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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/821 /2007 – SM[BR] Date 04/08/2009

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

To :
C.C.E, LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA.

C.C.E, LUDHIANA Appellant

Vs

AIP INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 857 / 2009 –SM[BR] dated 20.7.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   AIP INDUSTRIES
   15-B, PHASE-II, FOCAL POINT, LUDHIANA
2. Adv. / Consult
   NONE;---------------------

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.821 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.132/CE/APPL/LDH/2006 dated 22.12.2006 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh]

Date of Hearing/ Decision:20.07.2009

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.		No.
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?	:	Yes

CCE, Ludhiana ...Appellants
(Rep. by Shri Iskitkhar Baig, SDR)

Vs.

M/s.AIP Industries ...Respondent
(Rep. by None.)

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

Final Order No.857/2009-SM(BR)/Dated:20.07.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents obtained Central Excise Registration Certificate No.ABBPA 1684QXN002 dated 16.05.2005 issued by the jurisdictional Central

Excise Officers. On 21.06.2005, Range Officers verified the factory premises and found some construction work was going on and plant and machinery was yet to be installed. A show cause notice dated 9.1.2006 was issued to show cause as to why the registration certificate should not be cancelled for contravention of the provisions of the Central Excise Rules by not providing the required information as required by the Department for proper verification of the post-facto registration and also by not maintaining and keeping the records in the premises The Original Authority suspended the Registration Certificate till further orders. It was directed not to indulge in any fraudulent activities as well as clearance of the goods by issuing any invoices as required under Rule 11 of the Central Excise Rules, 2002 till the suspension is revoked by any competent authority. The Commissioner (Appeals) set aside the suspension of the Registration Certificate. Hence, Revenue filed this appeal.

2. After hearing the ld. DR and on perusal of the records, the main contention of the ld. DR is that the respondents had grossly violated the provisions of Rule 22(3) of the Rules as they failed to supply the records despite many letters written by the jurisdictional officers. It is also contended that the respondents failed to supply the duty paying documents on the basis of which they have taken credit and also the invoices on the basis of which they passed on the credit to the various buyers.

3. Ld. DR categorically submitted that the Proprietor of the respondent-firm was already booked in a fraud case against the other units, wherein he issued fake invoices to pass the Cenvat credit.

4. The finding of the Commissioner (Appeals) that the Adjudicating Authority recorded the findings that there was a delay in commencement of production and the production of goods has been shown w.e.f. August, 2006. It has been observed by the Commissioner (Appeals) that the alleged investigation proceedings initiated against the other units cannot be made ground for cancellation/suspension of the Central Excise Registration of the respondents just because the proprietor of the appellants is also the Director/Proprietor of the other units.

5. I find that the Original Authority suspended the Registration Certificate on the ground that the respondents failed to supply the relevant records. It is seen that during the visit, the respondents did not complete the manufacturing activities inasmuch as plant and machinery were not installed completely. The Original Authority suspended the Registration Certificate with the apprehension that the Registration Certificate was obtained to issue fake invoices to pass the Cenvat credit and to stop mis-use of Cenvat credit. In any event, it is a matter of investigation. I find that it is fit and proper to remand the matter to the Original Authority to decide forthwith and to pass final decision on the suspension of the Registration Certificate.

6. In view of the above discussions, the impugned order is set aside. The matter is remanded back to the Original Authority to decide afresh on the basis of above direction. The respondents are directed to produce the documents in support of their contention at the time of personal hearing. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 20.07.2009.

(P.K. Das)
Member (Judicial)

Ckp.