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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/2475/2005 - EX[DB] Date **01/03/2012**

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

To :
KALSI STEEL INDS.
TIBBI ROAD, PHAGWRA, PUNJAB
144401

**KALSI STEEL INDS.** Appellant

Vs

**C.C.E. JALANDHAR** Respondent

I am directed to transmit herewith a certified copy of **Final order No 235/ 2012 EX|DB|** dated 21-2-12 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. JALANDHAR**

2. Adv. / Consult
**MR.SUDHIR MALHOTRA.**
13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
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 (Haryana)
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

Assistant Registrar
(Excise Appeal Branch)

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

DIVISION BENCH
Court No.3

Excise Appeal No.E/2475/2005

(Arising out of Order-in-Original No.165/CE/2005 dt.29.4.05 passed by the CCE(A), Ludhiana)

Date of Hearing/decision: 24.01.2012

For approval and signature:

**Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr.Sahab Singh, 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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | No |
| 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.Kalsi Steel Industries — Appellant

Vs

CCE, Jalandhar — Respondent

Present for the Appellant: Shri Sudhir Malhotra, Advocate
Present for the Respondent: Shri S.R.Meena, SDR

**Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr.Sahab Singh, Member (Technical)**

FINAL **ORDER NO.** A/235/2012-EX (BR)

**PER: ARCHANA WADHWA**

After hearing both sides, we find that the appellant is engaged in the manufacture of diesel engines parts i.e. rocker lever and pump lever falling under chapter 84 of the Schedule to the Central Excise Tariff Act, 1985. The said parts were cleared by them after packing in card board packages on which the brand name

"KALSI" was printed. Inasmuch as the said trademark "KALSI" was owned by M/s.Kalsi Metal Works, Jalandhar, the Revenue entertained a view that the benefit of small scale exemption notification is not available to the appellant. Accordingly, the proceedings were initiated against them by way of issuance of show cause notice on 31.5.02 proposing to confirm the demand of Rs.91,439/- in respect of clearance effected by them during the period 1.5.1997 to 8.9.2001. The said show cause notice stands adjudicated by the Assistant Commissioner vide which he has observed that inasmuch as the brand name "KALSI" was printed only on card board packages and no brand name was affixed on the goods themselves. It cannot be said that the assessee was using brand name of other person. He also refers to the Board's Circular No.88/88-CX.6 dt.30.12.88 clarifying the same trademark/brand name for different class of goods can be made of different persons. Inasmuch as trademark "KALSI" stands owned by M/s.Kalsi Metal Works, Jalandhar for Centrifugal Pumps, Reflex valves, Electric motors, Starting Devices for Motors and Monoblock pumps and not for the goods being manufactured by the notice, the use of the same for the goods other than one being manufactured by the brands name owner AO will not result ~~any~~ in denial of SSI exemption. He also relied upon the larger bench decision in the case of Fine Industries reported 2002 (46) ELT 53 (Tri.-LB) held that different products bearing same brand name are entitled to SSI exemption. Accordingly, he dropped the proceedings against the appellant.

2. Being aggrieved with the said order, the Revenue filed the appeal before the Commissioner (Appeals), who set aside the order of the original adjudicating authority, and allowed the Revenue appeal. Hence the present appeal.

3. Without going into the merits of the case, we find that the demand stands raised against the appellant, by invoking extended period of limitation. As per the appellant, a due declaration was filed by them with their Range Central Excise authorities. However, the Commissioner (Appeals) has observed that though there is stamp of the office but the same is without any signature. He has referred to the report obtained by him by the Jalandhar office and has observed that there is no record of the said declaration. The appellant have explained that the declaration may not be available in the concerned office on account of division of various offices and range offices.

4. In any case, we find that the issue is bonafide interpretation of the provision of SSI exemption notification. When the Assistant Commissioner himself has held in favour of the assessee, the appellant cannot be attributed with any malafide in entertaining a view that the use of brand name of "KALSI" on the products being manufactured by them would result in denial of SSI exemption to them. There is no evidence on record indicating any suppression or mis-statement on the part of the appellant, with an intent to evade payment of duty. As such, we are of the view that the entire demand of duty being barred by limitation is required to be set aside alongwith setting aside of penalty. We order accordingly.

5. The appeal is allowed with consequential relief to the appellant.

(Pronounced in the open court)

**(ARCHANA WADHWA)**
**MEMBER (JUDICIAL)**

**(SAHAB SINGH)**
**MEMBER (TECHNICAL)**

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