

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

Appeal No. E/940 /2008-942 /2008 - EX[DB] WITH E/M/274/2009-EX
E/2666-2668/2008-EX

Date 13/07/2011

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

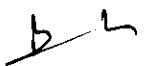
To :
M/S ESCORTS LIMITED (UNIT NO.I)
18/4, MATHURA ROAD,FARIDABAD. (HARYANA)
M/S ESCORTS LIMITED (UNIT NO.I)

Appellant
Vs
Respondent

C.C.E. DELHI IV

MISC ORDER NO. 390/2011-EX

I am directed to transmit herewith a certified copy of Final order No.575-580 2011 EX[DB] dated 07-7-11
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.V. LAXMIKUMARAN

B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R

4. Bar association. CESTAT, New Delhi

5. Director Publications. Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8.Sector - 10, Faridabad 121003 (Harvana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file

14. HON'BLE PRESIDENT.

15. M/S ESCORTS LIMITED (UNIT NO. II)
PLOT NO. 2-3, SECTOR-13, FARIDABAD. (HARYANA)

16. M/S ESCORTS LIMITED (UNIT NO-III)
PLOT NO. 2-3, SECTOR-13,FARIDABAD (HARYANA)


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

PRINCIPAL BENCH
COURT-1

Appeal No.E/940-942 of 2008 with E/M/274 of 2009
and
Appeal No.E/2666-2668 of 2008

(Arising out of Order-in-Original No.03/CE/P.K.J/Adjn/2008 dated
07.04.08 and No.35-36/CE/P.K.J/Adjn/2008 dated 30.09.08
passed by the CCE, Faridabad)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr.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?	Yes
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.Escorts Limited

Appellant

Vs.

CCE, Delhi

Respondent

Present for the Appellant: Shri V.Laxmikumaran, Advocate
Shri R.K.Hasija, Advocate

Present for the Respondent: Shri B.K.Singh, JCDR
Shri R.K.Verma, JDR

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing: 28.06.2011/30.06.2011

Date of Decision:

FINAL ORDER NO. 575-580/2011-EX

MISC Order No 390/2011-EX

PER: M.VEERAIYAN

1.1 Appeals No.E/940-942/08 arise out of order of the
Commissioner No.03/CE/P.K.J/Adin/2008 dt.7.4.08 and the same

have been filed by three different units of same company, namely, Escorts Limited. The dispute relates to the period 2005 to 31.3.2007.

1.2 Appeals No. 2666-2668/08 are against the order in original No.35-36/CE/P.K.J/Adjn/2008 dated 30.9.08 also filed by three units of the above said company. The dispute relates to the period April, 07 to 7th April, 08.

1.3 As the facts and legal issues involved are identical and appellants are the same company, these appeals are disposed of by this common order.

2. Heard both sides extensively.

3.1 Appellant has one production facility known as unit No.1 at 18/4, Mathura Road, Faridabad manufacturing tractor parts, another known as Unit II situated at plot no.2, sector 13, Faridabad manufacturing tractors and another known as Unit III situated at plot no.3, sector 13, Faridabad manufacturing tractors. Unit No.II was engaged in the manufacture of Farmtrac Brands of Tractor whereas Unit No.III was engaged in the manufacture of 'Escorts & Powertract' Brand Tractors. The tractors parts manufactured in Unit No1. are being sent to unit 2 and unit 3 for use in the manufacture of tractors.

3.2 Prior to 3.3.2003, the three units were operating under the name & style of M/s.Escorts Ltd. at 18/4, Mathura Road, Faridabad having separate registration. No.AACE0047BXM003, M/s.Escorts Limited, plot No.2, sector 13, Faridabad having Central Excise Registration No. AAACE0074BXM004 and M/s.Escorts Limited, plot

No.3, Sector 13, Faridabad having Central Excise Registration No.AAACE0074BXM002.

3.3 Prior to 9.7.04, the tractors manufactured were subject to central excise duty and the same were exempted from central excise duty with effect from 9.7.04 in terms of notification no.6/02-CE dt.1.3.02 as amended by Notification nO.23/2004-CE dt.9.7.2004.

