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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/111 /2005 - EX[DB] Date 08/12/2009

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

To :
HERO CYCLE LTD. UNIT II
SITE-IV, INDL. AREA, SAHIBABAD

HERO CYCLE LTD. UNIT II Appellant
Vs
C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1273/ 2009 EX[DB]** dated 07-12-09 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
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
   MR.S.V.ARYA,ADVOCATE
   CC-56, AVANTIKA,NEAR CHIRANJEEV VIHAR, HAPUR ROAD, GHAZIABAD.201002(UP)
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT

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. I

Excise Appeal No. 111 of 2005

[Arising out of the Order-in-Appeal No. 150-CE/GZB/2004 dated 08/10/2004 passed by The Commissioner (Appeals), Central Excise, Ghaziabad.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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 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?	:

M/s Hero Cycles Ltd. Appellant

Versus

CCE, Ghaziabad Respondent

Appearance

None – for the appellant.

Shri B.K. Singh, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 12/11/2009.
DATE OF DECISION : 7/12/09

FINAL Oral Order No. 1273/09-Ex Dated : ___________

Per. Rakesh Kumar :-

The appellant manufacture various models of Bicycles and its parts chargeable to Central Excise Duty under sub-heading 8712.00 and 8714.00 respectively. They have a unit (Unit-I) at Hero Nagar, G.T. Road, Ludhiana and Unit-II at Plot No. 8, Site IV, Industrial Area, Sahibabad, Ghaziabad. M/s K.S. Munjal Industries (hereinafter referred to as KSM) is another manufacturer of Bicycles at E-601/602, Phase-VII, Focal Point, Ludhiana. The Appellant for their Unit I and Unit II have separate central excise registration with jurisdictional central excise authorities and discharge central excise duty liability in their respective Central Excise Commissionerate. In course of inquiry during the year 2002 by the jurisdictional Central Excise officers in respect of Unit II at Sahibabad, it was found that the Appellant had also acquired bicycles on stock transfer basis from their Ludhiana plant and beside this, they had also obtained bicycles from KSM. The bicycles acquired from Unit I of Appellant and KSM were sold at higher prices. The Department is of the view that since Unit II of Appellant and Unit I and KSM are 'related person', central excise duty is payable on the price at which the bicycles were ultimately sold by Unit II of the Appellant company. It is on this basis that two show cause notices dated 4/6/03 and

26/9/03 were issued to Unit I as well as Unit II of the Appellant company and also to KSM for demand of differential duty amounting to Rs. 1,51,237/- and Rs. 62,667/- respectively for March 2002 – September 2002 and October 2002 – February 2003 periods respectively. The show cause notices were, however, issued by the Deputy Commissioner (AE), Ghaziabad/Deputy Commissioner Division – III, Ghaziabad. Both the show cause notices also sought recovery of interest on duty under Section 11AB and imposition of penalty under Rule 25 and 26 of Central Excise Rules 2002 readwith Section 11AC of the Central Excise Act. Both the show cause notices were adjudicated by the Assistant Commissioner, Central Excise, Division – III, Ghaziabad vide order-in-original dated 2/6/04 by which –

(a) total duty demand of Rs. 2,13,904/- was confirmed alongwith interest, against Unit II of the Appellant, and

(b) penalty of Rs. 2,13,904/- was imposed on the Appellant.

1.1 On appeal to CCE (Appeals), the CCE (Appeals) vide the impugned order-in-appeal dated 8/10/04 upheld the Assistant Commissioner's order.

1.2 It is against this order of Assistant Commissioner that the present appeal has been filed.

2. None appeared for the Appellant.

2.1 Heard Shri B.K. Singh, Jt. CDR representing the Department who defended the impugned order reiterating the

Commissioner (Appeals)'s findings. He emphasised that since the sale has taken place at the premises of Unit II of the Appellants, duty is chargeable on the price at which the goods were sold from Unit II.

3. We have carefully considered the submissions of the learned Jt. CDR and have perused the records. Unit II of the Appellant company with which we are concerned in this appeal, manufacture bicycles at its plant at Sahibabad Industrial Area and also acquires bicycles of various models from Unit I at Ludhiana and KSM, Ludhiana and sells the same.

4. So far as the bicycles acquired by Unit II from Unit I are concerned, it is clear that these bicycles had been obtained on stock transfer basis and there was no sale and hence the duty should have been paid by the Unit I at the price at which the bicycles were being sold by Unit II and as such, the differential duty should have been demanded from the appellant by the jurisdictional Deputy/Assistant Commissioner, Ludhiana in whose jurisdiction the short payment had taken place. However, the duty demand in this regard, confirmed by Assistant Commissioner, Central Excise Division – III Ghaziabad, for short payment of duty by Ludhiana Unit of the Appellant, located within the jurisdiction of a different Commissionerate, being beyond jurisdiction, is not sustainable.

4.1 As regards the bicycles acquired by the Appellant from KSM, Ludhiana and sold from Sahibabad, neither in the show cause notice, nor in the order-in-original and nor in the impugned order-in-appeal, there is any discussion as to how the Appellant and the KSM are "related person", within the meaning of this term, as defined in Section 4 (3) (b) of the Central Excise Act, 1944. Only a bland allegation has been made that the Appellant were selling bicycles on behalf of KSM and on this basis, in respect of the bicycle manufactured by KSM and cleared to the Appellant, the duty is sought to be charged on the price at which the bicycles were sold by the Appellant and that too from the Appellant, not from the KSM, who being manufacture, would be liable to pay the differential duty, if the same is held as chargeable. This duty demand from KSM, a unit located in Ludhiana, confirmed by Assistant Commissioner, Central Excise, Division III, Ghaziabad is also beyond jurisdiction. Hence the duty demand against the Appellant in respect of the bicycles obtained from KSM is also not sustainable.

5. In view of our above discussion, the impugned order-in-appeal is not sustainable and the same is set aside. The appeal is allowed.

(Pronounced in open court on 7/12/09)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK