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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

Date **21/04/2011**

Appeal No. **E/959 – 960 / 2009 –SM[BR]**

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. **M/S SATISH METAL CO.**
2. **M/S SATISH METAL CO.**
S-224, SUDHIR COMPLEX, INDUSTRIAL AREA,
JALANDHAR.

Appellant

M/S SATISH METAL CO.

Vs

Respondent

C.C.E. LUDHIANA

I am directed to transmit herewith a certified copy of **Final order No. 198 -199 / 2011 –SM[BR]** dated 3.3.2011 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.S.L. CHOPRA & RAVI CHOPRA
CONNAUGHT CIRCUS, JALANDHAR CITY, PUNJAB

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
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 -
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)

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

Excise Appeal No.959-960 of 2009-SM

(Arising out of Order-in-Appeal No.6/CE/APPL/Jal/2009 dated 15.1.2009 passed by the CCE (A), Chandigarh)

For approval and signature:
Hon'ble Mr. Ashok Jindal, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
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?	

M/s.Satish Metal Company Appellants

Vs.

CCE, Ludhiana Respondent

Present for the Appellant: Shri Ravi Chopra, Advocate
Present for the Respondent: Ms.R.Prasad, SDR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of Hearing/Decision: 03.03.2011

Final **ORDER NO.** 198-199/2011 SM (Br)

PER: ASHOK JINDAL

The appellants are in appeal against the order of imposition on them under section 11AC of Central Excise Act, 1944.

2. The facts of the case are that the intelligence received by the Commissioner, New Delhi that one M/s Ganpati Trade Links, Delhi has been issuing fake cenvatable invoices to different dealers and the appellant was one of the dealer and admitted that they have purchased 4 consignment from GTL and they have issued cenvatable documents to avail fraudulent credit by the end users. The appellants being dealer had allegedly facilitated ineligible credit to the manufacturers and abated in fraudulent availment of credit by the manufacturers to gain illegal transaction. Therefore the penalties were imposed on the appellants. Aggrieved by the said order, the appellants are before me.

3. Learned Advocate for the appellants concedes that that in the similar set of facts has confirmed the penalty on the persons who are involved in such type of transactions. He further prays that in the adjudication order or by the lower appellate authority, they were not given an option to pay 25% of penalty as provided under proviso 1 and 2 of Section 11AC, they must be given an option to pay 25% of penalty as confirmed by the lower appellate authority.

4. Heard and considered.

5. On examination of the order passed by the Tribunal vide order No.1258-1259/2010-SM dated 19.10.2010, this Tribunal has confirmed the penalty imposed by the lower appellate authority in similar set of facts and hence the penalties against the appellants are confirmed. Further, I have considered the submissions made by the learned Advocate that no option to pay 25% of penalty has been

given to them as per proviso 1 and 2 of Section 11AC. I have seen the impugned order where no option has been given to the appellants to pay 25% of penalty as per proviso 1 and 2 of Section 11AC. Hence, in view of judgement of Hon'ble Delhi High Court in the case of K.P.Pouches Ltd. vs. Union of India reported in 2008 (228) ELT 31 (Del.), I give an option to the appellants to pay 25% of penalty within thirty days from the date of this order, failing which the appellant shall pay 100% penalty.

6. Further I observed that the appellants have already paid Rs.35,000/- against the stated amount of (Rs.51,254/- + Rs.83,200/-) Rs.1,34,454/- the penalty is reduced to 25% of penalty i.e. Rs.33,614/-. With these observations, the appeals are allowed with consequential relief.

(pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

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