3.4 Since Units Nos. II & III at Plot No.2 & 3, Sector 13, Faridabad are adjacent to each other and in order to optimize all resources, appellants requested for common registration for these two units vide application dated 29.1.2003 which was granted as Central Excise Registration No.AAACE0074BXM004 by Communication dt.3.3.2003 of the Assistant Commissioner.

3.5 On the basis of another application dated 22.7.04, the Assistant Commissioner central excise division V, Faridabad vide letter dated 6.9.04 conveyed the common pan based Central Excise Registration No.AAACE0074BXM004 in respect of all these units functioning from plot no.2 & 3, Section 13, Faribabad and 18/4, Mathura Road, Faridabad.

3.6 Show cause notices dated 20.3.06 and 7.5.07 were issued alleging that the facility of common central excise registration was not available to them inter alia on the ground that unit I is geographically at a distance of about 1.5 km from Units No.II and III, unit No.II & III are separated by M/s.ECEL; that unit II and III are not interlinked since the final goods manufactured in one unit are

Act and therefore the common registration given to them was not valid and proposed modification by restoring the separate registrations. Consequently, demands were proposed in respect of clearances of goods from unit I to unit II & III and the clearances made from unit II to unit III holding that exemption under Notification No. 6/02-CE dt.1.3.02 (S.No.296) and later under Notification No. 6/06-CE 1.3.06 (S.No.92) were not available for the clearances of goods not used within the same factory of production. The demands have been issued invoking extended period of limitation.

3.7 The Commissioner vide order dated 7.4.08 for the following orders:

"ORDER

- (i) *I hold that all the three Units of M/s.Escorts Limited (AMG) situated at 18/4, Mathura Road, Faridabad, Plot No.2, Sector 13, Faridabad & Plot No.3, Sector 13, Faridabad are not part of a single factory, but each one of them is an independent factory as defined under Section 2(e) of the Central Excise Act, 1944;*
- (ii) *I hold that parts and accessories of Tractors cleared from Unit I at 18/4, Mathura Road, Faridabad to Unit II & III at Plot No.2 & 3 respectively, Sector 13, Faridabad are chargeable to appropriate Central Excise duty for the period 9.7.2004 onwards and benefit of exemption Notification No.6/2002-CE dated 01.03.2002, as amended and Notification No.6/2006-CE dated 1.3.2006 is not available to the noticee.*
- (iii) *In confirm a demand of Rs.10,10,61,154/- from M/s.Escorts Limited, Unit I, 18/4, Mathura Road, Faridabad, Rs.5,29,989/- from M/s.Escorts Limited. Unit II, Plot No.2, Sector 13,*

Mathura Road, Faridabad, Rs.3,71,738/- from M/s.Escorts Limited, Unit II, Plot No.2, Sector 13, Faridabad raised vide SCN dated 7.5.2007 under Section 11A of the Central Excise Act, 1944. I hold that proviso to Section 11A(1) to demand duty or the extended period of five years is not invocable in this case. Appropriate interest under Section 11AB of the Central Excise Act, 1944 shall also be payable.

- (iv) I order that the common Central Excise registration certificate No.AAACE0074BXM004 granted to M/s.Escorts Limited (AMG), Plot No.2 & 3, Sector 13, Faridabad and 18/4, Mathura Road, Faridabad is modified and separate registration certificates No. AAACE0074BXM003 for M/s.Escorts Limited, Unit I, 18/4, Mathura Road, Faridabad, No.AAACE0074BXM004 for M/s.Escorts Limited (Unit II), Plot No.2, Sector 13, Faridabad & No.AAACE0074BXM002 for M/s.Escorts Limited (Unit III), Plot No.3, Sector 13, Faridabad are restored.
- (v) I order that the notice are entitled to CENVAT credit attributable to inputs involved in the manufacture of parts cleared without payment of duty from Unit I to Unit II & III and from Unit II to Unit III. However, the admissibility of quantum of CENVAT credit is subject to verification of the amount of CENVAT credit by jurisdictional Range Superintendent for the respective period."

