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/2175/2007 – SM[BR] Date 06/10/2009

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

To :
M/S HARSARAN DASS SITA RAM
PROP. DESH METAL WORKS, JARODA GATE, JAGADHRI - 135003

M/S HARSARAN DASS SITA RAM Appellant
Vs
C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1173 / 2009 –SM[BR] dated 8.9.2009 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. PANCHKULA
   SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/2175/2007

[Arising out of Order-in-Appeal No.268/SSS/PCK/2007 dated 18.04.2007 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon].

Date of Hearing:08.09.2009
Date of decision: 08.09.2009

M/s. Harsaran Dass Sita Ram ...Appellant

Vs.

Commissioner, Central Excise, Panchkula ... Respondent

Present for the Appellant :Shri. Alok Arora, Advocate
Present for the Respondent:Shri.S. Gautam, DR

CORAM:HON'BLE MR. RAKESH KUMAR,TECHNICAL MEMBER

Final **ORDER NO.** 1173/2009-SM(BR) **DATED:08.09.2009**

PER: RAKESH KUMAR

This is an appeal against Order-in-Appeal No.268/SSS/PCK/07 dt. 18/4/07 passed by the CCE (Appeals) Gurgaon by which the Cenvat credit demand confirmed and penalty imposed on the appellant by the Order-in-Original dated 27.1.2000 passed by the Asstt. Commissioner, Central Excise was upheld.

2. The facts of the case leading to this appeal are that the appellants manufacture coils, sheets and circles of brass and copper falling under Chapter heading No.7409 of first Schedule

to the Central Excise Tariff Act, 1985. The appellant claim to have received certain quantity of copper rods during December 2000 under 3 invoices of a registered dealer claimed to have M/s.R.K. Enterprises, who, in turn, received the same from M/s. Jain Tar Udyog Ltd. The department conducted enquiry in respect of M/s. R.K. Enterprises and on the basis of certain evidences collected, alleged that no goods were received by the appellant under the 3 invoices of M/s. R.K. Enterprises and that this is a case of taking Cenvat credit without receiving any goods on the basis of bogus invoices. It is on this basis that a show cause notice was issued for denying the cenvat credit amounting to Rs.1,97,363/- alongwith interest and also for imposition of penalty under section11AC. The Asstt. Commissioner vide Order in Original dated 27.01.06 confirmed the cenvat credit demand, along with interest and imposed penalty of equal amount on the appellant. The appeal was dismissed by the Commissioner (Appeals) vide impugned order in appeal.

3. Heard both sides.

4. Shri Alok Arora, Advocate, the ld. Counsel for the appellant, pleaded that Shri R.K.Gupta, Proprietor of M/s. R.K.Enterprises in his statement has stated that consignments of less than 6 M.T. supplied by them are genuine and in case of consignment of above 6 M.T. they issued only invoices and no material was supplied, that the goods covered under each of the three invoices under dispute are less than 6 M.T, that the goods had actually been supplied under these invoices, that

there is no evidence that the invoices of M/s. R.K. Enterprises are bogus, that in respect of invoices No.241 dated 11.12.2000 & 258 dated 27.12.2000 dated 7.12.2000, the enquiry was made only with the registered owner of Truck DL ILD 5629 who has stated that she was not aware as to for whom the driver was transporting the goods, which does not prove anything, that no enquiry had been made with the owner of the other vehicle No.HR 38 E 6605 mentioned in Invoice No. 233 dated 7.12.2000, that there was a similar case against M/s. Garima Enterprises Pvt. Ltd. in respect of copper rods having been received from M/s. R.K. Enterprises and in that case the Division Bench of the Tribunal, vide judgment reported in 2005 (182) ELT 106 (Tri. Delhi) has held that there is no case against M/s. Garima Enterprises Pvt. Ltd., that relying upon this judgment of the Tribunal, a Single Member Bench in the case of M/s. Vardhman Strips (P) Ltd. and Shri Deepak Kumar Jain, Director V/s. CCE, Panchkula, vide Final Order No. 884-885/09-SM dated 27.7.09 has allowed the appeal, and that in this case there is no evidence with the department that no goods had been dispatched under the invoices No.233 dated 7.12.2000, 241 dated 11.12.2000 and 258 dated 27.12.2000 issued by M/s. R.K. Enterprises. Shri Arora, however, accepted that the GRs, under which the goods had been transported and copies of which are available at page 104, 105 & 106 of the appeal folder, are bogus. He however pleaded that the bogus invoices of M/s. R.K.Enterprises were issued to avoid detention by Sales Tax authority at the Sales Tax barriers, as mentioned by Shri R.K. Gupta in his statement. He also pleaded that the payment for these goods have been made by Cheque and that the receipt of the goods has been recorded in RG 23 part 1. In view of this, he pleaded that the Commissioner (Appeals) order is not correct.

5. Shri Gautam ld. DR defending the impugned order pleaded that the statement of Shri R.K.Gupta the proprietor of R.K.Enterprises Pvt. Ltd. itself indicates that they had been issuing bogus invoices without actually selling any goods, that GRs were used by him to cover bogus transactions and owner of one of the Trucks Nos. DL ID 5629, which was used for transportation of the goods covered under invoice No.241 & 258, in her statement has clearly stated that she is not aware of any goods of M/s.R.K. Enterprices having been transported in the Truck and that in the statement of R.K. Gupta at page 68 of the appeal folder, it has been clearly admitted by Shri R.K. Gupta that in respect of purchase of copper rods made by him, he used to give Cheques to the sellers to cover the purchases made through bogus invoices and there after, the sellers, in turn, used to give him the cash, which shows that the purchases of goods by Mr. R.K. Gupta are themselves bogus.

5.1 Shri Gautam also cited Tribunal judgment in the case of Rajiv Alloys Ltd. v/s. CCE, Chandigarh reported in 2009 (236) ELT 124 (Tri. Del.) wherein it was held that when the Truck Nos. mentioned in the invoices, under which certain goods are claimed to have been received by a manufacturer are bogus, the burden of proving that the goods had actually been received would be on the manufacturer who has taken cenvat credit on the basis of such invoices. He, therefore, pleaded that since in this case the GRs are admittedly bogus, the burden of proving that the goods had actually been received under the invoices mentioned at page 48 of the appeal paper book is on the appellant, which they have failed to discharge.

7. I have carefully considered the submissions from both the sides and perused the records. In this case there is no dispute about the fact that the GRs under which the goods had been dispatched by the registered dealer M/s. R.K.Enterprises are bogus and had been fabricated by him. In fact, the owner of one of the Trucks which was used for transportation of the goods covered under invoice No.241 & 258, in her statement has clearly stated that she is not aware of the transportation of any goods of M/s.R.K.Enterprises. In view of these circumstances, following the judgment of this Tribunal in the case of Rajiv Alloys Ltd. (supra), I hold that the burden of proving that under these invoices the goods had actually been received would be on the appellant. Since the ratio of this judgment has not been considered by the lower appellate authority and by the adjudicating authority, the impugned order is set aside and the matter is remanded to the Asst. Commissioner for denovo adjudication of this matter in accordance with the law

laid down by this Tribunal in the case of Rajiv Alloys Ltd. (supra).

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita