TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. E/3641/2004-3643/2004 - EX[DB]

Date 23/04/2009

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

To :
M/S BHARAT SEATS LTD.
PLOT NO-1, MARUTI JOINT VENTURE COMPLEX,
GURGAON (HARAYANA)
M/S BHARAT SEATS LTD.

Appellant

Vs

C.C.E. DELHI

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 272 – 274 / 2009 EX[DB] dated 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
   I.P. ESTATE, ROOM NO-263,
   CENTRAL REVENUE BUILDING,
   NEW DELHI - 110002
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE,
   NEW DELHI-110029
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

M/S BHARAT SEATS LTD.
PLOT NO-1, MARUTI JOIN VENTURE COMPLEX, GURGAON
(HARAYANA)

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 3641-3643 of 2004-EX.

(Arising out of Order-in-Original No. 10/04 dated 21.4.2004 passed by the Commissioner, Central Excise, New Delhi)

M/s Bharat Seats Ltd. & Others Appellant

Vs.

CCE, New Delhi Respondent

Appeared for Appellant : Shri B.L. Narasimhan, Advocate
Appeared for Respondent : Shri A.K. Rastogi, DR

Date of Hearing: 31.3.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

FINAL Order No....272-274/09-EX dated............

Per D.N. Panda:

Ld. Counsel Shri Narasimhan submits that the proceeding was initiated after making ~~to~~ make a comparison of the balance sheet figure, as on 31.3.97, 31.3.98 and 31.3.99 with the figures available in RG-23A, Part-I records maintained under Central Excise Act, 1944 by the Appellant. He submits that the records which are the basis for administration of tax law were not found to be with discrepancies nor the records faulted without any material brought on record. There is no scope under the law to rely on any other documents which are not known to law and bring charges against the appellant. The appellant was quite cooperative to Revenue to explain that the allegations brought out by the show-cause notice under different paragraphs have no basis. In view of the material evidence available with the appellant to reconcile discrepancy, if any, the documents filed by the appellant which are available in the respective paper book before the Tribunal may be examined by Revenue and submit a report to the Bench. These documents self speak that the appellant are not required to face any charge on the basis of irrelevant materials not known to law. He submits that even the Auditors of the Appellant company when conducted annual audit they scrutinised all the records of the appellant and the Balance sheet they prepared was without any fault and that is reflected in page-53 of order of adjudication. There are five circumstances explained by the Auditor which throws light to show that the records of the appellant remained unchallenged without any discrepancy and fully reliable.

2. Ld. Counsel submits that Revenue has not at all conducted any physical verification of stock but on mere suspicion and assumption proceeding was initiated. Firstly, Revenue alleges that physical balance of inputs at the year end showed in the balance sheet as on 31.3.97, 31.3.98 and 31.3.99 were higher than the figure appearing in RG-23A part-I on these relevant dates and to cover up the shortage of inputs, the appellant made entries showing

issues on the next day of Balance sheet date in RG-23A part-I of a quantity equal to shortage without actually issuing the inputs for use in manufacture. He submits that when such allegation was made, that calls for an exercise precisely depicting in a chart how the ~~short~~ shortage has occurred. But that was not done by Revenue. The Appellant all along prayed for reconciliation of difference if any. But deaf ear was paid by Revenue. Secondly, how the shortage of input alleged has come into RG-23A Part-I after the Balance Sheet data was not examined by Revenue except drawing an abrupt conclusion. Thirdly, how without the inputs being issued manufacture was carried out by Appellant was not appreciated by Authority below. There was no allegation of clandestine manufacture and that has not been alleged in the show-cause notice. Therefore, without any cogent evidence bringing the questionable conduct of the appellant as to suppression of purchase of the input or any extra purchase made to avail credit without being used in manufacture, the appellant cannot be denied of Modvat credit.

3. Ld. Counsel's further submission is that when the appellant came forward to explain its case reconciling the alleged discrepancy, that proves conduct of the appellant. Pleadings on such count was made by Appellant relying on several documents in its favour and formed part of Revenue's record. He quotes from page-56 dealing with defence reply showing fair conduct of the Appellant. Ld. Counsel is fair enough to state that the discrepancy alleged is

reconcilable. According to him, Revenue has not found out any additional set of records maintained by Appellant to prove any methodical adjustment during the year. He submits that the appellant has very categorically stated that unless Central Excise record viz. RG-23A part-I is faulted by any discrepancy of cognizable in nature the Balance sheet figures are not decisive to make allegation against the appellant. The appellant has already explained to the adjudicating authority that reconciliation statement of stock based on the consumption norms explains the issue. He further submits that when the department fully relies on the Balance sheet, the department has also to rely on the Auditor's report and Piecemeal evidence shall vitiate the proceeding.

4. With all the aforesaid submissions, learned Counsel prays that the demand is liable to be annulled being made presumptively without any basis and also without any examination of evidence available on record. So far as penalty is concerned, his pleading is that there was neither wilful nor deliberate breach of law made by the appellant. No manipulation has been brought to record. The persons those who are personally penalised were merely imputed to charge or without any basis. The returns filed regularly were all along available with the Department. Therefore in absence of any evidence being brought to record to squarely cover the appellant under proviso to Section 11A of Central Excise Act 1944, there cannot be any proceeding against the appellant nor against the

persons who have been brought to charges. Since the proceeding is time-barred for no satisfaction of the elements of proviso to Section 11A of Central Excise Act 1944, there shall not be any penalty on the appellant. Ld. counsel argues that Shri Dharam Pal has faced unnecessary charges and there is levy of penalty of Rs. 2 lakh for no reason. He should be exonerated from charge since he was not an abettor of the offence alleged.