3.8 Similarly, the Commissioner vide order dtd.30.9.08 decided show cause notice dt.17.4.08 and 9.7.08 and passed the following orders:

"ORDER

- (i) I hold that parts and accessories of Tractors cleared from Unit I at 18/4, Mathura Road, Faridabad to Unit II & III at Plot No.2 & 3 respectively, Sector 13, Faridabad are chargeable to appropriate Central Excise duty for the period 01.04.2007 to 07.04.2008 and benefit of exemption Notification No.6/2006-CE dated 01.03.2006,

- (ii) *I confirm a demand of Rs.10,59,39,993/- for the parts and accessories of tractor cleared from Unit I to Unit II & III and Rs.3,72,020/- for the parts and accessories of tractor cleared from Unit II to Unit III raised vide SCN dated 17.4.2008 and Rs.3,85,30,181/- for the parts and accessories of tractor cleared from Unit I to Unit II & III Rs.1,64,553/- for the parts and accessories of tractors cleared from Unit II to Unit III raised vide SCN dated 9.7.2008 under Section 11A of Central Excise Act, 1944. Appropriate interest under Section 11AB of the Central Excise Act, 1944 shall also be payable.*
- (iii) *I order that the notice are entitled to CENVAT credit attributable to inputs involved in the manufacture of parts cleared without payment of duty from Unit I to Unit II & III and from Unit II to Unit III. However, the admissibility of quantum of CENVAT credit is subject to verification of the amount of CENVAT credit by jurisdictional Range Superintendent for the respective period."*

4.1 Learned Advocate submits that the common registration given to unit II & III vide order dated 3rd March, 2003 and the common registration given vide order dated 6.9.04 including unit I are lawful. The same have been granted after taking into account various factors such as interlinked process, movement of goods manufactured from one premises to other premises, common administration, common sales tax registration, common income tax assessment as contemplated in para 3.2 of CBEC manual of supplementary instructions. These approvals have been granted after conducting verification of the contents of the applications for common registration after visit by the officers to the different units of

the revocation of such

common registration is not justified. At any rate, retrospective revocation is totally unwarranted.

4.2 Further, there have been no new developments warranting revocation of common registration granted in terms of Notification No.36/01-CE (NT) dt.26.6.01

4.3 The definition of factory in terms of Section 2(e) of Central Excise Act, 1944 is an inclusive definition and the factory includes the precincts thereof wherein or in any part of which excisable goods are manufactured or wherein or any part of which any manufacturing process connected with the production of these goods is being carried on or ordinarily carried on. At any rate unit II & III were in adjacent plots and not separated by any road or canal or railway line. Mere presence of ECEL in the premises of unit III cannot mean that these two are independent factories. Further, mere separation of unit I by a distance of 1.5 km does not mean that unit I is a different factory from unit II & III.

4.4 Board's Guidelines clearly envisage commonly registered units as one factory.

4.5 The proposal for denial of exemption to the appellants was totally dependent on the proposal to revoke the common registration already granted. If they are independent, show cause notices could have been issued without proposing revocation of common registration.

4.6 Denial of exemption on any ground other than the ground for eligibility of common registration shall be going beyond the grounds raised in the show cause notices.

4.7 Relying on the decision of Hon'ble Supreme Court in the case of Lohia Sheet Products vs. CC, New Delhi reported in 2008 (224) ELT 349(SC) and the decision of the Tribunal in the case of CC, Amritsar vs. Malwa Industries Ltd. reported in 2008 (229) ELT 233, he alternatively submits that goods in respect of which demands have been made ~~are~~^{are} consumed in "the factory of production" of the appellants and not elsewhere and therefore, they are eligible for exemption.

4.8 Ld.Advocate, further conceded that their main grievance is against the ^{retrospective} revocation of registration only and consequent demand for the past period.

