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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/3266/2009 – SM[BR] E/ CO / 45/2010-SM[BR]** Date **07/07/2011**

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

To :
C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)
C.C.E. INDORE Appellant

Vs

M/S GWALIOR CHEMICALS INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 385 / 2011 –SM[BR]** dated 1.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S GWALIOR CHEMICALS INDUSTRIES LTD.
BIRLAGRAM, NAGDA (M.P.)

2. Adv. / Consult SHRI G.K.KHANDELWAL, C.A.
M/S RESPONDENT:----------------------

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 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
Excise Appeal No. 3266 of 2009 with C.O. No. 45 of 2010 (SM)

[Arising out of the Order-in-Appeal No. IND-I/237/2009 dated 27/10/2009 passed by The Commissioner (Appeals-I), Customs & Central Excise, 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?	:

CCE, Indore Appellant

Versus

M/s Gwalior Chemicals Industries Ltd. Respondent

Appearance

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

Shri Sunil G. Khandelwal, C.A. – for the respondent.

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

DATE OF HEARING : 01/06/2011.

Final Order No. 385/2011 SM (BR) Dated : 1/6/2011

Per. Rakesh Kumar :-

The respondent are manufacturers of chemicals chargeable to Central Excise Duty under Chapter 28, 29 etc. They avail the facility of Cenvat credit of duty paid on inputs, and capital goods and service tax paid on input service as per the provisions of Cenvat Credit Rules, 2004. The period of dispute in this case is from January 2005 to March 2006. During this period the respondent availed service tax credit amounting to Rs. 3,55,602/- on services received from certain service provider on the basis of documents called debit note cum bills. The department was of the view that these documents are not the valid documents for availing Cenvat credit, as prescribed under Rule 9 (1) of Cenvat Credit Rules, 2004. On this basis, after issue of show cause notice, the Assistant Commissioner vide order-in-original dated 17/2/09 confirmed the Cenvat credit demand of Rs. 3,55,602/- under Rule 14 of the Cenvat Credit Rules, 2004 readwith Section 11A of Central Excise Act, 1944 alongwith interest under Section 11AB. However, no penalty was imposed under Rule 15. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide impugned order-in-appeal dated 27/10/09 set aside the Assistant Commissioner's order on the basis of Rule 9 (2) of the Cenvat Credit Rules according to which the Cenvat credit cannot be denied for minor lapses in the documents mentioned in Rule 9 (1) of Cenvat Credit Rules and also taking into account the fact that the documents called debit notes cum bill contained all the requisite information like name and address of the input service provider, description of service, value of service, service tax paid etc. Against this order of the Commissioner (Appeals), the Revenue has come in appeal and respondent have filed Cross Objection.

2. Heard both the sides.

2.1 Mrs. Rimjhim Prasad, the learned Departmental Representative, assailed the impugned order by reiterating the ground of appeal in Revenue's appeal and pleaded that in this case the Cenvat credit had been taken on the basis that the debit notes which are not prescribed as valid documents for Cenvat credit under Rule 9 (1) of Cenvat Credit Rules, that Larger Bench of the Tribunal in the case of **CCE, New Delhi vs. AVIS Electronics Pvt. Ltd.** reported in **2000 (117) E.L.T. 571 (Tri. – LB)** has held that Cenvat credit is not available in absence of duplicate copy of the invoice or where the duplicate copy of the invoice has been lost in transit, the necessary permission for taking Cenvat credit on original copy has not been obtained from the Jurisdictional Assistant Commissioner, that the provisions of Rule 9 (1) cannot be treated as mere procedure, that when Rule 9 (1) of Cenvat Credit Rules prescribes certain documents on the basis of which Cenvat credit that can be taken, the Cenvat credit cannot be allowed on the basis of any other documents and that in view of this, the impugned order permitting Cenvat credit on the basis of documents called debit notes cum bills is not correct. Learned Departmental Representative also cited the judgments of Hon'ble Punjab & Haryana High Court in the case of **S.K. Foils Ltd. vs. CCE, New Delhi – III** reported in **2009 (239) E.L.T. 395 (P&H)** and the judgment of Hon'ble Madhya Pradesh High Court in the case of **Executive Engineer (Civil), MPEB vs. Asstt. Commr., C. Ex., Ujjain** reported in **2008 (224) E.L.T. 219 (M.P.)**, in support of her plea.