5. Ld. DR appearing for Revenue submits that Revenue has made a careful exercise to analyse ~~analysis~~ the charges depicted in the show cause notice. Para-26 of the show cause notice brings out the charges categorically. To this submission, Shri Narasimhan contradicts showing paper books filed by the appellant before the Authorities below explaining the charges. He submits that the materials produced were running into several pages. Therefore those were fully brushed aside with pre-determined mind to raise demand against the appellant. Ld. DR brings out to our notice that the authorities have examined the case of 2001 that is appearing at page-52 of the appeal folder. The conduct of the appellant was under scrutiny. That speaks against the appellant. He further submits that Revenue has taken all the figures of the RG-23A part-I register and because it has found that on the first part of the financial year and most particularly at beginning there was big adjustments done, Conduct of appellant was questioned. The appellant has resorted to such practice. That is subject matter of

the issue framed at page-61 of the appeal folder dealing with discussions and findings. His further argument is that when the appellants adjusted on one day that itself has left doubt and nothing satisfactory explanation being furnished, adjudication was rightly done. He also submits that the issue of the input claimed by the appellant was not backed by the blending register or any other record. Therefore, the one day adjustment of the inputs and that too on the first day of the financial year has brought the appellant to the charges properly.

6. Heard both the sides carefully and extensively for long time. We have gone through the discussion and finding portion of the order. We are satisfied that when the issue was framed on the basis of the balance sheet figures, that needs to be tested since those figures were considered to be basis of charge while the statutory record under Central Excise Act 1944 are the full proof figures. To our mind, the Balance sheet does not appear to be recognised document under the law to bring an allegation and should be held to be legal basis for charging a litigant. The Balance sheet is totally a foreign material which may support the case of Revenue. If Balance sheet provides credence to Revenue and that remains uncontradicted in the process of rebuttal by the appellant, that may provides scope for a proceeding under Excise law. What that we feel is that the department has to come out with cogent evidence to prove that the inputs while undergoing the consumption

has given rise to questionable conduct of appellant. We appreciate that the Cenvat credit is not a facility *goods qua goods,* but Cenvat credit is a credit earned by the assessee which is utilised for ultimate discharge of duty liability. Therefore to deny the right, burden of proof lies on Revenue with cogent evidence led to show that the inputs were only gathered for mere paper/~~proper~~ credit but have not undergone consumption. We are unable to notice any suppression of purchase nor clandestine manufacture or removal. Revenue is required to prove that the goods manufactured is even possible with less quantity of inputs. But that is done in the case presently on record.

7. To resolve the dispute of both the sides, apart from our observation aforesaid it would be fair on the part of adjudicating authority to first find out what is the quantum of discrepancy as per Balance sheet and how such discrepancy has basis for an allegation. Once he finds that the figures of the Balance sheet calls for testing, he should not hesitate to make reconciliation when the assessee has brought out a clear evidence that its RG-23A Part-I ~~on~~ record is not challenged by Revenue nor has not been faulted the same leading any evidence to the contrary. There was no physical verification of the stock done by Revenue. Therefore the peculiar figures are the only basis to undergo tests of law. Ld. adjudicating authority should carefully look into the scope of show cause notice when the returns filed by the appellant were never ~~been~~ faulted and that is

not apparent from the order. He should not travel beyond the show cause notice without any cogent evidence available to satisfy ingredients of proviso to Section 11A of Central Excise Act 1944. he has to satisfy the record to hold that the proceeding is not time barred and proved by elements to proviso to Section 11A being present. He has to find out that the ingredients were present to proceeding under Section 11A of Central Excise Act, 1944. If the ingredients are not present, he should not fail to appreciate the ratio laid down by Apex Court decision in the case of **CCE Vs. H.M.M. Ltd.** reported in 1995 (76) ELT 497 and also the decision in the case of **Metal Forgings Vs. Union of India** reported in 2002 (146) ELT 241. The show cause notice should have foundation categorically demonstrating the allegation as to the ingredients of law being satisfied.

8. We make it open to the assesse to argue on the time bar since the matter is proposed to be remitted back. We make it clear that when the element of law is not present there cannot be levy of any penalty. The litigants should get appropriate opportunity when the matter is looked into afresh without being guided by earlier findings in the order of adjudication. The authority should dispose of the matter as early as possible since demand raised by impugned order was running into crores of rupees. The appellant shall appear before the ld. adjudicating authority within 60 days of receipt of this order, so that the authority shall fix the date of hearing. The

authority should not hesitate to make a proper exercise when the pleading of the appellant even today is that the figures are reconcilable. Fair opportunity of hearing should be given by the ld. adjudicating authority to all the appellants and he shall pass a reasoned and speaking order within the purview of show cause notice.

9. In the result, we remand the matter to the ld. adjudicating authority setting aside the entire order with aforesaid observations.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM