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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/596&3870 /2006 - EX[DB] Date **16/03/2012**

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

To :
MONGA BROTHERS LTD
15-16, FOCAL POINT LUDHIANA

MONGA BROTHERS LTD Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/285-286/ 2012 EX[DB]** dated 12-3-12 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. LUDHIANA (VICE VERSA)
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A, CHANDIGARH.

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
14. M/S. K.C. ALLOYS & CASTINGS, B-16, FOCAL POINT, LUDHIANA.

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.596/2006
Excise Appeal No.3870/2006
(Arising out of OIO No.50/Ldh/05 dt.01.12.05 passed by the CCE, Ludhiana)

Date of Hearing: 23.02.2012

Date of Decision:

For approval and signature:

Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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.Monga Brothers Ltd. — Appellant
Vs
CCE, Ludhiana — Respondent

And

CCE, Ludhiana — Appellant
Vs
M/s.K.C.Alloys & Castings — Respondent

Present for the Appellant: Shri Vikrant, Advocate and vice versa
Present for the Respondent: Shri S.R.Meena, AR and vice versa

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

FINAL **ORDER NO.** A/285-286/2012-EX(BR)

PER: ARCHANA WADHWA

Both appeals, one filed by assessee and other filed by the Revenue, are being taken together for final disposal as they arise out of the same impugned order of the Commissioner.

2. After hearing both sides, we find that M/s.K.C.Alloys and Castings were engaged in the manufacture of steel ingots and were selling the same to M/s.Monga Brothers Ltd., who are engaged in the manufacture of hot rolled products (rounds & bars). The Revenue entertained a view that the assessable value of ingots being cleared by M/s.K.C.Alloys & Steel Castings to M/s.Monga Brothers Ltd. is on the lesser side, visited their factory premises on 29.06.01, and examined the valuation aspect. It was found that M/s.K.C.Alloys & Steel Castings is a unit owned by M/s.Monga Brothers Ltd. and was only a name of Furnace Division of M/s.Monga Brothers Ltd. However, the assessee on being pointed out by the Revenue, recalculated the assessable value on the basis of cost of production of steel ingots and debited the differential duty of Rs.34,11,182/- for the period 1.7.2000 to 31.7.2001. The said duty was debited by raising supplementary invoices and duty ~~was~~ so paid by the assessee was availed by the appellant by M/s.Monga Brothers Ltd. ~~and~~ They were subsequently issued show cause notice on 29.06.05 alleging that the cost of production of steel ingots arrived at by the appellant was on the lower side and the same should have been Rs.12,483.16 per MT instead of Rs.11,393/- per MT adopted by the appellant. Accordingly, they were called upon to show cause as to why additional duty of Rs.17,95,666/- should not be confirmed against them, in addition duty Rs.34,11,182/- already paid by them.

3. The Commissioner vide impugned order has accepted the appellant's stand that M/s.K.C.Alloys & Steel Castings is a unit of M/s.Monga Brothers Ltd. He also accepted that cost of production of

steel ingots stands quantified by show cause notice by taking into account the combined figures attributable to all three units of M/s.Monga Brothers Ltd. Accordingly, he also got the cost of production verified by another chartered account and held that the short demand is to the extent of Rs.80,650/-. Accordingly, he confirmed the said and vacated the show cause notice relatable to demand of Rs.17,15,016/-. He also imposed penalty of Rs.80,650/- upon the assessee.

4. Both sides i.e. assessee as also Revenue has challenged the present impugned order before the Tribunal.

5. We find that the appeals can be disposed of on short ground of Revenue neutrality as also on the point of limitation. Admittedly when their factory was visited by the central excise officers and it was pointed out to them that the cost of production of steel ingots has to be arrived at in terms of Rule 8 of the Valuation Rules ~~and when~~ they accepted the said fact and paid duty of Rs.34,11,182/-. The said duty was paid by M/s. K.C.Alloys & Steel Castings is available as modvat credit to their unit M/s.Monga Brothers Ltd. As such, it is seen that the duty paid by or payable by K.C.Alloys & Steel Castings was available as credit to their own unit M/s.Monga Brothers Ltd. In such scenario, there could no question of any wilful mis-statement or suppression of facts.

6. The Tribunal in a number of its decisions has held that where duty paid by one unit is available as credit to other unit, there can be no wilful intention on the part of the assessee to evade duty,

resulting in invocation of longer period of limitation, inasmuch as the entire exercise Revenue neutral. The reference is made, to this effect, to the following decisions:-

1. *CCE, Surat vs. Indrayani Exports (P) Ltd.-2011 (272) ELT 410 (Tri.-Ahmd.*
2. *Jay Yuhshin Ltd. vs.CCE, New Delhi-2000 (119) ELT 718 (Tri.-LB)*
3 *Parle Biscuits Pvt.Ltd. vs. CCE, Rohtak-2011 (269) ELT 81 (Tri.-Del.)*
4. *Visen Industries Ltd. vs. CCE, Vapi-2009 (235) ELT 280 (Tri.-Ahmd.)*
5. *CCE, Chandigarh vs. H.F.C.L.-2008 (231) ELT 307 (Tri.-Del.)*

7. By following the ratio of the above decisions of the Tribunal, we note that the duty of Rs.34 lakhs ~~essentially~~ initially paid by the assessee also stands availed as modvat credit by M/s.Monga Brothers Ltd., there could be no occasion or reason available to adjust their duty liability less by Rs.80,650/-. As such, it cannot be held that there is any suppression of facts on their part. Otherwise also, we find that the duty was paid by the appellant in the year 2001 whereas the show cause notice questioned the correctness of the cost & was issued in the year 2005. As such, we are of the view that the demand is barred by limitation and the same is not sustainable. The impugned order confirming the demand is accordingly set aside and the appeal is allowed with consequential relief to the assessee.

8. Inasmuch as the assessee's appeal stands allowed, the Revenue's appeal against that part of the order of the Commissioner,

vide which part of demand was dropped is not sustainable. The same is accordingly rejected.

(Pronounced in the open court on 12/3/12)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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