assessable value as cost of production plus 10% / 15% towards profit margin. Instead, they have adopted the value as the cost of production plus 30% towards profit margin and accordingly paid higher duty while clearing / transferring the materials from the Chennai units to the Gurgaon units.

c) The Excise authorities in charge of Gurgaon units held that adopting higher profit margin in respect of transfer from Chennai units was wrong and therefore, they were not eligible for the higher credit even though higher duty has been paid by the supplying units.

d) Accordingly, in the case dealt with in Appeal No. 319/2007, a sum of Rs.4,90,46,057/- has been demanded for the period from April, 1999 to March, 1995 along with interest and penalty of same amount imposed. Similarly in the case dealt with in Appeal No. 190/2008, a sum of Rs.3,35,97,308/- has been demanded for the period from September, 2005 to September, 2006 along with interest and penalty of same amount imposed.

4.1. Learned advocate for the appellant submits that prior to 1.7.2000 value of the goods transferred from their Chennai units was being provisionally assessed in terms of Rule 6 (b)(1) or Rule 6(b)(2) of Valuation Rules and from 1.7.00, the duty was being paid in terms of Rule 8 of the Valuation Rules. For the entire period, the assessment was being made provisional, as valuation of some of the inputs were not final and that addition of 30% of the provisional cost of production was only with a view to take care of any possible escalation in the price of inputs. There was no accumulated credit with the Chennai units which could not be utilised by the Chennai units. They have paid substantial amounts of duty from PLA in respect of each of the Chennai units. He also submits that there has been no dispute raised about the higher provisional value adopted at the time of clearance from the Chennai units. There is no refund claim by the Chennai units after finalisation of the value in respect of clearance made from the

Chennai units. In the light of these facts, the credit taken by the Gurgaon units based on actual duty paid by the Chennai units is in order.

4.2. He also relied upon the following decisions in support of his case

(i)	Sarvesh Refractories Ltd. vs. CCE	2007 (218) ELT 488 (SC)
(ii)	CCE vs. Purity Flexpack Ltd.	2008(222) ELT 361 (Guj)
(iii)	CCE vs. Jyoti Ltd.	2008(223) ELT 171 (Guj)
(iv)	CCE vs Perfect Synthetics	2006(206) ELT 71 (P&H)
(v)	CCE Vs. Ranbaxy Labs	2006(203)ELT213 (P&H)
(vi)	CCE vs CEGAT	2006(222) ELT 753(Mad)
(vii)	Force Motors Ltd. vs. CCE	2007(222) ELT 302 (Guj)
(viii)	Evergreen Engg vs CCE	2007(222) ELT 134 (Guj)

4.3. Ld. Advocate also submitted that the provisions of the modvat rules existing prior to 31.3.2000 and the cenvat rules from 1.4.2000 is pari materia. Rule 3 of the Cenvat Credit Rules, 2001 allows credit of the specified duties paid on inputs and capital goods received in the factory of the manufacturer. Rule 4 of the Cenvat Credit Rules stipulates the conditions for allowing the credit of the duty paid on inputs and capital goods. Rule 4(1)(b) stipulates that credit can be taken on inputs immediately on receipt of the inputs in the factory of the manufacturer.

4.4. He contends that there is no dispute that the inputs procured from the two units were inputs eligible for credit, duty for which credit was taken by the appellants. Further, the duty so availed as credit was also deposited by the two units in the government account. The inputs received have been used by the appellants in or in relation to the manufacture of dutiable finished goods.

4.5. The appellants availed credit on the strength of the invoice issued by the two units as manufacturer. The appellants were entitled to avail the credit of duty paid by the two units on the various goods cleared by them. The impugned order denying credit on the ground that the credit should be restricted to the duty payable on the actual price is ex-facie erroneous.

4.6. The appellants submit that the department having accepted by the duty payment by the two units and not attempting to refund the excess duty paid to them, cannot deny credit to the appellants on the ground that the duty should have been paid by the two units on the lesser value.

5. Learned DR reiterates the findings of the reasoning of the Commissioner and seeks upholding the orders.

6. We have carefully considered the submissions made by both sides. We find that assessment of the goods cleared from Chennai units ~~were~~ was on provisional basis. By its nature, the provisional value and consequently the duty actually payable, is bound to change at the time of finalisation. The appellant was required to adopt the assessable value as cost of production plus 10% towards profit margin during certain period and the assessable value as cost of production plus 15% profit margin during the rest of the period. Admittedly, the appellant adopted a higher profit margin of 30%. They have paid a higher amount of duty on a provisional basis while clearing the goods from their Chennai units. The appellant explained this adoption of higher margin only to take care of value fluctuation in respect of inputs which have gone into the manufacture of the goods cleared from their Chennai units. Subsequently, when the assessments were finalised in terms of CAS 4 norms, though the value adopted was found to be on higher side, they have not claimed any refund in respect of clearances made from their Chennai units. We do not find any allegation or finding of any fraudulent intention in declaring a slightly higher value for their clearance

from their Chennai units to Gurgaon units. What ever duty was paid by the Chennai units was taken as credit. It has been claimed that the units in Chennai as well as Gurgaon have paid substantial amounts from PLA. We find that the entire exercise is revenue neutral and does not involve any fraud, or manipulation etc. We also note that there is no revision of any assessment in respect of Chennai units warranting variation of credit taken by the Gurgaon units.

7. Therefore, the appeals are allowed with consequential relief.

(Operative part pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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