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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/3919/2006-3920/2006 – SM[BR] Date 19/05/2009

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

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR
208005

C.C.E. KANPUR Appellant
Vs
M/S NARENDRA PRODUCTS Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 397 – 398 / 2009 –SM[BR] dated 16.4.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
1. M/S NARENDRA PRODUCTS
2. SH KAILASH CHANDRA MAHESHWARI,AUTHORISED SIGNATORY
12/5, GHER KALE KHAN, NAI KI MANDI, AGRA.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW 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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.619 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.100-CE/APPL/DLH-IV/2006 dated 15.12.2006 passed by the Commissioner of Central Excise (Appeals), Faridabad]

Date of Hearing/ Decision:22.04.09

For approval and signature:

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

3. 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? : NA

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.Toshi Auto India Ltd.
(now Lumax Automotive Systems Ltd.) ....Appellants
[Rep. by Shri Vivek Agarwal, Advocate]

Vs.

CCE, Delhi-IV ...Respondent
[Rep. by Shri S. Gautam, DR]

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

Final Order No..396/09-SM (BR)/Dated:22.04.2009

<u>Per P.K. Das:</u>

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of auto parts and accessories classifiable under Chapter 87 of the Central Excise Tariff Act, 1985. They received the capital goods viz. moulds on 27.09.1994 from M/s. Maruti Udyog

Ltd. free of cost for using job work materials. Maruti Udyog Limited received the goods under EPCG Scheme without payment of duty. Subsequently, it was found by the Maruti Udyog Limited that they failed to fulfill the export obligation and, therefore, they paid the customs duty and CVD on the moulds in the month of March, 2002. The Maruti Udyog Limited issued supplementary invoice No.514855 dated 26.03.2002 under Rule 7(1) (b) of Cenvat Credit Rules, 2002 to the appellant. The appellant availed Cenvat Credit partly on the basis of the supplementary invoice on 26.03.2002. A show cause notice dated 13.10.2004 was issued proposing to disallow the credit and to impose penalty. The Original Authority confirmed the demand of duty of Rs.2,93,414/- and imposed penalty of equal amount of duty under Section 11 AC of the Central Excise Act, 19444. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Advocate on behalf of the appellant contested the demand of duty on merits as well as on limitation. He submits that the appellant availed credit on the basis of the supplementary invoice issued by the Maruti Udyog Limited, which can not be disputed by the jurisdictional officers, recipient of the capital goods. He further submits that the Commissioner (Appeals) proceeded on the basis of Rule 57 R, which was not in force at the time of issue of show cause notice. He also submits that the Maruti Udyog Limited supplied the capital goods in 1994 on free of cost as no duty was payable under EPCG Scheme. Subsequently, the Maruti Udyog Limited paid duty and issued the supplementary invoice, which was not disputed by their jurisdictional Central Excise Officers. He

also submits that in terms of Rule 4(b) of Cenvat Credit Rules, they are eligible to avail credit on moulds sent by the manufacturer of final products to job worker for production of the goods on their behalf. On limitation, he submits that they have availed the credit on the basis of the supplementary invoice, which was duly recorded in the statutory records and, therefore, there is no suppression of facts with intent to evade payment of duty.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that supplementary invoice under Rule 7(1)(b) would be issued where additional amount of duty became recoverable from the suppliers of capital goods. In the present case, the supplier of capital goods had not issued any invoice under Rule 7(1)(a) of the Rules and the supplementary invoice issued by the Maruti Udyog Limited cannot be accepted. He also submits that the appellant have mis-declared the receipt of the goods in their Cenvat Accounts.

4. After hearing both the sides and on perusal of the records, I find that Rule 7(1)(b) of the Cenvat Credit Rules provides that a supplementary invoice, issued by a manufacture or importer of the inputs, or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or importer, in case, additional amount of excise duties or additional duty of customs leviable has been paid. Thus on perusal of the rules, it is clear that supplementary invoice would be issued in respect of the payment of additional amount of

duty. In the present case, it is seen that the Maruti Udyog Limited had not issued any invoice at the time of delivery of moulds in 1994. Thus, there is no question of payment of additional duty. Therefore, I find force in the submission of the ld. DR that the appellant availed credit on the supplementary invoice is not proper. In my view, supplementary invoice may be issued in connection with the invoice issued under Clause (a) of Rule 7(1) of the Rules. In the present case, there is no invoice issued under Rule 7(1)(a) of the Rules and, therefore, the credit taken on the basis of the supplementary invoice cannot be sustainable.

5. Ld. Advocate contended that the demand of duty is barred by limitation. In this context, the Original Authority observed that the appellant mis-declared the supplementary invoice as invoice and showed the date of receipt of the goods as 26.03.2002 instead of the year 1994. Hence, the appellant wilfully misdeclared with intent to evade payment of duty. Hence, extended period of limitation would be invoked. It is well settled that if the demand of duty is recoverable from the manufacturer by reason of suppression of facts with intent to evade payment of duty, penalty under Section 11 AC of the Act is warranted. Hence, I do not find any reason to interfere ~~the order of~~ the impugned order. Accordingly, the appeal filed by the appellant is rejected.

Order dictated & pronounced in open court on 22.04.2009.

(P.K. Das)
Member (Judicial)

Ckp.