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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/442 /2007 – SM[BR] Date 12/02/2009

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

To :
M/S JINDAL APPLIANCES PVT. LTD.
PLOT NO 35-37, MUJESAR. INDL. AREA, FARIDABAD

M/S JINDAL APPLIANCES PVT. LTD. Appellant

Vs

C.C.E. FARIDABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 160 / 2009 - **SM[BR]** dated 6.2.2009 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. FARIDABAD
   NEW CGO COMPLEX, N.H.IV, FARIDABAD, HARYANA
   121001
2. Adv. / Consult SHRI HEMANT BAJAJ 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

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.442/2007 -SM(Br)

(Arising out of order in appeal No.90/CE/Appl/DLH.IV/06 dated 23.11.06 passed by the Commissioner of Central Excise (Appeals), Delhi-IV, Faridabad)

M/s Jindal Gas Appliances (P) Ltd — Appellant

Vs

CCE, Delhi-IV, Faridabad — Respondent

Appeared for Appellant: Shri Hemant Bajaj, Advocate
Appeared for Respondent: Shri R.K. Verma, DR

Date of Hearing: 23.1.09

Coram: Hon'ble Mr.D.N. Panda, Judicial Member

Final Order No. 160 /2009 – SM (BR)

Per D.N. Panda:

Learned Counsel Shri Hemant Bajaj argues that for the fault of the manufacturer not to deposit duty liability for the goods sold to the appellants by invoice No.01 dated 12.4.2001, appeared at page 41, this appellant should not suffer. He submits that M/s Competent Oil Corporation was not made a necessary party to the proceeding when the case of this appellant was adjudicated. This appellant had taken all reasonable steps to prove its bonafide but basing on the audit objection, this appellant has suffered through the present proceedings. Accordingly, both duty and penalty are not sustainable.

2. Learned DR Shri Verma submits that necessary investigation was conducted by the Department and that proved that the duty liability of Rs.48,163/- against the impugned order against Invoice No.1 dated 12.4.2001 has not been deposited by M/s Competent Oil Corporation to the treasury. This submission of Revenue is countered by the learned Counsel submitting that the manufacturer has given affidavit showing that they had paid the duty liability and even if the unit is closed, their registration under law cannot be cancelled till they discharge the liability to the Department. Therefore, this appellant should not suffer. But the learned DR objects submitting that when there was no duty paid on the inputs, the basic rule of Cenvat credit requires that duty payable on the finished product cannot get set off. Therefore, the appellant shall not succeed at all in view of evidence against them.

3.1 Heard both the sides and perused the record.

3.2 There is no dispute by both the sides that the Cenvat credit is subject matter of Invoice No.1 dated 12.4.2001. There is also no dispute that show cause notice confronted to the appellant about the result of enquiry in respect of the impugned invoice. The appellant got opportunity to defend against the result of inquiry. Defence was not led to the satisfaction of law. The inference drawn by Authority was bound to be made. However, it is noticed that when the department could verify that the duty was not deposited by the seller manufacturer at the time of show cause notice, that manufacturer should have been brought to the ambit of law for resolution of controversy in this appeal. That was not done. The appellant submits that from its entries in the books of account, it has proved that the purchase was done making payment through banks. All the statements are available at Annexure J appended to the appeal Memo. Considering that the appellant should suffer for the amount of duty that has not been deposited by the manufacturer, it would be a fit case to relieve the appellant from penalty since the appellant has come forward to satisfy that steps were taken by it to secure revenue's interest. On the facts and in the circumstances of the present case, it would be proper to direct that the duty be realized from the appellant and appellant should get relief from penalty for no malafide of appellant brought on record by the investigation.

4. In the result, the appeal is partly allowed.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*