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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 4018 2006-4019 2006 Date 23 07 2008

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

To
M S GOYAL MG GASES PVT LTD.
SITE NO. IV, INDUSTRIAL AREA, SAHIBABAD,
GHAZIABAD.
M S GOYAL MG GASES PVT LTD. Appellant
Vs
C C E GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No** 509-510/2008- **Excise** dated 22-7-08

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. GHAZIABAD
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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 600017
13 Taxindiaonline com Pvt Ltd B-XI 8183,Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(Excise Appeal Branch)

16, MR P.K.GUPTA,
C O GOYAL MG GASES PVT LTD, SITE NO. IV, INDUSTRIAL AREA, SAHIBABAD,GHAZIABAD

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI, COURT NO. III

Excise Appeal Nos. 4018 - 4019 of 2006
[Arising out of Order-in-Original No. 02/Commr/GZB/2006 dated 27.09.2006 passed by the Commissioner of Central Excise, Ghaziabad]

Date of hearing: 09-10.07.2008
Date of decision 22/7/2008

Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

M Veeraiyan

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

M/s Goyal MG Gases Private Limited ...Appellant
Mr. P.K. Gupta, Vice President of
M/s Goyal MG Gases Private Limited
[Rep. by Mr. V. Laxmikumaran, Advocate]

Vs.

CCE, Ghaziabad ...Respondent
[Rep. by Mr. M. M. Singh, DR]

Coram: Hon'ble Mrs. Archana Wadhwa, Member [Judicial]
Hon'ble Mr. M. Veeraiyan, Member [Technical]

Final ORDER No. 509-510/08-EX

Per: M. Veeraiyan:

1.1 Excise Appeal No. 4018 of 2006 is by M/s Goyal MG Gases Private Limited against the order of the Commissioner No. 02/Commr/GZB/2006 dated 27.09.2006.

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1.2 Excise Appeal No. 4019 of 2006 is by Sh. P. K. Gupta, Vice President of said appellant company against imposition of penalty of Rs. 2,50,000/- by the same order.

2. Heard both sides. Ld DR also filed a written submission reiterating the findings of the commissioner on the demands relating to hydrogen trolleys and helium quads. He also reiterated the plea for retaining the penalty of Rs2.5lakh imposed on Sri P.K. Gupta.

3. The relevant facts, in brief, are as follows:-

a) The appellant company is engaged in the manufacture of hydrogen storage tanks, transport tanks, HP/LP Vaporisers, pressure building coils, helium quads, hydrogen trolleys etc. The appellant company also gets some of these goods manufactured by various job workers. Some of the job workers do not pay duty as they are availing exemption applicable to the small scale units.

b) The helium quad is a system manufactured out of M.S. channels and angles to accommodate 54 cylinders connected to each other with the help of pipeline (manifold) for storage of helium gases. The ultimate fabricated structure is held by horizontal bars fastened with screws/ nuts and nozzles of the cylinders joined with each other by means of pigtails, to facilitate one point filling or decanting. The cylinders mounted on the frames are joined by pigtails.

c) Hydrogen trolley is a system manufactured out of M.S. channels and angles to accommodate 70 to 80 cylinders for storage of hydrogen gas. It consists of two parts one is manufactured of steel frames and the other is its attachment to trailers to convert it into hydrogen trolleys.

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d) Show cause notice dated 04.03.2002 was issued proposing demand of duty on various grounds.

i) It was alleged that in respect of helium quads and hydrogen trolleys only the structure was built at the ends of the job workers and received in the premises of the appellant company and after completing rest of the work the finished product have been cleared without payment of duty. On this ground duty demand of Rs. 89,89,596/- was proposed in respect of 55 hydrogen trolleys and duty demand of Rs. 22,77,360/- was sought to be demanded on 60 helium quads .

ii) The demands were also proposed on other grounds.

e) Commissioner vide his impugned order dated 27.09.2006 confirmed total demand of Rs. 1,29,66,911/-. He also imposed a penalty of Rs.1,29,66,911/-. He ordered confiscation of plant and machinery and allowed redemption of the same on payment of fine of Rs. 5,00,000/-. He also imposed penalty of Rs. 2,50,000/- on Shri P.K. Gupta, Vice President.

f) The duty demanded included the following amounts.

Sl.No.	Description	Period	Demand confirmed
1	Denial of modvat credit on 15 tanks diverted		8,93,018/-
2	Raw materials and components cleared as such.	4/96 to 6/00	3,79,252/-
3	7 LP/HP vaporizer cleared under non-returnable gate passes.	7/96 to 10/98	1,36,500/-
4	26 Pressure Building coils cleared with tanks.	3/94 to 3/01	1,97,000/-
5	Clearance of gas filling spares (manifold, pig tails)	2/97 to 6/00	94,185/-
		Total Rs.	16,99,955/-

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4. Learned Advocate submits ,inter-alia, the following:-

(i) The appellant company gave truck chassis, angles, channels, cylinders (both new and old) etc. and gave the work order for getting the helium quad and hydrogen trolleys manufactured by the job workers.

(ii) Job workers who were not eligible for small scale exemption have paid duty on hydrogen trolleys under chapter 730890, others have cleared the same availing the exemption.

(iii) The Commissioner has held that the appellant has manufactured the helium quad and hydrogen trolleys merely on the ground that the appellant failed to substantiate that activities relating to manufacture of quad was undertaken at the job workers end. He also held that the quad like structure has been developed into equipment or appliances having individual function and merit classification under heading 8479. It was contended that such an inference and finding are based only on presumption.

