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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/2502 - 2503/2008 – SM [BR]** Date **29/04/2011**

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

1. **M/S CHETAN CABLETRONICS (P) LTD.**
2. **SHRI RAKESH GOYAL, DIRECTOR**
E-445-46CHOPANKI INDUSTRIAL AREA, BHIWADI

M/S CHETAN CABLETRONICS (P) LTD. Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 223 – 224 /2011-SM[BR]** dated 13.4.2011 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. JAIPUR I
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. 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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.E/2502-2503/2008

(Arising out of Order-in-Appeal No.138-139(RKS) CE/JPR-I/2008 dt.25.6.2008 passed by the CCE (Appeals), Jaipur)

For approval and signature:

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

1	Whether Press Reporters 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 the 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?	NO

M/s.Chetan Cabletronics (P) Ltd. — Appellants

Vs.

CCE, Jaipur — Respondent

Present for the Appellant: Shri Bipin Garg, Advocate
Present for the Respondent: Ms.R. Prasad, SDR

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

Date of Hearing/decision: 13.04.2011

Final **ORDER NO.** 223 - 224/2011 SM (Br)

PER: M.VEERAIYAN

These two appeals are arising out of a common Order-in-Appeal No.138-139(RKS) CE/JPR-I/2008 dt.25.6.2008 passed by the Commissioner (Appeals).

2. Heard both sides.

3. The relevant facts of the case, in brief, are that one M/s. Sulabh Impex Incorporation was investigated and its proprietor Shri Sunil Mittal in his statement dated 10.1.2006 stated that he has been issuing fake invoices showing sale of copper wire enabling the manufacturers to take credit. He also stated that he also issued fake bills of entry to support his action in issuing invoices. He claimed that he used to receive cheque payment and return money to the supplier by way of self cheque or by way of cash after taking his commission. He categorically stated that he has not supplied any goods with the invoices issued by him as a dealer.

4. Consequent to this, the officers have taken the statement of Shri Rajesh Goel, director of the appellant on 18.1.2006 and he claimed that he has received the goods alongwith invoices but at the same time debited irregularly availed credit amounting to Rs.76,715/- on 18.1.2006 and there was no retraction either by Shri Sunil Mittal and Shri Rakesh Goel. Shri Rakesh Goel has not sought refund of the amount paid. In pursuance of the show cause notice dated 15.11.2006, the original authority confirmed the demand of Rs.76,715/- and appropriated the amount already paid. He imposed penalty of Rs.76,715/- under section 11AC and the penalty of Rs.30,000/- under Rule 25 of the Central Excise Rules, 2002 on the appellant company. In addition, he imposed a penalty of Rs.30,000/- on Shri Rakesh Goel, Director under Rule 26 of the Central Excise Rules, 2002. He also ordered for recovery of the interest. The Commissioner (Appeals) has upheld the order of the original authority in so far as two appellants are concerned.

5. Learned Advocate assailed the order of the Commissioner (Appeals) stating that the statement of Shri Sunil Mittal cannot be relied upon; that there is no admission by Shri Rakesh Goel. At any rate, imposition of penalty both under section 11AC and under Rule 25 on the appellant company is not justified. As per the allegation of the department as no goods were received, the director has not dealt with the goods and therefore no penalty can be imposed under Rule 26 of the Central Excise Rules, 2002 before amendment to the said Rules w.e.f.1.3.2007.

6. Learned DR reiterates the findings and reasoning of the Commissioner (Appeals). She particularly refers to the statement of Shri Sunil Mittal, according to which based on fake bills of entry, invoices were issued without supply of goods and that the manufacturer who received the invoices has arranged goods on their own.

7. Alternatively learned Advocate submits that the benefit of concessional penalty under proviso to section 11AC should be extended in the light of the decision of the Hon'ble High Court in the case of K.P.Pouches Pvt.Ltd. vs. Union of India reported in 2008 (228) ELT 31 (Delhi).

8. I have carefully considered the submissions from both sides and perused the records. I find that Shri Sunil Mittal, proprietor admitted having merely issued invoices without supplying the goods mentioned in the said invoices. He also admitted that issuance of invoices was based on the fake bills of entry to show ~~that~~ as if the goods were imported. This statement of Sunil Mittal

has not been retracted. The appellant's director though did not accept the contents of the statement, has chosen to pay entire amount of duty involved 18.1.2006. Before the Commissioner (Appeals) the submissions have been made only to contest the penalties imposed on the appellant company and the appellant director as recorded by the Commissioner (appeals) in para 5 of his order. In any case where the supplier has clearly admitted supplying only the invoices and not the goods and the recipient company has chosen to pay the entire duty involved due to denial of credit and has challenged only penal action taken, the question of resisting demand before the Tribunal does not arise. The only question to be considered in this case is whether the penalty has to be sustained or not.

9. The statement of the representative of the supplier and the recipient company show that, on the preponderance of probability, the appellant company has merely received the invoices without receipt of the goods. Therefore the penalty on them is warranted. However, the submissions of the learned Advocate that there is no justification for separate penalties both under section 11AC and Rule 25 of the Rules appears reasonable and deserves to be accepted. The penalty of Rs.30,000/- imposed on the appellant company under Rule 25 deserved to be set aside. Further, the submissions of the learned Advocate that in the absence of option given by the authorities below, an option to pay 25% of penalty imposed under section 11AC should be extended in view of the decision of Hon'ble Delhi High Court in the case of K.P.Pouches Pvt.Ltd. also deserves to be accepted. In the given facts and

circumstances of the case, I do not find any justification for sustaining penalty on the appellant director in view of the version of the department that the appellant-company has not received the goods and therefore, he should not have dealt with goods.

10. In view of the above,

(a) The appeal filed by the appellant director is allowed.

(b) The penalty imposed under Rule 25 of Central Excise Rules, 2002 on the appellant company is set aside.

(c) The order of the Commissioner (Appeals) in sustaining penalty under section 11AC is upheld.

(d) However, appellant company is given an option to pay 25% of the penalty alongwith interest within a period of thirty days from today. If the appellant company do not pay penalty and interest within stipulated period as above, the penalty imposable shall be of Rs.76,715/-.

Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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