

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/1473/2006-1474/2006-SM[BR]

Date 26/02/2008

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH

M/S HITKARI IND LTD.

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No.345-346/2008 -SM[BR] dated 21.2.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S HITKARI IND LTD.
PLOT NO-18 SECTOR-1
DISTT SOLAN (HP)

[2] JAIWANT BERY MANAGING DIRECTOR
M/S HITKARI INDUSTRIES LTD;-----

2. Adv. / Consult

MR. AJAY JAIN
1293, SEC 18-C, 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, NEW DELHI
PRINCIPAL BENCH, COURT NO. I**

Excise Appeal Nos. 1473-74 of 2006-SM

[Arising out of Order-in-Appeal No. 45-46/CE/CHD/2006 dated 31.1.06
passed by Commissioner of Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

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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?

Commissioner of Central Excise
Chandigarh

Appellant

Vs.

Hitkari Industries Ltd.

Respondents

Appearance: Shri Sumit Kumar, DR for the Appellant
Mr. Ajay Jain, Advocate for the Respondent

Date of Hearing : 13.2.2008
Date of Decision : 21.2.2008

Per Justice S.N.Jha :

These appeals by the Revenue are directed against the order of Commissioner (Appeals), Chandigarh dated 31.1.2006 upholding the order-in-original of the adjudicating authority dated 9.9.2004 and dismissing the appeal of the Revenue.

2. Brief facts of the case are that on 3.3.2003, a show cause notice was issued to the respondents, M/s. Hitkari Industries Ltd., in the matter of proposed reversal of the modvat credit. The case of the Revenue is that the respondents had availed modvat / cenvat credit amounting to Rs. 7,94,006/- fraudulently on the strength of invoices issued by Karan and Co. without actually receiving the goods. It may be mentioned here that notice was issued to Karan and Co. too as well as many others who had also availed modvat /cenvat credit on the strength of the invoices issued by Karan and Co. The action was taken in the light of the report of the Director General of Central Excise Intelligence (DGCEI) on the ground that there were no entries of consignment in the records maintained by Karan and Co. for the purpose of sales tax, being ST XXVI-B Register, and non-availability of ST XXVI-A Forms which, according to the Department, indicated that the goods in question had not even entered the sales tax barrier at Parwanoo. The said show cause notice was adjudicated by the Joint Commissioner of Central Excise, Chandigarh who on examination of the records came to the conclusion that except in two cases, issuance of cenvatable invoices by Karna & Co. and availment of cenvat credit by M/s. Hitkari Industries was in accordance with Central Excise Rules and accordingly dropped the

demand of Rs.7,19,073/- while confirming the demand of Rs.74,933/- (in respect of those two cases) for irregular availment of modvat /cenvat credit.

On appeal by the Revenue, the Commissioner (Appeals) confirmed the order of the Adjudicating officer as indicated above.

3. It was submitted by Shri Sumit Kumar, learned Authorized Representative of the Department, that the show cause notice was based on sales tax records and there being no evidence of entry of the goods in the State of Himachal Pradesh, muchless receipt thereof by the respondents, availment of modvat /cenvat credit was an act of fraud and the authorities below committed error in dropping the demand. It was submitted that in the absence of any evidence regarding the entry of goods in the State, invoices supposedly issued by Karan and Co. must be presumed to be fake and there was ^{then} ~~then~~ no occasion for the respondents to claim credit on the basis of such invoices. It was submitted that in cases of clandestine transactions which take place under veil of secrecy, there cannot be direct evidence to prove such transactions and non-acceptance of the case of the Revenue on the ground that there was not enough evidence to substantiate the allegation was not correct. It was submitted that the Department having produced the records of the Excise and Taxation Department maintained for sales tax purposes of the Government of Himachal Pradesh, the burden which initially lay on the Department got shifted to the assessee- respondent to prove that the goods in question not only entered the State of Himachal Pradesh but was also received by them from the supplier i.e. Karan and Co under proper invoices.

4. On behalf of the respondents it was submitted that the same issue involving the same facts came for consideration before the Tribunal in the cases of CCE, Chandigarh vs. M/s. Karan and Co. (Appeal Nos. E/2013-35/06); CCE, Chandigarh vs. M/s. Veer Vision Pvt. Ltd. and others (Appeal Nos. E/2164 to 2169/06 and E/CO/137/06); CCE, Chandigarh vs. M/s. Himalayan Plastics Industries Ltd. and others (Appeal Nos. E/2567-2568, 2550 to 2551 & 2601-2602/ 2006); and CCE, Chandigarh vs. M/s. Adhunik Packages (P) Ltd. (Appeal No. E/3770/2005-SM), and in each of these cases, appeal preferred by the Revenue was rejected. Learned Counsel reiterated the findings recorded by the adjudicated authority and the appellate authority.

