

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

Appeal No. E/1218/2006-SM[BR]

Date 23/01/2008

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

To :  
M/S ESS ESS BATHROOM PRODUCTS P LTD.  
278/279, INDUSTRIAL AREA-1, PANCHKULA

M/S ESS ESS BATHROOM PRODUCTS P LTD.

C.C.E. DELHI III

Appellant  
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No. 131/2008-SM[BR] dated 27.12.2007 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM 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. JAGMOHAN BANSAL  
1640/1, SECTOR-40B, CHANDIGARH
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH  
NEW DELHI, COURT NO. III**

**Excise Appeal No.E/1218 of 2006 -SM (BR)**

[Arising out of order in appeal No.01/GRM/PCK/06 dated 3.1.2006 passed by the  
Commissioner (Appeals), Central Excise, Gurgaon]

**Date of Hearing/ Decision: 27.12.2007**

**For approval and signature:**

**Hon'ble Mr. P.K. Das, 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.         | : |   |
| 2. Whether it should 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 Departmental authorities?  | : | } |
- 

M/s.Ess Ess Bathroom Products (P) Ltd.

Appellants  
[Rep. by Mr. Atul Gupta, Advocate]

Vs.

CCE, Gurgaon

Respondent  
[Rep. by Mr. Atul Rastogi, Authorized Representative (DR)]

**CORAM: Mr. P.K. Das, Member (Judicial)**

*Final* Order NO.....131/08-SM(BR)...../Dated:27.12.2007

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants availed Cenvat Credit of Rs.43,518/- on the basis of two invoices, both dated 11.3.2005 issued by Second Stage Dealer, M/s. Sudha Enterprises, who issued the said invoices on the basis of invoice dated 19.2.2002 of M/s. R.K. Enterprises, First Stage Dealer. It has been alleged that the appellant availed the credit without actually receiving the goods in their factory. The adjudicating authority confirmed the demand of duty and imposed penalty of equal amount along with interest. The Commissioner (Appeals) upheld the adjudicating order.

2. The Id. Advocate on behalf of the appellant submits that on the similar allegation against M/r. R.K. Enterprises, this Tribunal in the case of Garima Enterprises (P) Ltd. Vs. Commissioner of Central Excise, Delhi -2005 (182) ELT 106 (T-D) allowed the appeal of the manufacturer. He further submits that the appellant produced various documents viz. RG-23A, Part-I, II and Purchase Book showing the receipt of the goods. He submits that the demand is barred by limitation and nothing was disclosed in the show cause notice for invoking extended period of limitation. In this connection, he relied upon the decision of the Hon'ble Supreme Court in the case of CCE, Vs. H.M.M. Ltd. - 1005 (76) ELT 497 (SC). He further submits that proviso to Section 11A was not invoked in the show cause notice.

3. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the show cause notice clearly indicates the fraudulent activities of M/s. R.K. Enterprises and the demand was raised under Rule 57I of the Central Excise Rules, 1944 read with Section 11 A of Central Excise Act, 1944.

4. After hearing both the sides, I find that it has been alleged in the show cause notice that G.R. Books were got printed by M/s. R.K. Enterprises, First Stage Dealer and the Transport Company did not exist anywhere and the addresses mentioned on the GRs were fictitious and these GRs were used by them to cover bogus transaction. It has been proposed in the show cause notice to recover the duty amount fraudulently availed and utilized by them under Section 11A of the Central Excise Act, 1944. So, it is clearly evident that the fraudulent activities of the First Stage Dealer (i.e. M/s. R.K. Enterprises) specifically stated in the show cause notice, which covers the proviso to Section 11 A (1) of the Central Excise Act, 1944. Therefore, the contention of the ld. Advocate that proviso to Section 11 A (1) of the Act was not invoked in the show cause notice and, therefore, the extended period of limitation cannot be invoked, is not sustainable. It is revealed from the order of the Commissioner (Appeals) that the appellant failed to prove that these goods were actually transported between the parties. The Central Excise Officers noticed discrepancy in record produced by the appellant

regarding the receipt of these goods. The receipt of the inputs are not tallied with invoices, RG-23A, Part-I and II and Purchase Book. It is revealed that no goods was ever received or issued from the registered premises of M/s. R.K. Enterprises and owner of vehicles had denied having loaded or unloaded any goods at the premises of M/s. R.K. Enterprises. In the present case, there are several materials indicate that the appellant availed the credit without receiving the goods. The case laws relied upon by the ld. Counsel is in the case of M/s. Garima Enterprises Ltd. It is seen that in the said case, the department proceed on the basis of general statement of Shri R.K. Gupta. In the present case, the Department proceeded after examining the various documents as stated above, and therefore, the said case law is not applicable. In view of the above, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal is rejected.

Order dictated & pronounced in open court on 27.12.2007.

( P.K. Das )  
Member (Judicial)

Ckp.