

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

Appeal No. E/5712/2004,71 /2005 - EX[DB]

Date 10/11/2009

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

To :
M/S ESS ESS KAY ENGG.CO.LTD.
FACTORY AREA,KAPURTHALA
M/S ESS ESS KAY ENGG.CO.LTD.

Appellant

Vs

Respondent

C.C.E.CHANDIGARH

2009 EX[DB] dated 06-11-09

I am directed to transmit herewith a certified copy of Final order No. 887-888/
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.CHANDIGARH

JALANDHAR HEADQUARTER AT CHANDIGARH

2. Adv. / Consult

SH. S. MALHOTRA, ADV.,
13-R, HUKAM CHAND COLONY,
NEAR D.A.V. COLLEGE, JALANDHAR

3 C.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

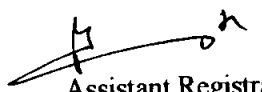
15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

16 Office Copy

17 Guard file

18 HON'BLE PRESIDENT

19 M/S SUDARSHAN STEELS,
TANDA ROAD, JALANDHAR


Assistant Registrar
(Excise Appeal Branch)

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

COURT - I

- (1) Excise Appeal No. E/ 5712/2004
(2) Excise Appeal No. E/71/2005

[Arising out of Order-in-Appeal Nos.435 & 436/CE/Jal/04 dated 29.09.04 passed by the Commissioner of Central Excise (Appeals), Chandigarh].

Date of Hearing: 03.11.2009
Date of decision: 06.11.2009

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr.P.Karthikeyan, 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?	Yes
2	Whether it should be released under Rule 27 of the 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

- (1) Ess Ess Kay Engg. Co. Ltd.
(2) M/s. Sudarshan Steel

...Appellants

Vs.

CCE, Chandigarh

... Respondent

Present for the Appellant : Shri S. Malhotra, Advocate
Present for the Respondent : Shri R.K. Saini, SDR

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. P.Karthikeyan, Member (Technical)

Final

ORAL ORDER NO. 887-888/09 DATED: _____

PER: P.KARTHIKEYAN

M/s. Ess Ess Kay Engg. Co. Ltd. (hereinafter called EEK)
and M/s. Sudarshan Steel (herein after called SS) have filed
these appeals assailing the impugned order. Vide the
impugned order, the Commissioner (Appeals) affirmed demand
of Rs.5,45,062/- alongwith applicable interest from EEK and

penalty of equal amount imposed on it by the original authority. The impugned order also affirmed penalty of Rs.50,000/- imposed on SS under rule 209 A of the Central Excise Rules 1944.

2. The facts of the case are that EEK a manufacturer of CR sheets etc. had received CR coils during the period 4/97 to 11/98 from SS, a dealer in CR coils registered with the Department. The consignments of CR coils involved had not been received in the registered premises of the dealer. The dealer had issued modvatable invoices to EEK covering consignments of CR coils during the material period. Following circulars issued by the Board, the lower appellate authority found that registered dealers needed to have proper godown for receipt, storage and onward dispatch of excisable goods and that no modvatable invoices could be issued without receipt of goods in the godown declared in the application form for registration. By failing to bring goods in the registered godown, modvatable invoices issued by the dealer was in violation of statutory provisions and were not valid for taking modvat credit. The Commissioner (Appeals) rejected the argument of EEK based on the decision of the Tribunal in the case of N.V.Enterprises (P) Ltd. reported in 1994 (176) ELT 367 (Tri. Delhi) on the ground that the said decision of the Tribunal had relied on Bombay Commissionerate Trade Notice No.62/99 dated 16.10.99 which related to procedure to be followed by registered dealers for de-coiling of CR coils and cutting them into sheets. In the instant case, the registered dealer had not arranged to supply coils at the cutter's place

and delivery of sheets obtained on cutting coils to the appellant manufacturer. Appellant EEK had received CR coils which had not been received in the premises of the dealer SS. The Commissioner (Appeals) affirmed the demand of modvat credit of Rs.5,45,062/- found by the original authority to have been taken by the appellants on the strength of invalid documents. He also affirmed the penalty imposed on the appellant finding that it had availed modvat credit in an irregular manner contravening statutory provisions.

3. The penalty imposed on SS was affirmed, finding that they had falsely issued the impugned invoices without bringing excisable goods to the registered premises. They had suppressed this fact from the Department and facilitated EEK availing inadmissible credit. He found penalty of Rs.50,000/- imposed on SS under Rule 173 Q(1) (bbb) read with Rule 209A of Central Excise Rules appropriate though the show cause notice had not proposed to penalise SS under rule 209A of Central Excise Rules.

