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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/246 /2009 – SM[BR]** Date **04/05/2011**

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

To :
M/S AAR KAY FORGE (P) LTD
PLOT NO 49, SECTOR-6, FARIDABAD(HR)

M/S AAR KAY FORGE (P) LTD Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. 259 / 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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult SHRI K.K SHARMA ADV.
A-115, GROUND FLOOR, ASHOKA ENCLAVE-II
SECTOR-37, FARIDABAD-121003.

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 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
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 MEBER BENCH

Excise Appeal No.246 of 2009-SM

(Arising out of Order-in-Appeal No.86/CE/Appl/DLH-IV/2008 dated 20.11.2008 passed by the CCE (A), Delhi-IV, Faridabad)

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.Aar Kay Forge (P) Ltd. Appellants

Vs.

CCE, Delhi-IV Respondent

Present for the Appellant: Shri K.K.Sharma, Advocate
Present for the Respondent: Shri Anil Khanna, SDR

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

Date of Hearing/Decision: 03.03.2011

Final

ORDER NO. 259/2011 SM(BR)

PER: ASHOK JINDAL

The appellants are in appeal against the denial of credit availed by them on the basis of endorsed by their head office to their factory.

2. The facts of the case are that it was alleged against the appellants they are engaged in the activities of providing the services of "erection, commissioning and installation" of air conditioning and related works to various customers, such as military, railways, and airports etc. were registered with the Central Excise department at Plot No.25, Sector 4, Faridabad. In February, 2006, the appellants got registered in their own name at another address at Plot No.49, Sector 6, Faridabad showing their head office at Plot No.25, Sector 4, Faridabad. In the month of June to 2006 to July, 2006, the appellants procured inputs against duty paid invoices on which the address of their head office was mentioned and the said goods have been received in their factory at new address of their factory through endorsement of head office to the factory address. On verification by the Range Superintendent of Central Excise it was alleged the same is not permissible under Rule 9 of the Cenvat Credit Rules, 2004. Hence, the show cause notice was issued which was adjudicated and the credit was denied and interest and penalty were also levied. The same was confirmed by the Commissioner (Appeals). Aggrieved by the said order, the appellants are before the Tribunal.

3. Learned Advocate for the appellants submits that it is not the case of the department that the appellants have not received the goods against the duty paid invoices and the same have not been used in the manufacture of final products on which the duty has been discharged. The denial of credit is only on the basis of the invoices issued at the address of the head office which were endorsed to the factory premises. Being a technical error, the credit

cannot be denied. To support this contention, he places reliance on the following decisions of this Tribunal which are as under:-

(1) Eveready Industries India Ltd. vs. CCE, Lucknow-2007 (219) ELT 333 (Tri.-Del.)

(2) Gharda Chemicals Ltd. vs. CCE, Mumbai – 2004 (167) ELT 89 (Tri.-Mum)

(3) CCE, Surat vs. Kalpana Industries – 2004 (175) ELT 309 (Tri.-Mum)

(4) Tooltronics vs.CCE, Mumbai-II -2006 (205) ELT 946 (Tri.-Mum)

(5) Salora International Ltd. vs. CCE, Meerut -2002 (147) ELT 740 (Tri.-Del.)

(6) Electro Steel Castings Ltd. vs. CCE, Calcutta-III – 2001 (136) ELT 929 (Tri.-Kolkata)

(7) Chrome Chemical Industries vs. CCE, Calcutta-IV – 2001 (135) ELT 405 (Tri.-Kolkata)

(8) SWIL Ltd. vs.CCE, Calcutta-IV – 2001 (138) ELT 216 (Tri.-Kolkata)

(9) CCE, Trichy vs.Sree Uma Pasrameswari Mills Ltd. -2001 (136) ELT 910 (Tri.-Chennai)

(10) CCE, Vapi vs. ITW India Ltd. -2010 (17) STR 587 (Tri.-Ahmd.)

(11) Merloni Termo Sanitari India Ltd. vs. CCE, Pune-I -2009 (233) ELT 222 (Tri.-Mumbai)

(12) Gautam Weaving Mills vs. CCE, Belapur – 2008 (230) ELT 147 (Tri.-Mumbai)

4. On the other hand, learned SDR submitted that under new rule no endorsement is allowed and this fact has been suppressed by the appellants from the department, it came in the knowledge of the department when the Range Superintendent asked for verification of the invoices. He submitted that the endorsed invoiace is not proper document for availment of cenvat credit as per Rule 9 of Cenvat Credit Rules, 2004. He further submitted that both the

lower authorities have rightly denied the credit to the appellants. In support of his contention, he relied on the decisions of the Tribunal in the case of Bengal Saws & Steel Products Ltd. vs. CCE, Kolkata reported in 2004 (177) ELT 517 and CCE, Mumbai-II vs. Vikas Testing & Development Lab reported in 2009 (238) ELT 790.

5. On careful examination of the submissions made by both sides, I find that it is a case where the invoices have been issued at head office of the appellants. The head office has diverted the goods in packed condition to their factory through endorsement of address on the invoices. I also find that it is not the case of the endorsement of the party in the invoices. It is admitted fact that the appellants have received these goods against duty paid invoices in their factory and the same have been used in the manufacture of final products on which duty has been discharged. I do not agree with the contention of the learned DR and the case law relied upon by him in the case of Bengal Saws & Steel Products Ltd. vs. CCE, Kolkata (supra), the period involved is prior to Cenvat Credit Rules, 2000. At that time, for transport of the goods form one unit to another unit, prior permission of Range Superintendent was required but after the year of 2000 it is not the situation. Hence, the case law is not relevant to the facts of the present case. The case of Vikas Testing & Development Lab is also not relevant to the facts of the present case, as in that case, the demands were raised against the refund made by the adjudicating authority which was availed by the party on the basis of endorsed invoices. But no where it is coming out what endorsement is made. Moreover in that order, it is

mentioned that Revenue's appeal against setting aside the demands were allowed by the Tribunal but the said order is not produced by the DR. Hence, this case is not relevant to the facts of the present case. I find that the case law relied upon by the learned Advocate are some how are relevant to the facts of the present case where in a series of decisions, this Tribunal has held that invoices addressed to the head office of the company and the credit availed on the factory address is not the ground for denial of credit. Hence, in this case, also the order of denial of credit to the appellant on the basis that the address of head office has been endorsed on the invoices is not sustainable. Accordingly, the impugned order is set aside the appeal is allowed.

(pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

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