

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1736/2006-SM[BR]

Date 18/03/2008

Assistant Registrar
C.E.S.T.A.T, New DelhiTo :
M/S ESSEN CONNECTORS LTD.
23-24,INDL AREA,PHASE-I,PANCHKULA (HARYANA)

M/S ESSEN CONNECTORS LTD.

CCE,PANCHKULA

Appellant
Vs
RespondentI am directed to transmit herewith a certified copy of Final order No. 423 /2008 -SM[BR] dated 1.1.2008
passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944
Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

CCE,PANCHKULA

S.C.O.NO-407-408,SECTOR-8,PANCHKULA
(HARYANA)

2. Adv. / Consult

MR. BIPIN GARG ADV.

B-1/1289-A, VASANT KUNJ NEW DELHI-110070

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. 1736 of 2006 –SM (BR)

[Arising out of order in appeal No. 05/GRM/PCK/2006 dated 4.01.2006 passed
by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/ Decision: 01.01.2008

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?
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:)

M/s Essen Connectors Limited

Appellant

[Rep. by Mr. Bipin Garg, Advocate for the Appellant]

Vs.

CCE, Panchkula

Respondent

[Rep. by Mr. A.K. Rastogi, Authorised Representative (DR)]

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

Final ORDER 423/08-SM

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants availed credit against Invoice No. 24 dated 1.3.2000 issued by Second Stage Dealer, M/s Sudha Enterprises. On investigation, it was found that M/s Sudha Enterprises issued the invoices on the strength of invoice No. 79 dated 16.2.2000 issued by First Stage Dealer, M/s R.K. Enterprises, who in turn issued the invoice on the basis of Invoice No. 688 dated 8.10.99 issued by the manufacturer, M/s Gupta Metal Sheets Pvt. Ltd., It is revealed from the show cause notice that M/s R.K. Enterprises had been issuing fictitious invoices in a fraudulent manner without

supplying the goods. It is seen that M/s R.K. Enterprises printed G.R. to cover the bogus transactions. The appellant reversed the credit of Rs. 29,412/- vide Entry Sl. No. 258 dated 2.12.2004 in RG 23 A, Part-II. Thereafter a show cause notice dated 21.12.2004 was issued proposing to disallow the credit and to recover the same under Rule 57I read with Section 11A of the Central Excise Act, 1944 along with penalty and interest. The adjudicating authority disallowed the credit and ordered to recover under the provisions of Central Excise Act, 1944 and imposed penalty of equal amount under Rule 57I(4) of the erstwhile Central Excise Rules, 1944 read with Rule 173Q of the erstwhile Central Excise Rules and to pay interest.

2. Learned Advocate on behalf of the appellant submits that the appellant received the goods alongwith the Central Excise duty paid invoice and duly recorded in their statutory records, which were used in the manufacture of finished goods. He submits that the payment was made partly on cheques. He further submits that no enquiry was conducted with the appellant as well as M/s Sudha Enterprises (i.e. second stage dealer) who supplied the goods. He strongly relied upon the decision of the Tribunal in the case of Garima Enterprises Pvt. Ltd., vs. CCE, Delhi reported in 2005 (182) ELT 106 (Tri. Del.). He further submits that the demand is barred by limitation and relied upon the decision of the Hon'ble Supreme Court in the case of CCE vs. HMM Limited reported in 1995 (76) ELT 476 (SC). He also submits that duty was deposited before issue of show cause notice and, therefore, no penalty can be imposed as held by the Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Sigma Steel Tubes Limited reported in 2007 (218) ELT 657 (P&H).

3. Learned DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the show cause notice reveals M/s R.K. Enterprises issued invoice fraudulently and therefore, extended period is applicable and demand of duty and penalty are justified.

4. After hearing both sides and on perusal of the records, I find that the appellant deposited the duty voluntarily before issue of the show cause notice without any protest. Therefore, the demand of duty by show cause notice dated 21.12.2004 is not sustainable, which may be appropriated and therefore submission of the learned Advocate at this stage in respect of the demand of duty is irrelevant. The question is as to whether the penalty is imposable under these circumstances. Regarding imposition of penalty, I find force in the submission of the learned Advocate. It is seen that the division bench of this Tribunal in the case of Garima Enterprises Pvt. Ltd., (supra) on the similar allegation set aside denial of credit on manufacturer, which was also related to transaction with M/s R.K. Enterprises. Hence, in the present case, penalty on the basis of allegation against the same M/s R.K. Enterprises is not warranted. Accordingly, penalty is set-aside. The appeal is allowed in the above terms.

(Order dictated and pronounced in the open Court).

(P. K. Das)
Member (Judicial)

[Pant]