4. We take up the appeals together. We have heard both sides. Reiterating the grounds taken in the appeal the Id Counsel for the appellant submitted that there was no dispute that the appellant EEK had received the impugned CR coils and had put them to the intended use. There was no dispute that the impugned credit related to inputs CR Coils received by the appellants EEK and used in the manufacture of finished goods. In the circumstances, substantive benefit could not be denied on procedural infractions. He also submitted that the

Commissioner (Appeals) had wrongly held that the Trade Notice No.62/99 dated 6.10.99 issued by the Bombay Commissionerate was not applicable to the instant case and that the ratio of the decision of the Tribunal in M/s. N.V. Enterprises Pvt. Ltd. case had not applied. He relied on the decision of this Tribunal in *Allied Steels vs. CCE, Jalandhar reported in 2007 (207) ELT 248 (Tri. Delhi)* in support of the claim that Modvat Credit could not be denied for the reason that the manufacturer had received inputs sold in transit by the dealer which had not been received in the premises of the dealer Appellants had availed Cenvat credit legitimately due to them. No penalty could have been imposed on them.

5. As regards the penalty imposed on SS, it is submitted that the dealer had not manipulated the particulars in the invoices to facilitate the manufacturer EEK to avail undue credit. In the circumstances, no penalty could have been validly imposed on SS. He relied on the decision of the Tribunal in *NV Enterprises Pvt. Ltd. 2005 (191) ELT 594 (Tri. Delhi)* in support of this argument.

6. Ld. DR reiterated the findings and decision of the Commissioner (Appeals) and argued that the demand and penalties adjudged in the impugned order deserves to be sustained.

7. We have carefully studied the case records and considered the rival submissions. In the instant case the appellant EEK received CR coils sold in transit by a registered

dealer. The dealer had not received the duty paid CR coils in its premises and issued modvatable invoices against which EEK availed the impugned credit. We find that the revenue has no case that the appellant manufacturer had not received the duty paid inputs in its manufacturing premises and had not utilized them in the manufacture of finished goods. The credit is sought to be denied on the sole ground that the credit had been availed on the strength of modvatable invoices issued by the registered dealer without receiving the inputs in its registered premises. We find that similar dispute as involved in the instant appeals were decided in favour of the appellants in the case laws cited by the Id. Counsel for the appellants.

Appeal No. 5712/04

8. In *NV Enterprises (P) Ltd. case [2004 (176) ELT 367 (T)]* the Tribunal held that in the light of Trade Notice No.62/99 dated 16.10.99 the contention of the Revenue that the Modvat Credit could not be allowed against invoices issued by a dealer without bringing the HR coils to its factory had no merit. The trade notice had provided for allowing credit in respect of CR coils taken to the cutters place and cut sheets arranged to be supplied to the manufacturer from cutter's place, against invoices issued by the dealer covering CR coils. In *Allied Steels case (supra)*, relying on the case of *NV Enterprises (P) Ltd. reported in 2004 (176) ELT 367 (Tri.Delhi)*, the Tribunal held that a manufacturer could avail credit on an invoice issued by a registered dealer covering CR coils; unloading the consignments of CR coils at cutter's place (without bringing into dealer's premises) and the manufacturer receiving the cut

sheets therefrom did not make the dealer's invoice invalid to avail credit. The basic requirement of rule 57G in that context was that the manufacturer could take credit of the goods received by him in his factory under the cover of modvatable documents which included an invoice issued by the dealer of excisable goods registered under rule 174. There was no statutory provision to the effect that modvat credit could be denied if the goods were not first taken to the premises of the registered dealer and then brought to the factory of the manufacturer.

9. In the light of these decisions, we find that the impugned demand of credit with applicable interest from EEK is not sustainable. In the circumstances the penalty imposed on EEK is also liable to be set aside. We order accordingly.

Appeal No. E/71/05

10. As regards the appeal by SS against the impugned penalty, we find that the same is imposed on the basis that it had issued invalid invoices to facilitate EEK avail undue credit. We note that identical issue was decided against the revenue in the *NV Enterprises (P) Ltd. case reported in 2005 (191) ELT 594 (Tri. Delhi)*. It was held that the dealer's invoices had not contained any incorrect particulars intended to enable the manufacturer to avail undue credit. The invoices showed legitimately admissible credit. The Tribunal, therefore, vacated

the penalty. We find that the relevant facts of the instant case are identical to the facts of above decision in NV Enterprises (P) Ltd. case. The penalty imposed on SS is not sustainable. We vacate the same.

11. The appeals are allowed.

Pronounced in open Court on 6th November, 2009

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(P.KARTHIKEYAN)
MEMBER (TECHNICAL)

Anita