5.1 Ld.DR strongly defended the orders of the original authority.

5.2 He submits that Unit II & III are not adjacent to each other; M/s.ECEL is situated in between the said units; and that the two units are not separated by any common road or canal or railway line but there are residential houses in between them. Under these circumstances these two units do not qualify for common registration. Further, the manufacturing activity are not interlinked since the unit II & III manufacture identical goods namely, tractors of different brand names and goods manufactured in one is not input for another. He further submits that unit I being at a considerable

5.3 As the Commissioner has power to grant common registration, he has also power to revoke the same on coming to know that the registration was wrongly given and accordingly show cause notice was issued and the common registration stands revoked. In the facts and circumstances of the case, he submits that revocation retrospectively of the common registration and modification of the same by restoring individual registrations is valid and the consequences are to follow.

5.4 The show cause notices not only proposed modification of common registration into individual registrations but also specifically proposed that the appellants were not eligible for exemption under notification 6/02 and later under 6/06. Therefore, independently the appellants were put on notice that they were not eligible for exemption notification as clearances were not for use within the same factory of production.

5.5 Unit I manufactures parts of tractors which are themselves finished goods and are excisable. Unit I, in addition to supplying the parts to unit II & III, are clearing the parts of tractors on payment of duty to their spare parts division and thus confirming the independent status of the factory.

5.6 The three premises have independent factory licences duly renewed by Chief Inspector of Factory with a specified work force and load connection. All the three plants have separate electricity/water connection; they have separate and distinct

for different plants. In view of all this, it cannot be said that the appellants have fulfilled the criteria for common registration.

5.7 The decision of the Tribunal in the case of CCE, Amritsar vs. Malwa industries Ltd. 2008 (229) ELT 233 holding that the words "use in the same factory" simply means that the goods in question should not be used in any other factory was in the context of imported goods where the Tribunal took note of the object underlining under Section 3 to bring the importer at par with domestic manufacturer. He relies on the decision of the Bombay High in the cases of Jenson Nicholson (India) Ltd. vs. Union of India reported in 1981 (8) ELT 128 wherein it has been held that in terms of rule 175 separate license in respect of each place of business was required.

5.8 Common PAN based Registration granted to M/s.Escorts Ltd. is a mere facilitation to them and it does not, ipso facto, make the three units as one factory. If one unit is situated in separate premises and engaged in an activity amounting to manufacture, the same would be a different factory within the meaning of Section 2(e) of CEA, 1944 and separate registration would be required to be obtained by said unit. In the instant case, the three units are separate factories requiring separate registration.

6. We have carefully considered submissions from both sides and perused the records. The following issues arise for consideration.

(a) Whether the appellants were entitled to common

- (b) In case they were not eligible for common registration whether the Commissioner was right in revoking retrospectively the common registration granted to them and modifying the registration as separate registrations for each of the three units?
- (c) Whether the three different units be treated as a single factory eligible for exemption for goods manufactured in one unit and used in another unit treating the same as used in the factory of production on the ground that are under common registration?
- (d) If it was held that three units are independent factories, then whether the demand of duty denying the exemption is beyond the scope of show cause notices?

7.1 The registration of central excise assessee is in terms Section 6 of the Central Excise Act read with Rule 9 of the Central Excise Rules, 2002. Rule 9 of the Central Excise Rules read as under:

"Rule 9. Registration-(1) Every person, who produces, manufacturers, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered:
Provided

(2) The Board may by notification and subject to such conditions or limitation as may be specified in such notification specify person or class of person who may not require such registration.

(3) The registration under sub-rule (1) shall be subject to such

7.2 Board issued notification 35/01-CE (NT) dt.26.6.01 prescribing conditions, safeguards, and procedure for registration. Board has also issued notification 36/01-CE (NT) dt.26.6.01 providing for exemption for registration in certain cases and providing for common registration in respect of different units of the same assessee in certain circumstances. The Board has also issued detailed guidelines contained in para 3.2 of chapter 3 of supplementary instructions which read as under:

"Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlinked), but are segregated by public road, canal or railway line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as:

