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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/1132/2007-1133/2007 – SM[BR] Date 30/10/2009

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

To :
M/S BALDVA TEXTILES PVT. LTD.
CHITTORGARH ROAD, BHILWARA (RAJ.)

M/S BALDVA TEXTILES PVT. LTD. Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1345 - 1346 / 2009-SM[BR] dated 29.9.2009 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. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
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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17 Guard file

Assistant Registrar
(SM Appeal Branch)

2. SHRI ANIL BALDVA, DIRECTOR
M/S BALDVA TEXTILES PVT. LTD., CHITTORGARH ROAD,
BHILWARA (RAJ.)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 1132-1133 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 578-579/(HKS)CE/JPR-II/2006 dated 19.10.2006 passed by Commissioner (Appeals II), Customs & Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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

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Excise Appeal No. 1132 of 2007-SM(BR)

M/s. Baldva Textiles (P) Ltd. — Appellants

Vs.

Commissioner of Central Excise Jaipur II — Respondent

Excise Appeal No. 1133 of 2007-SM(BR)

Shri Anil Baldva — Appellant

Vs.

Commissioner of Central Excise Jaipur II — Respondent

Appearance:

Shri Atul Gupta, Company Secretary for the Appellant
Shri M.K. Rastogi, SDR for the Respondent

Date of Hearing/decision : 29.9.2009

ORAL ORDER NO. 1345-1346/2009 SM(BR)

Per M. Veeraiyan:

These two appeals arise out of common order in appeal No. 578-579/(HKS)CE/JPR-II/2006 dated 19.10.06 passed by Commissioner (Appeals), Jaipur.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant-company is a manufacturer of unprocessed man made fabrics. They were availing Cenvat credit of duty on inputs like PV and texturised yarn. The Department found that in certain cases that the credit has been taken based on invoices which were received at dates later than dates of receipt of the goods; that, in some cases, the invoices have been received from certain registered dealers and the goods have come either from the manufacturer or other registered dealers; that there was mis-match between the goods received and the duty paying documents. On the above mentioned grounds, the original authority demanded duty of Rs.78,864/- along with interest; he imposed equal amount as penalty under section 11AC on the appellant company; he also imposed a penalty of Rs. 10,000/- under Rule 13 on the appellant company. He also imposed penalty of Rs.10,000/- on Shri Anil Baldva, Director of

the appellant company. The other portions of the order are not relevant to the present proceedings.

4. On appeal, Commissioner (Appeals) upheld the order of the original authority in so far as the appellants are concerned.

5. Learned Company Secretary submits that the discrepancies are technical in nature; that, in certain cases, the goods have been received ~~in~~ under challans and slips issued by the dealers and the connected invoices were received on the very next day or within few days. In certain ~~cases~~ other cases, they have placed orders for the inputs with the dealers and the said dealers have arranged for supply of the goods either from other dealers or from the manufacturers directly and therefore, there is a discrepancy between the details contained in the invoices and those in the challans. The above reasons for discrepancies have been explained by the suppliers of raw materials and the dealers concerned. Therefore, he seeks that the order of the Commissioner (Appeals) should be set aside. He also submits that the Director has not been personally involved in the day today activities of the company and further, there is no finding of personal knowledge of mideeds or intention on the part of the Director warranting imposition of penalty on him.

6. Learned SDR reiterates the findings of the Commissioner (Appeals).

7. I have carefully considered the submissions from both sides. Commissioner(Appeals) has disallowed the credit and upheld the order of the original authority with the following findings:-

"8. I have carefully gone through the case records & submissions made by the appellants in their appeal memo. I find that the issue involved in these appeals are whether the goods can arrive separately from the invoices and whether taking credit of Cenvat in such cases is justified or not. In this connection, the main contention of the appellants is that of bonafide mistake and lack of knowledge with no intention to avail/utilise wrong credit as there was sufficient balance in their RG 23A Pt.II account and that the only irregularity is regarding taking a credit earlier than the arrival of invoices.

9. The point to be noted here is that the goods arrived on a particular day and their invoices stated to be concerning them were issued on a subsequent date. This clearly shows that on the day of movement of goods, the goods have moved without any proper document and such goods were liable to seizure, if intercepted in transit. To say that the invoice issued on a subsequent date pertained to the goods sent earlier in advance is not substantiated by any documentary evidence, except the mere plea that the goods pertain to such invoices issued subsequently. This is also not permitted by law.

10. If we look at the two event i.e. movement of goods to the appellants' premises and also the issuance of invoices, a plain understanding would simply mean that the consignment has been received on a day without proper document and on the day of issuance of invoice, the goods might have been dispatched to some other place to somebody other than the appellants. There is no evidence to substantiate the claim of the appellants that the goods and the subsequent invoices are linked to each other. The appellants have pleaded ignorance of the procedure which can not absolve them from legal requirements. "

8. It is to be noted that the appellant was claiming the credit of duty paid on the inputs. The burden of proof to show that they have received the duty

paid goods and the corresponding duty paying documents is on the appellant company. The finding of authorities below clearly shows that in some cases, the goods have been received under kaccha challans. The goods on which credit has been taken has been admittedly received under kaccha challans. The need for issue of goods by the supplier under kaccha challans cannot be appreciated especially when credit was to be taken by the appellants. There is failure on the part of the appellant company in linking the duty paying documents to the goods received. Therefore, the denial of credit and the order for recovery of interest are justified. Considering the facts and circumstances of the case, the penalty imposed under section 11AC is also justified. However, I hold that, in the facts and circumstances of the case, a separate penalty under Rule 13 on the appellant company is not warranted. Similarly, no specific evidence about the Director's personal knowledge or his intention to evade duty has been brought out. The penalty on the appellant Director is not, therefore, justified.

9. In view of the above, the appeal by the appellant company M/s. Baldva Textiles (P) Ltd. is rejected in so far as it relates to demand of duty, order of recovery of interest and imposition of penalty under Section 11AC. Penalty on the appellant company under Rule 13 is set aside.

10. The appeal of Shri Anil Baldva is allowed with consequential relief.

(M. Veeraiyan)
Member(Technical)

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