(iv) The hydrogen trolleys consist of two parts one manufactured of steel frames and the other its attachment to trailers to convert it into hydrogen trolleys. Even if it was held that they have manufactured such hydrogen trolleys, the same should be considered as special purpose motor vehicle and eligible for exemption.

5.1 Learned DR submits that the party has not produced enough evidence to prove that the frames and trolleys completed in all respects were received from the job workers and no further activities was undertaken by the appellant. The manifold and pigtail connections were fabricated at the

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appellant's premises and fitted to the structures received from the job worker; final assembly, inspection and approval was given at the appellant's premises. Therefore, these quad and trolleys were manufactured only at the appellant premises.

5.2. He submitted that they are liable to be charged duty under heading 8479.19.

5.3. The helium quads are for holding together the cylinders. The ultimate fabricated structure is held by horizontal bars fastened with screws/ nuts and nozzles of the cylinders joined with each other by means of pigtails, to facilitate one point filling or decanting. The cylinders mounted on the frames joined by pigtails impart essential character to the structure for which it is known and is acceptable in the trade. In the light of the above, it was submitted that value of the cylinders should also be included in assessing the hydrogen trolleys and helium quad.

6.1. We have carefully considered the submissions from both sides and perused the records. There are more than one dispute relating to the hydrogen trolleys and helium quads. Whether they have been manufactured by the appellant? If so what is their classification? Whether the value of cylinders should be included to arrive at the assessable value? If the answer to the first question is in the negative, then the other issues become academic.

6.2. It is settled law that the burden to prove exciseablity is on the Department. The Commissioner has held that the appellant has manufactured the helium quads and hydrogen trolleys merely on the ground that the appellant failed to substantiate that activities relating to manufacture of quad was undertaken at the job workers end. No evidence from the job workers' end about the nature of materials received by them, activities undertaken by

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them, or the condition in which the goods were sent back by them to the appellant has been relied upon. No reliable evidence from the appellant's end has been relied up on to show that the manufacturing activities have taken place in the premises of the appellant company.. The Commissioner has inferred, merely based on presumption, that the quad like structure has been developed into equipment or appliances having individual function by the appellant and merit classification under heading 8479.

6.3. The appellant company claims that they gave truck chassis, angles, channels, cylinders (both new and old) etc. and gave the work order for getting the helium quad and hydrogen trolleys manufactured by the job workers. They also produced some work orders in support of their claim. This submission has not been disproved by the Department with any reliable evidence. The claim of the appellant deserves to be accepted.

6.4. The department makes a submission that the cylinders were fitted in the premises of the appellant and hence the manufacture of hydrogen trolleys, helium quads by the appellant is proved . Even otherwise mere fitting of cylinders in the slots meant for them and testing will not amount to manufacture. On the same ground the question of adding the value of cylinders to determine the value does not arise.

6.5. Having held that there is no evidence of manufacture by the appellant, going into the issue of classification will amount deciding the dispute relating to the job workers with out putting them on notice which is not permissible.

7. Regarding the issue relating to denial of modvat credit of inputs relating to 15 tanks diverted, amounting to Rs. 8,93,018/- the same stands admitted and appellant had paid, they are only praying for setting aside penalty on this count. Similarly, the appellant admits to the liability of Rs. 94,185/-

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relating to clearance of gas filling spares. Regarding duty demanded on 7 LP/HP vaporizer the contention was that originally duty was paid in February 1997 on the 7 LP/HP vaporizer; but they were subsequently cleared on different dates preparing the challans. There was no explanation as to circumstances as to why the goods on which duty was paid was kept in the factory with out any intimation to the department. They were not able to produce any evidence that the consignment of which duty was paid in February 1997 relates to the same consignment cleared in later months. This claim of the appellant is, on the face of it, not acceptable. Therefore, the demand of Rs. 1,36,500/- deserves to be confirmed. Regarding a demand of Rs. 1,97,000/-, the Department holds that it relates to clearance of 26 pressure building coils separately whereas the appellant claims that they were included in the value of 26 tanks already cleared. The Department relies on appellant's own documents to hold that pressure building coils were given separately and they had separate prices. The appellant is not able to refute this with any acceptable evidence. Therefore, this demand is also confirmed. As a result the demand to the extent of Rs 16,99,955/ is confirmed which includes admitted duty liability to the tune of Rs 9,87,203 .

8. Regarding imposition of penalty, it was submitted that even in respect of cases where duty liability is accepted ,there was no intention to evade duty but out of bona fide belief that no duty was payable the amounts were not paid. In other cases, they were utmost cases of improper accounting and lack of reconciliation. In none of these cases any positive evidence of clandestine removal has been brought on record. Therefore, there is scope for leniency in matters relating to imposition of penalty and accordingly the penalty on the company is reduced to Rs one lakh only. However we do not

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any grounds for sustaining individual penalty on Shri P.K. Gupta and the same is set aside.

9. The appeal of the company is disposed by confirming the demand of duty to the extent of Rs 16,99,955/- along with interest and penalty to the extent of Rs one lakh. The appeal by Shri P.K. Gupta is allowed.

[Pronounced in the open Court on 22/7/08

18/7/08
[Archana Wadhwa]
Member [Judicial]

22/7/08
[M. Veeraiyan]
Member [Technical]

[Pant]