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
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/337 - 338 / 2006 -SM[BR] Date 10/10/2008

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

To :
M/S MODERN EX SERVICE MAN P LTD.
208/PH-I,HMT ANCILLARY INDL,ESTATE,
PANCHKULA(HARYANA)

[2] M/S RANA INDUSTRIES
202 PH-1, HMT ANCILLARY INDL. ESTATE
PANCHKULA [HARYANA]

M/S MODERN EX SERVICE MAN P LTD. Appellant

Vs

C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1361 – 1362 / 2008- **SM[BR]** dated 30.9.2008

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. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI NAGAR, GHAZIABAD
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.70(Old No. 88). Thyagarava Road. 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-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/337-338/06-SM

[Arising out of Order-in-Appeal No.394-95/GRM/PCK/2005 dt.10.11.05 passed by the Commissioner(Appeals), Gurgaon)

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, 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?
2. Whether it would 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 : Department Authorities:

M/s. Modern Ex-Service Man Pvt.Ltd. Appellant

Versus

CCE, Rohtas Respondent

Appearance

Sh. Rajesh Chibber,Adv. For appellant
Shri S.Gautam, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final Date of decision: 30.9.08
Order No. 1361-1362/08 SM-(BR)

Per Rakesh Kumar:

This is an appeal against Commissioner of Central Excise(Appeals)'s order dt.10.11.05 by which order-in-original No.11/AC/2004 dt.30.4.04 passed by the Asstt. Commissioner was set aside

2. The facts of the case, in brief, are that the Appellants are manufacturing excisable goods out of C.R/H.R coils received by them in respect of which they took Cenvat credit. Cenvat credit amounting to Rs.93,531/- was denied in respect of H.R./C.R.coils received under invoices No.161 dt.3.1.98, 162 dt.5.1.98 and 177 dt.14.1.98 from M/s. Majestic Inds. Ltd., Ludhiana on the ground that while in respect of invoice 161 dt.3.1.98, the owner of the truck in which the goods were supposed to have been transported denied transporting those goods and in respect of invoice 162 dt.5.1.98 and 177 dt.14.1.98, the owners ~~are~~ of the trucks in which the goods were supposed to have been transported, are not traceable and their addresses are fictitious. It is on this basis, it was alleged that no goods had been supplied under these invoices. The Asstt. Commissioner vide order-in-original dt.13.4.04 dropped the show cause notice on the ground that the end user - the Appellant has made payments through cheques/demand drafts for the goods received under the invoices, in question, and they have further used the goods in manufacture of final products which has been supplied to Public-sector undertakings like M/s. HMT, Pinjore/M/s. P.T.L., Mohali and that there is no allegation to the

effect that inputs were not duty paid. On review appeal filed by the Department against the Asstt. Commissioner's order, the Commissioner(Appeals) vide order-in-appeal dt.10.11.05 set aside the Asstt. Commissioner's order, confirmed the demand of Cenvat credit and imposed equal penalty on the ground that in view of the transporter's statement in one case and the transporters and their addresses being not traceable, in other cases, the goods cannot be said to have been transported under these invoices and that these are just paper transaction.

2. Heard both the sides.

2.1 Shri Rajesh Chhibber, Advocate, the Ld. Counsel on behalf of the Appellant pleaded that in this case the goods have been received by the Appellant which is cleared from the fact that the payment for the same had been made by cheque/demand draft and that the goods had been used for manufacture of the finished products which were supplied to Public-sector undertakings. He also pointed out that no enquiry has been made with the supplier M/s. Majestic Inds. to ascertain as to where the goods have gone, if the goods have not been transported in the vehicles mentioned in the invoices. He also cited the Tribunal's order No.231/08-SM dt.27.2.08 in the case of K.K. & Co. vs CCE, Delhi-IV wherein on identical circumstances and the supplier of the goods being same, the appeal had been allowed holding that only on the basis of the statement of the vehicle's owner, it cannot be presumed that no goods had been supplied.

2.2 Ld. Departmental Representative pleaded that in this case in one case, the transporter has denied to transport the goods and in other two cases, the vehicle's owners ~~are~~ not traceable ~~and their~~ addressed ~~are~~ fictitious and therefore, the only presumption which can be drawn is that no goods have been received and only invoices had moved. He also cited the Tribunal's order No.654/08-Ex. in the case of [illegible] Alloys Ltd. wherein this Tribunal held that when the vehicle number mentioned in the invoices in which the goods are supposed to have been transported are found to be fictitious, the burden to prove that the goods had been received, shifts on the manufacturer taking Cenvat credit on the basis of such invoices. He also stated that no documents like G.Rs/lorry receipts issued by the transporters have been produced. He also stated that there is no weighment slips or gate regiser etc., showing that the goods covered under their invoices had been received in the factory of the Appellant.

3. I have carefully considered the submissions from both the sides. In this case, the dispute is about the Cenvat credit taken by the Appellant under three invoices – 161 dt.3.1.98, 162 dt.5.1.98 and 177 dt.14.1.98, all issued by M/s. Majestic Inds. This Tribunal in the case of [illegible] Alloys Ltd. vs CCE(supra) has held that when the Cenvat credit had been taken by the manufacturer in certain invoices and the vehicle numbers mentioned in the invoices are found to be fictitious, the burden of proving that the goods had been received under those invoices shifts on the manufacturer taking cenvat credit on the basis of those invoices. In

this case, in one case the transporter has ~~been~~ denied ~~to transport~~ the goods, in other two cases, the vehicle's owners address have been found to be fictitious ~~and~~ the owners of the vehicles ~~are~~ not traceable. In view of these circumstances, the burden of prove that the goods had been received under these invoices shifts ~~for~~ the Appellant. The impugned order, therefore, is set aside and the matter is remanded to the Asstt. Commissioner for denovo adjudication. At the time of denovo proceedings, the Appellant may produce the evidence in support of their claim that the goods had, indeed, been received under these invoices. The appeals are disposed of by way of remand.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

km