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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/1608/2009 – SM [BR] Date **13/01/2011**

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S S.R. JINDAL METALS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 47 / 2011- **SM[BR]** dated 4.1.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S S.R. JINDAL METALS PVT. LTD.
G.T. ROAD, DHANDARI KALAN,
LUDHIANA.
2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
H.NO.5, SECTOR-10A, CHANDIGARH
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No. 1608 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 35/CE/LDH/2009 dated 5.3.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

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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Commissioner of Central Excise. Ludhiana — Appellants

Vs.

M/s. S. R. Jindal Metals Pvt. Ltd — Respondent

Appearance:

Shri Anil Khanna, SDR for the Appellants
Shri Vikrant Kackria, Advocate for the Respondent

Date of Hearing/decision : 04.01.2011

Final

ORAL ORDER NO. 47/2011 SM (Br)

Per M. Veeraiyan:

This is an appeal by the department against the order of the Commissioner (Appeals) No. 35/CE/LDH/2009 dated 5.3.09 by which order of the original authority demanding the duty of Rs.2,17,126/- by disallowing the Cenvat credit along with interest and imposition of penalty was set aside.

2. Heard both sides extensively. This is a case arising out of poorly conducted investigation, if one can say that there was any investigation.

3. The relevant facts, in brief, are that there was alert notice issued on 30.9.05 in respect of Annapurna Impex Pvt. Ltd., Ludhiana by Additional Director General of Central Excise, Intelligence Mumbai to the effect that they had no facility / infrastructure for the use / manufacture of copper ingots/ bars/ rods. Based on the said alert notice, a letter was issued by the Range officer having jurisdiction of the appellant to the Range Officer Incharge of Annapurna Impex. The Range Superintendent Incharge of Annapurna Impex Pvt.Ltd. has given his verification report which reads as under:

> "The party had not supplied sale invoices as well as purchase invoices on the strength of which Cenvat credit has been passed on / availed. So duty payment particulars in respect of the invoices mentioned in the above referred letter dated 28.2.2006 could not be verified. It is pertinent to mention that during the relevant period M/s. Annapurna Impex Pvt. Ltd. Ludhiana was not having any facility to manufacture Copper/Brass Ingots and further vide their letter C.No. Central Excise-20/AIPLR-V/LDH-I/VFN./32/2005/1134 dated 22.3.2006 wherein mentioning that during the relevant period

M/s. Annapurna Impex Pvt.Ltd., Ludhiana was not having any facility to manufacture Aluminum Ingots."

4. Based on this report, it appears that the Range Superintendent forwarded the show cause notice which has been approved on 19.3.2008 by the Assistant Commissioner, who is incharge of both the supplying unit and the receiving unit (the present appellant). There is no indication that any verification / investigation was conducted with the appellants. The show cause notice dated 19.3.2008 was issued alleging that the appellants have not received the materials covered by three invoices No. 99 dated 13.6.2003, 148 dated 12.7.2003 and 179 dated 27.7.2003 and consequently proposing to recover credit of Rs.2,17,126/- and proposing penalty. The adjudicating authority confirmed the demand along with interest and imposed penalty as mentioned above. Commissioner (Appeals) has set aside the order of the original authority.

5. Learned SDR reiterates the grounds of appeal. In the grounds of appeal, there is reference to case booked against M/s. Annuapurna Impex Pvt. Ltd. and the outcome of adjudication of the said case.

6. Learned Advocate for the respondents strongly supports the order of the Commissioner (Appeals).

7. I have carefully considered the submissions from both sides and perused the records. The respondent is a manufacturer of Aluminium bars, and wires. They have availed credit of duty in respect of aluminum ingots covered by three invoices referred above. The department has issued show cause notice in 2008 based on the alert notice issued by DGCEI dated

30.9.05. Jurisdictional Range Officer reported that M/s. Annapurna Impex Pvt. Ltd. had not supplied sales invoices as well as purchase invoices and that Annapurna Impex Pvt. Ltd. was not having any facility to manufacture aluminum ingots. There is no further investigation either with the supplying unit or with the ~~appelaint~~ appellant. The Assistant Commissioner who is in-charge of both the supplying unit and the receiving unit had issued the show cause notice very casually alleging that the appellants have not received the material as per the invoices and it was a case of paper transaction based on the report dated 3.2.06 of the Superintendent Incharge of Annuapurna Impex. The supply of consignment have been made in June, 2003. and July, 2003. Learned Advocate for the respondents made a submission that the verification report dated 22.3.06 has no relevance to the period when the inputs have been received in June/July 2003 by them. He also submitted that there is no question raised about the fact of transportation and utilization of material. He also submitted that no action was proposed against M/s. Annapurna Impex for the alleged paper transaction. These submissions are relevant. If there was any mal-practice, the same has not been unearthed by any investigation. It is sad that the Assistant Commissioner who was in-charge of both the supplying and receiving units have issued show cause notice making serious allegations without causing any worthwhile investigation.

8. Even though the original authority has confirmed the demand in the proposed show cause notice, the Commissioner (Appeals) has rightly allowed the appeal of the party for lack of evidence. If there was any mal-

practice, it should have been brought out by investigating the same. Neither any statement has been taken from the respondents nor any statement of the supplying unit has been relied upon. In view of the above, there are ~~therefore,~~ no valid grounds to interfere with the order of the Commissioner (Appeals).

9. The appeal is, therefore, dismissed.

(M. Veeraiyan)
Member(Technical)

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