

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NOS: E/1456 to 1458/2010

[Arising out of Order-in-Appeal No: SB (54 to 56) 54 to 56/MV/2010 dated 20th May 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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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 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
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Supreme Industrial Works,
Bhupendra Kansara
Gear Enterprises

... Appellants

versus

Commissioner of Central Excise
Mumbai – V

...Respondent

Appearance:

Shri MH Patil, Advocate for appellants

Shri AB Kulgod, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 01/01/2019
Date of decision: 01/01/2019

ORDER NO: A/85013-85015 / 2019

Per: C J Mathew

Having heard Learned Counsel for appellants and Learned Authorised Representative at length, we find that these three appeals of M/s Supreme Industrial Works, M/s Gear Enterprises and Shri Bhupendra Kansara against order-in-appeal no. SB (54 to 56) 54 to 56/MV/2010 dated 20th May 2010 of Commissioner of Central Excise (Appeals), Mumbai Zone-I, which upheld duty liability of ₹16,08,298 under section 11A of Central Excise Act, 1944, along with appropriate interest under section 11AB of Central Excise Act, 1944 against the first of the appellants, and the imposition of penalties against all three, can be disposed of on the basis of simple facts adduced on behalf of the appellants and the stated object of the proceedings as acknowledged in the orders of the two lower authorities.

2. M/s Supreme Industrial Works and M/s Gear Enterprises are two partnership firms with, admittedly, some common partners. The allegation against the former is that a part of their output, with duty

liability of ₹ 16,08,298, was shown by them as production of the latter and, coupled with eligibility for the benefit of notification no. 8/2003-CE dated 1st March 2003 between October 2003 and March 2008, enabled escapement from duty liability. During the investigations, duty liability of ₹ 7,77,613 had been deposited.

3. The sales of M/s Gear Enterprises totalling ₹ 1,08,79,015 with an assessable value of ₹ 93,53,559 that was sought to be fastened on M/s Supreme Industrial Works included sales of ₹ 60,52,995 recorded as having been made to M/s Supreme Industrial Works which is not controverted and thus not includable in the liability of clearances. Furthermore, the other clearances valued at ₹ 47,19,659 entitles them to avail to CENVAT credit on inputs as M/s Supreme Industrial Works is, admittedly, a unit discharging duty liability on its final products. In the calculation-sheet submitted by Learned Counsel it is seen that, after deducting the 'sales made to itself' and the availment of CENVAT credit on the sales made to other units, the net tax liability is found to be ₹ 1,01,411/-.

4. The submission of Learned Counsel, notwithstanding the error in the computation of duty liability on the premise that a part of the production of M/s Supreme Industrial Works was shown as having been cleared from the premises of M/s Gear Enterprises, is that these are two different entities and that the presence of machinery capable

of manufacturing 'gear blanks', which are semi-finished inputs for M/s Supreme Industrial Works as recorded in the panchnama of search proceedings, evidences the hollowness of the basis on which the clubbing of clearances has been established in the orders of the lower authorities.

5. Benefit of notification no. 8/2003-CE dated 1st March 2003 was claimed by M/s Gear Enterprises. The records show that this unit, opting to operate as a declarant, did possess the wherewithal to manufacture 'gear blanks' that could, conceivably, have been finished at the premises of M/s Supreme Industrial Works and, being their finished products, cleared on payment of duty without the benefit of availing CENVAT credit on the 'gear blanks'. In the circumstances, it would appear that the allegation of misusing of M/s Gear Enterprises by M/s Supreme Industrial Works to mask a part of the production of the latter with intent to evade duties of central excise does not rest on sufficiently solid foundation.

6. For the above reasons, we find ourselves unable to sustain the impugned order and allow the appeals with consequential relief.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)
*/as05100312

(C J Mathew)
Member (Technical)