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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. **C/405 /2010 – SM[BR]** Date **30/06/2011**

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

To :
M/S METALMAN INDUSTRIES LTD.
PLOT NO. 802, INDUSTRIAL AREA, SECTOR-III,
PITHAMPUR, DHAR-454774.

M/S METALMAN INDUSTRIES LTD. Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No. 366 / 2011-SM[BR]** dated 28.4.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Customs Appeal No. 405 of 2010 (SM)

[Arising out of the Order-in-Appeal No. IND-I/120/2010 dated 23/04/2010 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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?	:
2.	Whether it would 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 Department Authorities?	:

M/s Metalman Industries Ltd. Appellant

Versus

CCE, Indore Respondent

Appearance

Shri Manish Saharian, Advocate – for the respondent.

Mrs. Rim Jhim Prasad, Authorized Representative (SDR) – for the appellant.

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

DATE OF HEARING : 28/04/2011.

Final Order No. 366/2011 SM (BR) Dated : 28/4/2011

Per. Rakesh Kumar :-

Facts of this case giving rise to this appeal are, in brief, as under.

1.1 The appellant are manufacturers of Flat rolled products of Iron & Steel viz. C.R. Coils, Galvanized plain & corrugated coils & Sheets, M.S. Plates etc. chargeable to Central Excise Duty under Chapter 72 of the Central Excise Tariff. On 11/12/07, on receipt of an intelligence that the appellant have in their factory certain quantity of partially oriented polyester yarn (POY) on which no duty had been paid, their factory was searched and in course of search of the factory 214 cartons each bearing the printed letters – "L. No. – IPCC, D No. -125/36-145/36" and "product of SEZ, Pithampur" were recovered. On opening the carton, the same were found to be containing POY on spools. Each carton was containing 4 spools of POY. Apart from this, 43 spools were also found in loose condition. The total quantity of the yarn was determined as 8938.31 kgs. valued at Rs. 3,57,532/-. On the basis of printed writing on each carton of POY, it appeared that the same had been cleared from SEZ, Pithampur. At the time of search, Shri Vijay Hardiya was present in the appellant's factory, who introduced himself as Excise Assistant. On inquiry he could not produce any document regarding the POY and he could not give any explanation for the same. In view of this, the POY was placed under seizure and the same was handed over to the appellant for safe custody under the Supurdginama. Several summons were thereafter issued to the appellant company to submit their statement with regard to the recovery of POY from their factory but none appeared from the appellant company. The Investigating Officers also found that one of the group company of the appellant M/s Amulya Exports Ltd., C-16, SEZ Sector – III, Pithampur is functioning at the Pithampur and the goods recovered from the factory premises of the appellant may have come from this unit, but the appellant in spite of being repeatedly asked did not produce any document during the period of investigation. It is in the background of the above facts, that the show cause notice dated 2/6/08 was issued to the appellant for –

(a) confiscation of the seized cartons of POY under Section 111 of Customs Act, 1962 readwith Section 118 ibid ;

(b) demand of customs duty amounting to Rs. 1,52,026/- chargeable on the goods which had come from the SEZ, Pithampur ;

(c) imposition of penalty on the appellant company under Section 114A of Customs Act, 1962 and

(d) imposition of penalty on the appellant under Section 112 of Customs Act, 1962.

