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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/1677/2006-1679/2006 – SM[BR] Date 13/01/2009

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

To :
CCE,JAIPUR
NCRB STATUE CIRCLE,C SCHEME,JAIPUR

CCE,JAIPUR Appellant
Vs
M/S VENKTESH CONES P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 27 -29 /2009 - **SM[BR]** dated 5.1.2009

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 VENKTESH CONES P LTD.
2. SH.RAM BHARADIA, DIRECTOR
F-4,INDL AREA,BHAWANIMANDI,DISTTT JAHALAWAR,(RAJ)

2. Adv. / Consult SHRI K.K.ANAND ADV.
A-5,[BASEMENT] LAJPAT NAGAR –III
NEW DELHI -110024.

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
16 Guard file

3. SH ANAND BANGUR
75/7-B,INDL AREAS MAKSHI ROAD,UJJAIN(MP)

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 1677-79 of 2006-SM

(Arising out of Order-in-Appeal No. 49-51(MPM)CE/JPR-I/2006 dated 22.2.06 passed by the Commissioner (Appeals), Central Excise, Jaipur)

CCE, Jaipur-I — Appellant
Shri Sansarchand, DR

Vs.

M/s Venktesh Cones Pvt. Ltd.
Shriram Bharadia, Director
Shri Anand Bangur — Respondent
Shri Hemant Bajaj, Advocate

Date of Hearing: 23.12.08

CORAM: HON'BLE MR. D.N. PANDA, MEMBER (JUDICIAL)

final Order No. 27-29/09-SM(BR) dated 5.1.09

Per D.N. Panda:

Revenue is in appeal. Its principal grievance is that the respondent succeeded before the first appellate authority for no thorough examination of the factual aspect done by that authority.

1.2 Ld. DR appearing for Revenue submits that the art paper which is a crucial input having availed Modvat credit Revenue has been prejudiced. The art paper in question whether was a necessity for the manufacturing process that needs rigorous scrutiny. Once it is held that art paper is necessity and that was purchased by the appellant, truthfulness of purchase is required to be tested. Also it is necessary to test whether the purchased input has undergone process of manufacture.

1.3 Ld. DR submits that unless above aspects are tested by law on the basis of materials on record, revenue shall be prejudiced. He submits that modus operandi of the appellant was questionable as to the claim of the Cenvat/Movat credit. There was no possibility of the entry of the art paper to the premises of the appellant in view of the materials on record. The appellant should not have been given input credit on art paper. He further submits that once the contention of Revenue is held to be just, invoking of proviso to Section 11A of Central Excise Act 1944 is justified. Therefore, by no stretch of imagination the show-cause notice can be challenged to have not brought the respondent to the charges. The proceeding being well within the limitation, the respondent is answerable to the charges.

E/1677-79/2006-SM

1.4 According to Revenue, Ld. appellate authority, without examining the chain of evidence as well as governing facts and attendant circumstances held that the appellant was entitled to Modvat credit on art paper. When there was intention to evade duty and that is patent from records, the appellant should not have been granted benefit of limitation by ld. appellate authority. The case of the respondent calls for to suffer penalty without any immunity if all the three issues framed by the ld. assessing authority at page 9 of the order of adjudication is thoroughly examined.

1.5 Learned DR submits that ld. adjudicating authority came to categorical conclusion that art paper is not used in the manufacturing process. The department is very keen to know whether art paper was input and used. If so, whether there is evidence on record to show movement of the art paper from the origin to the destination of manufacturing process. He further argues that the appellant was not entitled to the relief granted by lower forum. The matter is to be tested according to the grounds of appeal Revenue has submitted in the appeal memo.

2. Ld. counsel appearing for the respondent seriously objects submissions of the Revenue. His categorical submission is that show-cause notice has not stated that the extended period of limitation was invoked. He further states that the recorded statement in the course of investigation reveals that art paper was in use. Considering the recorded statements and material evidence, ld appellate authority justly allowed relief to the appellant. Therefore, Revenue's appeal should be dismissed.

3. The respondent has also come in cross objection and that supports the order of appellate authority. It has therefore become necessary that when the respondent has come in cross-objection it is the duty of respondent to substantiate conclusion and decision of the appellate authority by necessary evidence by the respondent.

4.1 Heard both sides and perused the record. Revenue has brought out questionable conduct of the respondent in the grounds of appeal filed in their appeal memo. The grounds submitted and the argument advanced by the ld. DR throws slight that the matter has not met the tests of law and the matter called for decision on the basis of evidence available on record.

4.2 In view of the rivalry submissions of both the sides, it is necessity of law that the facts are to be well settled on the basis of record by ld. appellate authority below granting fair opportunity to both the sides. If the authority is able to come to the conclusion that art paper was in use in the manufacturing process. Then it is also necessary to came to the conclusion that art paper was essential input and such input has seen the light of the day by appropriate evidence showing its existence and use in the manufacturing process travelling from origin to the destination of the manufacturing process by chain of evidence on record. If the evidence is bonafide purchase and receipt and use of the input is established by evidence there may not be grievance of Revenue for grant of appropriate relief of Modvat to the respondent. If the ld. appellate authority is unable to conclude in favour of the respondent, the question of immunity of penalty may not arise, in view of recent decision of the apex Court in Dharmendra Textile's case.

E/1677-79/2006-SM

The ld. appellate authority shall carefully look into three issues as stated aforesaid and that was before the ld. adjudicating authority and resolve the dispute of both sides to meet the ends of justice.

5. In the result, all the appeals are remanded to the ld. appellate authority who shall dispose the matter expeditiously by 31st March 2009 granting reasonable opportunity of hearing to both sides.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM