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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/209 /2007 – SM [BR] Date 01/12/2008

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

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

C.C.E.CHANDIGARH Appellant

Vs

M/S ASHISH GUPTA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1552 / 2008 - **SM[BR]** dated 23.10.2008 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 ASHISH GUPTA
   S/O LATE SH L.D. GUPTA, R/O GALI NO I, ADARSH NAGAR, MANDI GOBINDGARH.
2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
   H.NO. 631 [FF], SECTOR 11-B, CHANDIGARH

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). Thyagaraya 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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.209/07-SM(BR)

(Arising out of order in appeal No.944/CE/Chd/06 dated 3.10.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial)

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?

No

CCE, Chandigarh	Appellant (Rep. by Shri Sansar Chand, DR)
Vs	
M/s Ashish Gupta	Respondent (Rep. by Shri Vikrant Kackria, Advocate)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 23.10.08

Final Order No. 1552 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents issued invoices without delivery of goods on the basis of which the manufacturer availed ineligible benefit of Cenvat credit. The Adjudicating Authority imposed penalty of Rs.1 lakh on the respondents under Rule 209-A of the erstwhile Central Excise Rules, 1944. The Commissioner (Appeals) set aside the penalty on the respondents. Hence the Revenue filed this appeal.

2. After hearing both the sides and on perusal of the record, it is seen that the main contention of the learned DR is that the respondents supplied fictitious gate passes to the manufacturer without supplying any material for availing Cenvat credit. The main contention of the respondents is that the imposition of penalty under Rule 209-A of the erstwhile Act is not sustainable in the present situation. He submits that Rule 209-A corresponding to Rule 26 of Central Excise Rules, 2002 was amended by Notification No.8/2007-CE(NT) dated 1.3.2007 whereby sub-rule(2) was inserted. The relevant portion of sub-rule (2) of Rule 226 of Central Excise Rules, 2002 is reproduced below:-

"(2) Any person who issues –

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of the said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of Cenvat credit under the Cenvat Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater."

3. On perusal of the sub-rule (2) of Rule 226 of the Central Excise Rules, 2002, I find that imposition of penalty on a person who issues invoices without delivery of goods or abates in making such invoice, would be applicable from insertion of the said rule. The present case relates to the

period 1990-91. It is noted that the Tribunal in the respondents own case for the different period by Final Order No. 1046/07-SM(BR) dated 8.6.2007 rejected the appeal filed by the Revenue on the identical situation. In view of that, I do not find any infirmity in the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*