1.2 It is only after issue of the show cause notice dated 2/6/08 ~~20/10/08~~ that the appellant vide letter dated 08/09/2009 claimed that the goods under seizure had been purchased by their Mumbai Unit from M/s Sonal Garments (India) Pvt. Ltd., Mumbai and from the Bombay the same had been transferred to their Pithampur unit. They also enclosed photocopy of the invoice dated 31/10/07 of M/s Sonal Garments (India) Pvt. Ltd. and also the LR No. 136 dated 5/11/07 of M/s Yash Transport and Travel regarding transport of the goods. It was also pleaded that M/s Amulya Exports had imported these goods on behalf of M/s Sonal Garments from the SEZ Unit and in this regard they also produced the copy of the bill of entry. The matter was adjudicated by the Deputy Commissioner, Central Excise, Pithampur, after hearing the appellant and vide order dated 30th October 2009, the seized goods were ordered to be confiscated with option to be redeemed on payment of redemption fine of Rs. 50,000/- in addition to duty of Rs. 1,22,026/- and beside this penalty of Rs. 1,22,026/- was also imposed on the appellant under Section 112 of Customs Act. The Adjudicating Authority also demanded interest on the duty as per the provisions of Section 28AB of Customs Act. The appellant filed an appeal against the order of Deputy Commissioner to Commissioner (Appeals) and Commissioner (Appeals) vide order-in-appeal dated 23rd April 2010 dismissed their appeal. It is against this order of the Commissioner (Appeals), that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Manish Saharan, Advocate, the learned Counsel for the appellant, pleaded that Shri Vijay Hardiya, the person present in the appellants factory at the time of officer's visit, was not their employee and for this reason, he could not give any explanation or produce any document, that subsequently the appellant have explained that the goods under seizure had been purchased by their Bombay unit from M/s Sonal Garments and who in turn had imported the goods from the SEZ unit through M/s Amulya Exports, a sister concern of the appellant unit, that the goods has been legally acquired from the SEZ on payment of duty and that in view of this, there is no justification for confiscation of the goods and demand of duty in respect of the same. He also pleaded that the department at no stage doubted the authenticity of the document – invoice of M/s Sonal Garments and bill of entry regarding import of POY through Amulya Exports from the SEZ unit. He, therefore, pleaded that the impugned order upholding the confiscation of the goods, duty demand and imposition of penalty is not correct.

2.2 Mrs. Rimjhim Prasad, the learned Departmental Representative defended the impugned order by reiterating the findings of the Commissioner (Appeals) in the impugned order and pleaded that at the time of officer's visit to the appellant's factory, Shri Vijay Hardiya was present, that he had introduced himself as Excise Assistant of the appellant and in the statement also he had written his address as "c/o M/s Metalman Industries Ltd., Industrial Area, Pithampur", that in course of investigation the appellant never cooperated with the Investigating officers and never appeared before the investigating officers in spite of issue of several notices and during that period, they never stated that Shri Vijay Hardiya is not their employee, that it is only after 1½ years after issue of the show cause notice in course of the reply to the show cause notice, they have pleaded that Shri Vijay Hardiya is not their employee and produced the invoice covering the goods, issued by M/s Sonal Garments, that at that stage it was not possible to verify the authenticity of the documents produced by them, that there is no explanation as to why during more than 1 and ½ years period between the date of issue of show cause notice and reply to the show cause notice they could not produce any document regarding the goods seized from them, that this clearly shows that the goods have been illicitly cleared from the SEZ, that Assistant Commissioner in para 14 of the order-in-original, has clearly discussed as to how the invoice produced by the appellant cannot be correlated with the goods under seizure, and that in view of this, there is no infirmity in the impugned order.

3. I have carefully considered the submissions from the Departmental Representative and perused the records.

4. The goods, in question, had been seized from the appellant's factory on 11/12/07 and the markings on the cartons of the goods indicated that the same had come from SEZ, Pithampur. At the time of officer's visit to the factory, one Shri Vijay Hardiya was present, who had introduced himself as Excise Assistant of the appellant company, but he could not produce any documents whatsoever about the goods and could not give any explanation about the same. I also find that during investigation several summons have been issued to the appellants but they never cooperated and never appeared before the investigating officers and at no stage during investigation, the appellant either gave any explanation about the goods from SEZ, Pithampur, seized from their Pithampur unit nor did they plead that Shri Vijay Hardiya is not their employee. It is only at the stage of reply to the show

cause notice after about 1½ years that the appellant have come up with the plea that Shri Vijay Hardiya was not their employee and also the plea that the goods under seizure had been purchased from M/s Sonal Garments who, in turn, had purchased the same from M/s Amulya Exports, an SEZ unit in Pithampur. The stage at which the documents regarding the goods were produced by the appellant, their genuineness could not be verified. There is no explanation from the appellant as to why during the more than 6 months from the date of seizure to the date of show cause notice, they could not produce the documents covering the goods. In view of this, the explanation of the appellant that the goods under seizure had been legally purchased by M/s Sonal Garments from the SEZ and they have purchased the goods from M/s Sonal Garments is difficult to accept. I, therefore, do not find any infirmity in the impugned order. The appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK