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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/2914/2011 - EX[DB]
E/S/3750/2011-EX

Date 25/04/2012

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

To :
M/S SONA KOYO STEERING SYSTEMS LTD
PLOT NO 32, HUDA INDUSTRIAL AREA,
DHARUHERA, DISTT- REWARI(HR)

M/S SONA KOYO STEERING SYSTEMS LTD Appellant

Vs

C.E.E. DELHI III **STAY ORDER NO. 692/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.459** **2012** **EX|DB|** dated 19-4-12
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. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

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 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)

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 Stay Application No. 3750 of 2011 in Appeal No. 2914 of 2011

[Arising out of the Order-in-Original No. 21-CE/PKJ/CCE/ADJ/ 2011 dated 30/09/2011 passed by The Commissioner of Central Excise (Adjudication), New Delhi.]

For Approval and signature :
Hon'ble Shri Justice Ajit Bharihoke, 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 Sona Koyo Steering Systems Ltd.] Appellant
Plot No. 32, Industrial Area, Dharuhera,]
Rewari.

Versus

CCE, Delhi – III, Gurgaon Respondent

Appearance

S/Shri A.R.M. Rao and R.K. Hasija, Advocates – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 19/04/2012.
DATE OF DECISION : 19/04/2012.

STAY oral order No. 692/2012-Ex(BR)
FINAL Oral Order No. 459/2012-Ex(BR)

Per. Rakesh Kumar :-

The appellant have a factory at Dharuhera, Distt. Rewari and are engaged in the manufacture of motor vehicle parts chargeable to Central Excise Duty. They also have another unit at 38/6, KM Stone, NH-8, Gurgaon, which is their corporate office also. During the period from 2006-2007 and 2008-2009, the appellant company imported capital goods and inputs for the Rewari unit, but the bills of entry were bearing the address of the Corporate office at 38/6, KM Stone, NH-8, Gurgaon. Those bills of entries were endorsed to the Rewari unit and on the basis of those endorsed bills of entry Cenvat credit of Rs. 2,86,33,448/- was taken. The department was of the view that since the bills of entry on the basis of which Cenvat credit has been taken do not bear the appellant unit's address and there was no provision for endorsement of bill of entry and as such an endorsed bill of entry is not a valid duty paying document under Rule 9 of the Cenvat Credit Rules, 2004, the Cenvat credit has been wrongly taken. It is on this basis that the Jurisdictional Commissioner vide order-in-original dated 30th September 2011 confirmed the Cenvat credit demand of Rs.2,88,36,448/- alongwith interest and imposed penalty of equal amount on the appellant under Rule 15 of Cenvat Credit Rules, 2004. Against this order of the

Commissioner, this appeal alongwith stay application has been filed.

2. Though this matter was listed for hearing of the stay application only, since a short issue is involved, we were of the view that appeal itself can be taken up for final disposal. Accordingly with the consent of both the sides, the matter was heard for final disposal waiving the requirement of pre-deposit.

3. Shri A.R.M. Rao, Advocate, the learned Counsel for the appellant, pleaded that both the units are owned by the same company, that the import of the capital goods and inputs, in question, had been made by the appellant company and the goods had been transferred to the appellant unit at Rewari by endorsing the bills of entry, that since the duty paying documents are in the name of the appellant company and receipt of the goods in the Rewari unit is not disputed, the Cenvat credit had been correctly taken, that in this regard he relies upon the judgment of the Tribunal in the case of **Bando India (P) Ltd. vs. CCE, Delhi – III** reported in **2010 (262) E.L.T. 1103 (Tri. – Del.)** and also the judgment of the Apex Court in the case of **Union of India vs. Marmagoa Steel Ltd.** reported in **2008 (229) E.L.T. 481 (S.C.)**, that in view of this, the impugned order is not correct.

4. Shri Sanjay Jain, the learned Senior Departmental Representative, defended the impugned order by reiterating the

findings of the Commissioner in it and emphasised that since the bills of entry ~~is~~ are in the name of his sister unit located at Gurgaon, the appellant unit located at Rewari could not take the Cenvat credit.

5. We have carefully considered the submissions from both the sides and perused the records.

6. In this case there is no dispute about the receipt of the inputs and capital goods, in question, by the appellant unit. The only objection of the department is that the goods, in question, had been imported by the Gurgaon unit/Corporate office of the appellant company and the same have been transferred to the appellant unit at Rewari under endorsed bills of entry, while the endorsed bill of entry is not valid duty paying document. We find that issue involved in this case stands decided in the favour of the appellant by the Apex Court in its judgment in the case of **UOI vs. Marmagoa Steel Ltd.** (supra) ~~and~~ which has been followed by this Tribunal in the case of **Bando India (P) Ltd. vs. CCE, Delhi – III** (supra). Moreover, this case both the units-the unit at Dharuhera which has taken the Cenvat credit and the Gurgaon unit whose address appear in the bills of entry, under which the inputs and capital goods had been imported, belong to the same company and it is a case of transfer of inputs and capital goods by one unit of a company to another unit. The credit has, therefore, been correctly taken. We are, therefore, of the view

that impugned order is not sustainable. The same is set aside. The appeal as well as stay application is allowed.

(Dictated and pronounced in the open court.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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