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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/1846/2009 – SM [BR] Date **25/04/2011**

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

To :
**M/S SARASWATI IMPEX,**
BILASPUR ROAD, JARODA GATE, JAGADHRI.

**M/S SARASWATI IMPEX,** Appellant
Vs
**C.C.E. PANCHKULA** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 200 / 2011 –SM[BR]** dated 31.3.2011 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. PANCHKULA**
SCO NO. 407 AND 408, SECTOR 8,
PANCHKULA (HARYANA) 134119.

2. Adv. / Consult
**MR.NAVEEN MULLICK,ADV**
B-388, MEERA BAGH, N.DELHI

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:31.03.11
Date of decision:31.03.11

Service Tax Appeal No.1846 of 2009-SM

[Arising out of Order-in-Appeal No.159/ANS/PCK/2009 dated 10.06.2009 passed by the Commissioner of Central Excise (Appeals), Gurgaon].

M/s. Saraswati Impex — Appellant

Vs.

CCE, Panchkula — Respondent

For approval and signature:

**Hon'ble Shri Rakesh Kumar, Member (Technical)**

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1. Whether Press Reporters may be allowed to see 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?

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Appearance: Rep. by Shri Naveen Mullick, Advocate for the appellant.
Rep. by Ms. Rimjhim Prasad, DR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No. 200/2011 SM(BR)/Dated:31.03.2011

**Per Rakesh Kumar**

The appellant are a registered dealer. The allegation against them is that during May, 2004, they availed Cenvat credit amounting to Rs.34,498/- on the basis of certain invoices for brass scrap issued by M/s. Ganpati Trade Links, New Delhi and passed on the same while the inquiry indicated that the invoices issued by M/s.Ganpati Trade Links were bogus and no material had been supplied. It is on this ground that the Asstt. Commissioner vide Order-in-Original dated 28.08.2008 disallowed the credit of Rs.38,498/- and also imposed penalty of Rs.34,498/- on them. On appeal, the Commissioner (Appeals) upheld the order of the Assistant Commissioner relying upon the judgement of the Hon'ble Supreme Court in the case of **Punjab Tractors Ltd. Vs. CCE, Chandigarh reported in 2005 (181) ELT 380 (SC).** It is against this order of the Commissioner (Appeals) that the present appeal has been filed.

2. Heard both the sides.

3. Shri Naveen Mullick, Advocate, ld. Counsel for the appellant pleaded that the appellant is a registered dealer who placed orders for supply of brass scrap with M/s. Ganpati Trade Links and received the scrap, that the payment ~~of~~ for the scrap had been made by cheques, that even

if the goods had not been supplied by M/s. Ganpati Trade Links but had been supplied by some other persons, M/s. Rajdhani Metals Ltd., in such a situation, the appellant cannot be accused of taking credit on the basis of cenvatable invoices with knowledge that the person who had issued the invoices, had not supplied the goods or goods had come from somewhere else and that in view of this, there is no justification for imposition of penalty on the appellant.

4. Ms. Rimjhim Prasad, ld. DR pleaded that as is clear from the facts narrated in the order-in-original, the supplier firm, M/s. Ganpati Trade Links on enquiry was found to be non-existent firm, that the proprietor of M/s. Ganpati Trade Links is Shri Sunil Kumar Mittal, who in his statements dated 10.1.2006, 4.2.2006 and 20.06.2006 has stated that though the copper scrap consignments were being imported in his name, but he was not the owner and the goods imported in his name belonged to M/s. Rajdhani Metals, M/s. S.K. Metals and Shri Mukesh Teli, that he was actually issuing invoices to the parties who wanted only invoices without supplying any goods, for which he was charging commission from them, that Shri Sunil Kumar Mittal in his statement clearly stated that though payments to his firms were being made through cheques, but he issued self-cheques in return to the party presenting the cheque after deducting his commission and in some cases, he himself after withdrawing cash, paid to the party presenting the cheque, that these statements of Shri Sunil Kumar

Mittal are corroborated by the statement of Shri Abhay Jain, that from these statements, it is clear that M/s. Ganpati Trade Links had only issued invoices without supplying any goods, that when in view of this, the appellant could not take Cenvat credit on the basis of the invoices issued by M/s. Ganpati Trade Links, the credit had been rightly disallowed and penalty had been rightly imposed for taking wrong Cenvat credit.

5. I have carefully considered the submissins from both the sides and perused the records.

6. In this case, there is no dispute that the Cenvat credit, in question, had been taken on the basis of the invoices issued by M/s. Ganpati Trade Links. The fact that M/s. Ganpati Trade Links were found to be non-existent firm has not been disputed. I also find that the Shri Sunil Kumar Mittal, Proprietor of M/s. Ganpati Trade Links has repeatedly in his statements recorded over a period of time has stated that though the brass scrap was being imported in the name of his firms, but the same belonged to some other persons, M/s. Rajdhani Metals, M/s. S.K. Metals and Shri Mukesh Teli and that he was only issuing invoices to the customers coming to him without supplying any goods, for which he was charging his commission. I also find that it has been clearly stated that Shri Sunil Kumar Mittal that though the persons to whom the invoices were being issued without supplying any goods were presenting the cheques to him for the goods supposed to have been supplied, money

either by self cheque or in cash was being returned after deducting his commission. In view of this, I have no doubt that the invoices on the basis of which the Cenvat credit has been taken by the appellant, were bogus and the appellant as such were not entitled to take credit on the basis of the same. It has, however, been pleaded that since the appellant had received the goods from M/s. Rajdhani Metals and as such, they had no knowledge that the invoices being issued by M/s. Ganpati Trade Links were bogus, no penalty should be imposed on them. It has also been pleaded that Shri Abhay Jain stated that he had taken the cash from Shri Sunil Kumar Mittal and had paid same to M/s. Rajdhani Metals. This plea of the appellant is not acceptable as even if the actual supply of scrap was from M/s. Rajdhani Metals, the same could happen only on instructions from the appellant. In view of this, I do not find any infirmity in the impugned order. The appeal is dismissed.

( Rakesh Kumar )
Member (Technical)

Ckp.