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/2111/2007 – SM[BR] Date 19/05/2009

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

To :
M/S SARVPRIYA INDS. LTD.
CIRCULAR ROAD, NABHA, DISTT. PATIALA

M/S SARVPRIYA INDS. LTD. Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 395 / 2009 –SM[BR] dated 15.4.2009 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.BHASIN SETHI & ASSICIATE
   401,SATYAM CINEMA BUILDING,RANJEET NAGAR,DELHI
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2111 of 2007-SM (BR)

Arising out of Orders-in-Appeal No.93/CE/CHD/2007 dated 24.04.2007 passed by the Commissioner of Central Excise (Appeals-I), Chandigarh]

Date of Hearing/ Decision:15.04.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

M/s. Sarvpriya Industries Ltd. .....Appellants
[Rep. by Shri V.R. Sethi, Advocate]

Vs.

CCE, Chandigarh ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No..395/09-SM(BR)........../Dated:15.04.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of motor vehicle seat parts classifiable under sub-heading No.9401.00 of the Schedule to the Central Excise Tariff Act,

1985. On 20.12.2001, the Central Excise Officers visited the appellants' factory and examined the records. It was found that the appellants availed credit on Additional Excise Duty on the basis of invoices, which they used for the clearances of Basic Excise Duty. Further, they used the credit on inputs in respect of two invoices involving amount of Rs.20,230/-. The Central Excise Officers directed to reverse the credit as it is inadmissible. The appellants reversed the credit of Rs.80,193/- vide PLA Entry No.16 to 21 dated 20.12.2001. On 24.12.2005, a show cause notice was issued proposing demand of duty and to appropriate the amount deposited by them and to impose penalty under Section 11 AC of the Central Excise Act, 1944. The Original Authority confirmed the demand of duty of Rs.80,493/- and appropriated the amount as deposited by them and imposed penalty of equal amount under Section 11 AC of the Act, which was upheld by the Commissioner (Appeals).

2. After hearing both the sides and on perusal of the records, it is seen that the appellants are not contesting the demand of duty, which they paid on 20.12.2001. Ld. Advocate submits that there is no fraud and mis-representation in this case. He submits that the credit was taken on the basis of the invoices which are the part of the record. On the contrary, ld. DR submits that they were enjoying the credit in 2000-2001, which was detected by the Central Excise Officers. He further submits that if the officers have not detected the credit as inadmissible, they would not have reversed the credit. I find that the credit was taken on the basis of documents. It is also noted that the amount involved Rs.80,493/- which the appellants reversed on the spot on 20.12.2001 at the instance of the central excise officers. After four years by show cause notice dated 24.12.2005, it was proposed to impose penalty under Section 11 AC of Central Excise Act, 1944 on allegation of suppression of fact with intent to evade payment of duty. But, there is no material available for

suppression of facts with intent to evade payment of duty. Accordingly, the imposition of penalty under Section 11 AC of the Act is not warranted.

3. In view of the above discussions, the demand of duty is upheld and penalty is set aside. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 15.04.2009.

(P.K. Das)
Member (Technical)

Ckp.