- (1) *Interlinked process product manufactured / produced in one premises are substantially used in other premises for manufacture of final products.*
- (2) *Large number of raw materials are common and received /proposed to be received commonly for both/ all the premises.*
- (3) *Common electricity supplies.*
- (4) *There is common labour / work force.*
- (5) *"Common administration/work management.*
- (6) *Common sales tax registration and assessment*
- (7) *Common Income tax assessment*
- (8) *Any other factor as may be indicative of inter linkage of the manufacturing processes.*

This is not an exhaustive list of indicators nor is each indicator

in each case. The Commissioner has to decide the

7.3 Normally different manufacturing units of any manufacturer, (in the present case Ltd. company) are required to take separate registrations in terms of the conditions, safeguards and procedures prescribed in notification No. 35/2001 dated 21.6.2001. However, notification No. 36/2001 provides for relaxations and in certain cases registration is totally exempted and in certain cases common registration is provided for. The Board has given the above guidelines as to circumstances in which two premises can be treated as part of the same factory. They have prescribed seven different specific indicators and another indicator which is residual in nature. It has also been clarified that the list of 8 are not exhaustive indicators and that it is not as if that every indicator should be necessarily satisfied.

7.4 The facility of common registration can thus be extended at the discretion of the Commissioner taking into account the relevant factors. It is settled law that the authority which has power to grant certain permission/facility has the power to withdraw the same. However, withdrawing the said facility retrospectively, in the given facts and when the permission was granted based on applications by the appellants and after due verification of the details is not appropriate. It is not a case of the department that the appellants have given any false particulars and obtained the facility.

8.1 The definition of the factory as given in the Central Excise Act, reads as under:

manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on."

From the reading of the above definition it is clear that the term factory includes precincts thereof. There is no indication in the said definition that the precincts thereof should be adjacent to the existing premises. The notification 36/01-CE (NT) also do not specify the distance as criteria. The emphasis is on several factors such as common labour, work force, common administration, interlinked manufacturing process, common procurement of raw materials etc. On appreciation of all these considerations, which are not exhaustive, the Commissioner is required to exercise discretion and grant common registration.

8.2 The guidelines by the Board clearly refers to registration of different units of the same factory. Common registration is to be considered in spite of segregation of the premises by public road and canal. If there are not segregated and are contiguous to each other there could not be any difficulty in registering the different premises of the manufacturer as one factory. The relaxation is only for separated premises based on guidelines as prescribed by the Board.

9.1 In the present case, undisputedly show cause notice dt.23.5.06 sought to treat the three premises as three independent factories and proposed revoking the common registration and therefore sought to deny the exemption. Later shows cause notices dt.17.4.08

and consequent upon revocation of common

earlier period upto 7.4.08. It is implicit in the proposal contained in the show cause notices that the exemption sought to be denied only on the grounds that they are not eligible for common registration and if common registration is upheld, then all three premises would be treated as same factory and that clearances from one premises to another would be eligible for exemption. The department cannot now make a new case going beyond the grounds in the show cause notice.

9.2 As rightly pointed out by the learned Advocated the term "used in the factory of production" has been interpreted by the Hon'ble Supreme court in the case of Lohia Sheet Products vs. CC, New Delhi-2008 (224) ELT (SC).

10. In view of the above, the following emerges:

- (a) The Commissioner has power to revoke the common registration granted, in case he found the guidelines issued by the Board do not permit common registration. However, the Commissioner was not justified in withdrawing the facility of common registration retrospectively.
- (b) The proposal for denial of the exemption in the show cause notices was on the ground that the common registration granted was not correct and the same was not in conformity with the guidelines of the Board. Therefore, when it is held that the facility of common registration cannot be denied retrospectively, the demand of duty on inter unit transfer on other grounds will be clearly going beyond the grounds, the demand of duty

(c) The Board's guidelines clearly envisages registration of different premises of the same factory. The common registration therefore makes the three different premises as belong to the same factory. Further, the term 'used in the factory of production' stands interpreted by the Hon'ble Supreme Court as use not in any other factory.

11. In view of the above, demands of duty relating to the period prior to 7.4.08 are not sustainable and the appeals are allowed with consequential benefits as per law.

(pronounced in the open court on 7/7/11)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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