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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/1009/2008 – SM[BR] WITH E / CO/ 230/2008-SM[BR]** Date **04/05/2011**
E / 1226 / 2008-SM[BR]

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

C.C.E. DELHI IV Appellant

Vs

M/S METAL FORMERS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 250 -251 /2011-SM[BR]** dated 26.4.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S METAL FORMERS,
(EARLIER PLOT NO. 56-C/5,
INDUSTRIAL AREA) PLOT NO. 61,
SECTOR-24,FARIDABAD
(HARYANA)
2. Adv. / Consult SHRI R.SANTHANAM ADV.
C-3/310 JANAKPURI NEW DELHI-58.
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

[2] **SHRI SANJIV RATRA**
S/O SH. H.S.RATRA. 955.SECTOR-15, FARIDABAD

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/1009/08-SM with E/CO/230/09-SM

(Arising out of Order-in-Appeal No.8 & 9/CE/Appl/DLH-IV/2008 dated 29.2.2008 passed by the CCE (Appeals), Delhi-IV, Faridabad)

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?	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

CCE, Delhi-IV, Faridabad — Appellants

Vs.

M/s.Metal Formers — Respondent

And

<u>Excise Appeal No.E/1226/08-SM</u>

Shri Sanjiv Ratra — Appellants

Vs.

CCE, Delhi-IV, Faridabad — Respondent

Present for the Appellant: Sh. K.P.Singh, SDR and vice versa
Present for the Respondent: Sh.R.Santhanam, Advocate and vice versa.

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

Date of Hearing/decision: 26.04.2011

Final **ORDER NO.** 250 - 251 / 2011 SM (BR)

PER: M.VEERAIYAN

1.1 The appeal No.E/1009/08 is by the department against the order of the Commissioner (Appeals) No. 8 & 9/CE/Appl/DLH-IV/2008 dated 29.2.2008. The cross objection No.E/CO/230/08 filed by the respondent firm is connected to this appeal.

1.2. The appeal No.E/1226/08-SM is by Shri Sanjiv Ratra challenging imposition of penalty of Rs.10,000/- sustained by the Commissioner (Appeals).

2. Heard both sides.

3. The relevant facts of the case, in brief, are that the respondent M/s.Metal Formers is a proprietary concern of Smt. Sumitra Devi Ratra which was functioning from plot No.56C/5, Industrial Area, Faridabad and they were registered with the excise authorities. Shri Sanjiv Ratra, son of Smt. Sumitra Devi Ratra is authorized signatory of the firm. It is claimed that with effect from 1.10.2004, a partnership was constituted with Shri Sanjiv Ratra and Smt. Sumitra Devi Ratra as partners. It is also claimed that the premises at plot No.56C/5, Industrial Area, Faridabad required to be vacated as the lease period has expired. The finished goods, raw materials and machineries from plot No.56C/5, Industrial Area, Faridabad were removed to premises at plot No.61, Sector 24, Faridabad from where M/s.Mek Metal Industries, the partnership firm was functioning. In pursuance of the show cause notice dated 13.4.2005, the original authority confiscated the finished goods valued at Rs.4,46,646/- and the raw materials valued at Rs.4,75,200/- and allowed the same to be redeemed on payment of fine of Rs.2 lakh. He confirmed the demand of Rs.27,466/- together with interest on account of cenvat credit on the capital goods removed from M/s.Metal Formers. He imposed penalty of Rs.50,000/- under Rule 25 of Central Excise Rules, 2002 and a penalty of Rs.50,000/- under Rule 15(1) of Cenvat Credit Rules,

2004 on M/s.Metal Formers. He also imposed penalty ofRs.50,000/- under Rule 26 of Central Excise Rules, 2002 on Shri Sanjiv Ratra.

4. On appeal, the Commissioner (Appeals) has upheld confiscation but reduced redemption fine from Rs.2 lakhs to Rs.30,000/-. He set aside the penalty of Rs.50,000/- imposed under Rule 15(1) of Cenvat Credit Rules, 2004 on M/s.Metal Formers. He reduced the penalty from Rs.50,000/- to Rs.20,000/- imposed under Rule 25 of Central Excise Rules, 2002. He also reduced penalty imposed on Shri Sanjiv Ratra from Rs.50,000/- to Rs.10,000/-.

5. Learned SDR submits that the Commissioner (Appeals) erred in setting aside the penalty of Rs.50,000/- on the ground that Rule 15(1) of Cenvat Credit Rules, 2004 was not invoked. He also erred in reducing penalties and redemption fine. He relied on the decision of the Apex Court in the case of Collector of Central Excise, Calcutta vs. Pradyumna Steel Ltd. reported in 1996 (82) ELT 441 (SC) to support his contention that mere mentioning of wrong provisions of law is not fatal to imposition of penalty.

6. Learned Advocate appearing for the respondent firm and the appellant Shri Sanjiv Ratra submits that it was a case of mere transfer of the business to another premises. The change of proprietary concern to partnership concern was duly intimated. Therefore, he submits that there is no merit in the appeal filed by the department and in fact there is no justification for confiscating the finished goods, raw materials and the capital goods removed

from the premises. He also submits that there is no justification for imposition of penalty on the firm and on Shri Sanjiv Ratra.

7.1 I have carefully considered the submissions and perused the records. No evidence has been produced on behalf of the respondent firm to support the claim that they have intimated the change of proprietary concern into partnership firm. Even at this stage, no such communication addressed to the excise authorities has been relied upon. Therefore, it emerges that the materials in the form of finished goods, raw materials and the capital goods from the premises of proprietary concern Metal Formers have been removed to another premises belonging to M/s.Mek Metal Industries, a partnership concern. Shri Sanjiv Ratra is the authorised signatory of Metal Formers and also a partner in M/s.Mek Metal Industries. Removal of the excisable goods from the erstwhile premises of Metal Formers without payment of duty is evident. Similarly removal of inputs on which the credit is taken without reversing the credit is also evident. It is not merely a case of shifting premises of manufacturer to another premises of same manufacturer after following the procedure prescribed. Clearance without payment of duty/reversal of credit on the inputs is clearly in violation of Cenvat Credit Rules. Therefore, the Commissioner (Appeals) upholding confiscation is justified. The cross objection filed by the respondent firm challenging confiscation and penalty in this regard is without merits.

7.2 The Commissioner (Appeals) has set aside the penalty imposed under Rule 15(1) of Cenvat Credit Rules, 2004 on the ground that the said rule was not invoked in the show cause notice. On perusal of the show cause notice with the assistance of the DR, I do not find specific allegation of removal of inputs on which the credit has been taken. Under these circumstances, the Commissioner (Appeals) has rightly held there was no invocation of Rule 15(1) and therefore penalty cannot be sustained.

7.3 In the facts and circumstances of the case, involving claim of the change of premises and claim of change in the constitution of the firm, the leniency shown by the Commissioner (Appeals) in reducing penalty from Rs.50,000/- to Rs.20,000/- and reduction in redemption fine are reasonable and calls for non interference.

8. Shri Sanjiv Ratra is concerned person both in his capacity as authorised signatory of Metal Formers and as partner of M/s.Mek Metal Industries in dealing with goods which are liable for confiscation. The penalty imposed on him is warranted. The penalty sustained by the Commissioner (Appeals) is also not excessive.

9. In view of the above,

(a) The appeal by the department is rejected.

(b) The cross objection filed by the respondent firm is also rejected.

(c) The appeal by Shri Sanjiv Ratra seeking to set aside the penalty is rejected.

Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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