5. The basic issue for consideration – as observed by the adjudicating authority – is whether the consignments had actually entered the State of Himachal Pradesh through sales tax barrier at Parwanoo. The allegation, it would appear, was directed against M/s. Karan and Co., a registered dealer itself under the Central Excise Act, against whom too similar show cause notice had been issued. In its show cause, Karan and Co. stated that it had filed single ST XXVI-A form in respect of number of consignments and single entry was made in the ST XXVI-B register. The Department, however, did not check the consignment entered in the ST XXVI-A form and checked only ST XXVI-B register wherein single entry was made.

6. The Sales Tax Department vide its letter dated 20.5.2002 – on request of the Central Excise Department – submitted details of consignments by M/s. Karan and Co. which had crossed Parwanoo tax barrier. The list contained particulars viz. Serial Numbers, ST-XXVI-A Numbers, name of

the Consignors, vehicle numbers, bill numbers and dates, amounts and GR numbers. The adjudicating authority found on examination of the records that except in 16 cases, the details furnished by the Sales Tax Department matched with the particulars mentioned in ST XXVI-A Forms submitted by Karan and Co. In order to verify the genuineness of the remaining forms further queries were made from the Sales Tax authorities at Parvanoo. In response to the said request, the Excise and Taxation officer verified those 16 cases from the records of the Registered Dealer and it transpired that all entries except two, at sl. No.1 of Annexure 'A' and sl. No. 16 of Annexure 'C' of the show cause notice, were genuine. The adjudicating authority in the circumstances concluded that the report of the Director General of Central Excise Intelligence (DGCEI) was unfounded except in two cases mentioned above. Accordingly, the adjudicating authority vacated the demand amounting to Rs.7,19,073/- and confirmed rest of the demand to the extent of Rs. 74,933/- along with interest against the respondents.

7. The Commissioner as the appellate authority on examination of the matter further found that the respondent had made payments for the goods in question to the supplier i.e. Karan and Co. through account payee cheques/ draft in their favour which had been encashed which was a clear proof of the fact that Karan and Co. had supplied the goods to the respondent and they in turn had used them in the manufacture of final products. The Commissioner accordingly, held that the case of the respondent was supported by documentary evidence such as invoices, receipts of the inputs in the statutory records (under the Central Excise law), clearance of the finished goods from the factory on payment of duty

payment through account payee cheques to the consignor of inputs i.e. M/s.

● Karan & Co. and realization / encashing of those cheques in their accounts, and thus affirmed the order of the adjudicating officer.

8. I find that the impugned order of the adjudicating authority is based on records and backed up by sound reasoning. It is true that in cases of clandestine transactions it would be futile to expect any direct evidence and therefore, it may be legitimate to draw inferences from the attending facts and circumstances. In such a case, therefore, the Department would be justified in relying on the records of the Excise and Taxation Department of the State of Himachal Pradesh and the like, and such statutory records cannot be treated to be extraneous to the process of adjudication. The observations of the Commissioner that in terms of Excise law, receipt of goods can be established only from statutory records of the Central Excise Department and further, that in the absence of any provision under Central Excise law requiring production of ST XXVI-A forms, receipt of goods cannot be disbelieved and credit cannot be disallowed, in our opinion, are too wide to be accepted as laying down any general proposition. As observed above, the factum of clandestine transaction can be gathered from attending facts and circumstances which would include statutory records maintained under different laws, and therefore, the records maintained in the Excise and Taxation Department of the Government of Himachal Pradesh, though for the purpose of sales tax, can not said to be extraneous material. In the instant case, however, the adjudicating authority went in-depth into the entire gamut of the case and upon examination of the records and the reports received from the sales tax authorities of the state

government, came to conclusions which cannot said to be contrary to the records. The fact that payments were made by the respondent to the supplier i.e. Karan and Co. under account payee cheques/ drafts which were encashed and the money was credited into their accounts shows the bonafide of the transaction. I am satisfied that the respondent duly discharged the onus which had shifted onto it except in two cases for which it was held liable to pay duty to the extent of Rs. 74,933/- along with interest. It is to be kept in mind that the case of Karan and Co. was accepted by this Tribunal in Excise Appeal No. 2013-35/06, as noticed above. I am satisfied that the dispute is included by concurrent findings of the authorities below and there is no scope for interference in these appeals.

In the result, the appeals are dismissed.

(Pronounced in the open Court on 21 Feb 2008)

(Justice S.N. Jha)
President

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