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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 **22/06/2011**

Appeal No. **E/5 /2009 – SM [BR]**

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

To :
M/S SATYA ENGG. WORKS PVT. LTD.
A-111, MANGOLPURI INDUSTRIAL AREA, PHASE-II,
NEW DELHI.

M/S SATYA ENGG. WORKS PVT. LTD. Appellant

Vs

C.C.E. DELHI I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 326 / 2011-SM[BR]** dated 15.6.2011 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 I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.K.M.DWIVEDI,
A-6/26, SECTOR-17, ROHINI, DELHI-10085

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
Court No.III

Excise Appeal No.E/05/2009-SM

(Arsing out of Order-in-Appeal No.179/CE/DLH/08 dated 30.09.2008 passed by the CCE (A), New Delhi)

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

M/s.Satya Engineering Works (P) Ltd. Appellants

Vs.

CCE, Delhi-1 Respondent

Present for the Appellant: Shri K.M.Dwivedi,Advocate
Present for the Respondent: Ms.Renu Krishnan Jagdev

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

Date of Hearing: 15.06.2011
Date of Decision: 15.06.2011

Final **ORDER NO.** 326/2011 SM (Br)

PER: M.VEERAIYAN

This is an appeal against the order of the Commissioner (Appeals) No.179/CE/DLH/08 dated 30.09.2008.

2. Heard both sides.

3. The facts of the case, in brief, are that the appellant is a manufacturer of Ballast, Electrical light fitting and their parts, electric fans and CFSU falling under heading 8504.00, 8414.20, 9405.90 and 8537.00 and had Cenvat credit amounting to Rs.2,24,526/- on the basis of certain invoices for insulated coper wire issued by M/s.Satvik Inds. Subsequently, in the course of investigation against M/s.Satvik inds., Shri Rajesh Jain, proprietor of M/s.Satvik Inds. gave a statement that he had issued invoices without supplying any material. As per invoices, the goods were shown to have been transported by Vehicle No.DL9cB-1541, DL3CN-2569, DLIL-2021 and DL4CB-0217, but on enquiry, while the owner of vehicle No.DLIL-2021 (Vikram auto rickshaw) denied to have transported any goods from premises of Satvik Inds., other vehicles were found to be Maruti Cars which are not capable of transporting the quantity shown in the respective invoices. It is on this basis that the show cause notice dt.19.10.04 was issued to the appellant for the recovery of wrongly taken Cenvat credit amounting to Rs.2,24,526/- and proposing imposition of penalty on them. The Asst. Commissioner vide order-in-original dt.14.2.07 confirmed the Cenvat credit demand of Rs.2,24,526/- alongwith interest and imposed penalty of equal amount. On appeal before the Commissioner (Appeals), the Asst. Commissioner's order was upheld.

4.1 Shri K.M.Diwedi, learned Advocate for the appellant pleaded that throughout during the period of dispute, the appellant was filing the E.R. Returns alongwith invoices on the basis of which Cenvat credit has been taken, that the invoices had been seen by the Range Officer and defaced and that in view of this, there was no ground to invoke extended period under proviso to Section 11A(1) and therefore, SCN is time barred. He also pleaded that from the statement of Shri Rajesh Jain, it cannot be concluded that none of the goods covered in the invoices had been received and that the Commissioner (Appeals) has not considered the ground NO.2 & 3 of the appeal i.e. the plea of time and the plea that the goods being manufactured by the appellant had been supplied to the Govt.Deptt. and since the goods had been manufactured and supplied to a Government Department, it cannot be said that no inputs had been received.

4.2 He also relies on the decision of the Tribunal in the case of EM ESS Electricals vs. CCE, Delhi reported in 2003 (159) ELT 730 and in the case of Indian Petrochem Corpn. Ltd. vs. CCE & C, Vadodara reported in 2003 (151) ELT 565.

5. Learned SDR reiterating the findings and reasoning of the Commissioner (Appeals) submits that on behalf of the supplier both Shri Manoj Sharma and Rajesh Jain have clearly admitted ~~that~~ the supply of invoices without supplying the goods to several parties including the appellant. The vehicles mentioned in the transport documents were incapable of transporting such quantity of goods as clearly stated by Shri Rajesh Jain. It is also on record that the owner of one vehicle admitted that the vehicle has not been used for transporting the goods.

6. I have carefully considered the submissions and perused the records. The investigation at the suppliers' end clearly showed that the suppliers have stated that they merely supplied the invoices without supplying the goods. Further, the vehicles which were shown to have used for transporting as per invoices were stated to be either incapable of transporting ~~the goods~~ that much quantity or were not used for transporting the goods. The appellant, as a manufacturer availing benefit of credit under the Cenvat Credit Scheme is under obligation to prove that they have really received the goods as mentioned in the documents based on which they have taken the credit. When the department has adduced evidence to the contrary from the suppliers and the transporter, the burden squarely shifts to the manufacturer who has availed the credit. Undoubtedly the appellants have received the documents. The documents have also been got defaced by the jurisdictional Central Excise Authorities. Defacing of the documents is merely based on the production of documents. This does not prove that the appellants have received the goods mentioned in the invoices when the 'suppliers' themselves have admitted the supply of only the invoices and not goods. The decision of the Tribunal in the case of EM ESS Electricals holding that no suppression of any material fact established has been arrived at on the facts of said case where apparently there is no statement taken from the suppliers of the inputs. Similarly, the decision of the Tribunal in the case of Indian Petrochem Corporation Ltd also does not rely on evidence in the form of statement from the suppliers of the inputs. In the present case, the evidence of the supplier of 'goods' (in fact supplier of

inputs) and that of one of the transporters clearly establish that the appellants have failed to discharge the burden of proof that they have received the duty paid goods as mentioned in the invoices.

7. In view of the above, I do not find any merit in the appeal. The appeal is therefore rejected.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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