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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/2777/2009 – SM [BR]** Date **21/07/2011**

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

To :
M/S SRF LTD.

VILLAGE & POST OFFICE-JHIWANA, BHIWADI
(RAJASTHAN)
M/S SRF LTD.

Appellant

Vs

C.C.E. JAIPUR I

Respondent

I am directed to transmit herewith a certified copy of **Final order No.418 / 2011-SM[BR]** dated 13.7.2011 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.A.K.MISHRA, CONSULTANT,
1, CSC-6, 1ST FLOOR, BEHIND SHAKTI APPARTMENTS, SECTOR-9, ROHINI,
DELHI-110085

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-IV
Excise Appeal No.2777 of 2009-SM

Date of Hearing/Decision: 13.07.2010

(Arsing out of Order-in-Appeal No.26/2009(CE) Commissioner dated 3.7.09 passed by the CCE, Jaipur)

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.SRF Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Present for the Appellant: Shri A.k.Mishra, Consultant
Present for the Respondent: Shri Anil Khanna, SDR

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

Final **ORDER NO.** 418/2011 SM (BR)

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order imposing the penalty under Rule 15(1) of Cenvat Credit Rules, 2004 for contravention of the provisions of Rule 9(2) ibid.

2. The brief facts of the case are that the appellants have procured inputs during the course of their manufacturing activity. On scrutiny, it was found that on some invoices although the appellants have taken cenvat credit, it did not mention vehicle number or mode of transportation of inputs in the factory of the appellants. Therefore, the show cause notice was issued for denial of cenvat credit for contravention of Rule 9(2) of Cenvat Credit Rules, 2004 and for imposing penalty under Rule 15 (1) ibid. The show cause notice was adjudicated after verification of the documents and the fact the inputs mentioned in the invoices physically received in the factory of the appellants. The cenvat credit was allowed but the penalty under Rule 15(1) ibid has been imposed of Rs.1 lakh on the appellants. Aggrieved by the said order, the appellants are before this Tribunal.

3. Learned Consultant appeared on behalf of the appellants and submitted that as there is no demand of duty, therefore, no penalty is imposable as held by the Apex Court in the case of CCE vs. H.M.M. Limited reported in 1995 (76) ELT 497 (SC) and in the case of CCE, Raigad vs. Fibre Foils Ltd. reported in 2009 (241) ELT 201 (Bom.). He further submits that as the appellants have taken cenvat credit on duty paid invoices and on physical receipt of the goods, if there is any contravention of the rules that has been done by the supplier only. Therefore, if at all any penalty is leviable that is to be levied on the supplier only. He also submits that while issuing the show cause notice, the appellants were not put to notice under which Rule the penalty is imposable on the appellants. To support his contention, he relied on the decision of the Tribunal in the case of Amrit Foods

vs. CCE, U.P reported in 2005 (190) ELT 433 (SC). Therefore, he prayed that the impugned order for imposing penalty is to be set aside.

4. On the other hand, learned DR appeared on behalf of the Revenue and submitted that it is an admitted fact that the vehicle number/mode of transportation was not mentioned in the invoices as per Rule 9(2) ibid, the assessee cannot take cenvat credit where these particulars are not mentioned in the invoices. Therefore, the appellants have contravened the provisions of Cenvat Credit Rules. Therefore, the appellants are liable to be penalised. Moreover, the appellants have not been alleged that they have taken cenvat credit by fraud, collusion or mis-statement or suppression of facts or contravention of rules with intent to evade duty. Therefore, the lower authorities has rightly imposed penalty under Rule 15 (1) of Cenvat Credit Rules. He further submits that the show cause notice clearly shows that the contraventions of Rules have been made by the appellants and the appellants were very much aware of those contraventions. Therefore, the lower authorities have correctly imposed penalty under the provisions of law. To support his contention, he relied on the decision of the Tribunal in the case of A.V.I.Steel Traders vs. CCE, Delhi-IV reported in 2010 (262) ELT 664 which was later on affirmed by the Hon'ble High Court of Delhi reported in 2010 (260) ELT 43. He also relied on the decision of the Apex Court in the case of CC (Import), Mumbai vs. Jagdish Cancer & Research Centre reported in 2001 (1320 ELT 257. Therefore, he prayed that the impugned order is to be upheld.

5. Heard both sides and considered the submissions made by them.

6. On careful consideration of the submissions made by both sides, the short issue involved in this case is whether in the facts and circumstances of the case, the appellants are liable to be penalised under Rule 15(1) ibid. It is admitted fact that the cenvat credit taken by the appellants on the strength of invoices which are not bearing mode of transportation/vehicle number but after verification during adjudication that the goods mentioned in the invoices have duly/physically received in the factory of the appellants, the adjudicating authority has allowed the cenvat credit. I find that there is no force in the contention of the learned Consultant that when there is no demand of duty, therefore, the penalty is not imposable. Moreover, the provision of Rule 15(1) of Cenvat Credit Rules,2004 provides that if there is any contravention of rules then the goods liable for confiscation and the assessee is liable to be penalized. Admittedly in this case, the goods were not held liable for confiscation. When the goods are held liable for confiscation then also the penalty is also not imposable in this case. The case laws cited by the learned DR are distinguishable from the facts of the present case as in those cases the duty liability was confirmed against the assessee for contravention of rules. Therefore, when the nature of contravention has to be put to notice to the appellants, the penalty was imposed. But in this case it is alleged that the appellants are not entitled for cenvat credit but during adjudication it was found that the appellants have taken cenvat credit on the strength of invoices

against which the goods received in the factory of the appellants physically and as per Rule 9(2) ibid provides that if concerned officer is satisfied that the goods have been received in the factory then for the contravention of non mention of vehicle number is not to be held as contravention as per rule. Therefore, I set aside the impugned order imposing penalty on the appellants by allowing the appeal.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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