2.2 Shri Sunil G. Khandelwal, C.A., the learned counsel for the respondent, pleaded that in this case the service provider for the services provided by them to the respondent issued documents called "debit notes cum bills," that these documents are nothing but bills or invoices, that the original Adjudicating Authority in the order-in-original has also given a clear finding that the debit note cum bill contained all the requisite information as per the provisions of the Cenvat Credit Rules, and that the service provider has charged the service tax in the said document and has also deposited the tax calculated on the basis of debit notes to the exchequer, that when the debit note cum bill which contains all the requisite information which is required in an invoice, the Cenvat credit cannot be denied, that the provisions of proviso to Rule 9 (2) have been correctly invoked by the Commissioner (Appeals), and that in view of this, there is no infirmity in the impugned order. He also cited the judgments of the Tribunal in the case of **Karur KCP Packaging Pvt. Ltd. vs. CCE, Trichy** reported in **2009 (16t) S.T.R. 609 (Tri. – Chennai)** wherein this Tribunal while considering the question of waiver from the requirement of pre-deposit, granted full waiver observing that when the debit notes raised by the service provider contained all the information required to be provided under invoice, the same were adequate to avail Cenvat credit, and that same view has been taken by this Tribunal in the case of **Pharmalab Process Equipments Pvt. Ltd. vs. CCE, Ahmedabad** reported in **2009 (16) S.T.R. 94 (Tri. – Ahmd.)**. Shri Khandelwal also mentions that since the period of demand is from January 2005 to March 2006 and show cause notice has been issued on 17/4/07 and since there is no evidence of wilful suppression or fact of contraventions of the provisions of Cenvat Credit Rules, 2004 with intent to evade the payment of duty, the extended period is not available to the department and, hence, the bulk of Cenvat credit demand is time barred. He also pointed out that the Assistant Commissioner in the order-in-original has not imposed any penalty on the appellant under Rule 15 of the

Cenvat Credit Rules, 2004 or Rule 25 of the Central Excise Act, 2002 giving a finding that there is no malafide intention on the part of the noticee.

3. I have carefully considered the submissions from both the sides and perused the records.

4. The only point of dispute in this case is as to whether the respondent could take service tax credit on the basis of the documents called debit notes cum bills issued by the service providers for the service provided by them to the Respondent. From the records, it is also seen that the debit notes cum bills are not in the nature of supplementary invoices, but are of the nature of invoices and Assistant Commissioner in the order-in-original has given a clear finding that the debit note cum bill contain all the requisite information as per the provisions of Rule 9 (1) of the Cenvat Credit Rules, 2004, that the service provider has also charged the service tax and has deposited the taxes to the exchequer and that the debit notes cum bills are in the name of the respondent. From the nature of these documents called debit notes cum bills in the Commissioner (Appeals)'s order, it is clear that the same are

in the nature of invoices as these documents not only contained the information about the name of the service provider, the nature of the service provided, but also the value of service and the service tax charged. In view of this, I am of the view that these documents have to be treated as invoices and it would not be correct to deny the Cenvat credit to the respondent just because these documents invoice are mentioned as debit notes cum bills. I find that same view has been expressed by the Tribunal in the case of **Karur KCP Packaging Pvt. Ltd. vs. CCE, Trichy** (supra) and **Pharmalab Process Equipments Pvt. Ltd. vs. CCE, Ahmedabad** (supra).

5. The learned Departmental Representative has cited the judgment of Larger Bench of the Tribunal in the case of **CCE, New Delhi vs. AVIS Electronics Pvt. Ltd.** (supra), wherein it was held that when as per the provisions of the Cenvat Credit Rules, the credit could be taken only on the basis of duplicate copy of invoice or in the case of loss of duplicate copy in transit on the basis of other copy with the necessary permission of Jurisdictional Assistant Commissioner, the Cenvat credit could not be taken on the

basis of other copies or in the case of loss of duplicate copy, without the permission of the Jurisdictional Assistant Commissioner. The issue involved in this case is totally different and, hence, I am of the view the ratio of this judgment is not applicable to the facts of this case. The learned Departmental Representative has cited judgment of Hon'ble Punjab & Haryana High Court in the case of **S.K. Foils Ltd. vs. CCE, New Delhi – III** (supra) and of Hon'ble Madhya Pradesh High Court in the case of **Executive Engineer (Civil), MPEB vs. Asstt. Commr., C. Ex., Ujjain** (supra). The issue involved in these cases are totally different. In the case of **S.K. Foils Ltd.**, the issue involved was as to whether the Cenvat credit could be taken on the basis of carbon copy of the invoice, while the issue involved in the case of **Executive Engineer (Civil), MPEB** was as to whether Cenvat credit could be taken on the basis of invalid invoices which are not in conformity with the Rules. In this case, there is no dispute that the documents called "debit notes cum bills" contain all the information which is required to be mentioned in the invoices and except for the name of the document, there is no difference between the debit note cum bill and invoice. The nature and value of the service provided and the service tax paid has been shown in these documents and it is not disputed that the service tax has been paid to the Government. In view of these circumstances, I hold that there is no infirmity in the impugned order. The Revenue's appeal is dismissed. The cross-objection also stands disposed of.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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