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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/698 /2007 – SM[BR] Date 22/10/2009

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

To :
C.C.E, DELHI-III
UDYOG MINAR, UDYOG VIHAR, VINIJYA NIKUNJ,
PHASE-V, GURGAON-122016.

C.C.E, DELHI-III Appellant

Vs

SUNDARAM INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1301 / 2009 –SM[BR] dated 13.10.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   SUNDARAM INDUSTRIES LTD.
   NARSINGHPUR INDUSTRIAL AREA, GURGAON.
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)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 13.10.2009

Central Excise Appeal No.698 of 2007-SM

Arising out of the order in appeal No.370/NS/GGN/06 dated 22.12.2006 passed by the Commissioner (Appeals), Central Excise, Delhi III, Gurgaon.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No.
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.E., Delhi III .... Appellant/applicant

Vs.

M/s Sundaram Industries Limited .... Respondent

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue and none for the respondent

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1301/2009 SM (BR)

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals) whereby the appeal filed by the respondent was allowed. After hearing the learned SDR and on perusal of the record, it is seen that the respondent received capital goods from their sister unit at Madurai on commercial invoice during the period 2001-02 and 2002-03 on stock transfer basis. Subsequently, a proceeding was initiated demanding duty and imposition of penalty under Section 11AC of the Central Excise Act, 1944 against Madurai unit for removal of the goods without payment of duty. It is revealed from the order of the Commissioner (Appeals) that the Madurai unit paid duty on the capital goods and issued supplementary invoices under Rule 7 (b) of Cenvat Credit Rules, 2002 to facilitate the credit to the respondent company. The respondent availed credit on the basis of supplementary invoice issued by the Madurai unit. In the present case, the credit was denied and penalty was imposed by the adjudicating authority on the ground that the case was made against the sister unit at Madurai unit. It is revealed from the order of the Commissioner (Appeals) that the Tribunal vide Final Order No.964/06 dated 19.10.06 in the case of Madurai unit set aside the penalty under Section 11AC of the Act. Thus, it is clearly evident that there is no fraud, collusion or suppression of fact on the part of the Madurai unit, as the Tribunal set aside the penalty under Section 11AC of the Act. Commissioner (Appeals) allowed the credit taken by the respondent on the basis of supplementary invoice. On perusal of the grounds of appeal filed by the Revenue, I find that the Revenue has not disputed this fact of setting aside the penalty under Section 11AC to the Madurai unit. Hence, there is no reason to deny credit to the respondent.

2. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by Revenue is rejected.

(P.K. Das)
Member (Judicial)

scd/