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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 **26/07/2011**

Appeal No. **E/1631/2009 – SM[BR]**

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S STANDARD WIRES & CABLES Respondent

I am directed to transmit herewith a certified copy of **Final order No. 429 / 2011-SM[BR]** dated 23.6.2011 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 STANDARD WIRES & CABLES
D-110, FOCAL POINT,
KHANNA(PUNJAB)

2. Adv. / Consult SHRI JATIN MAHAJAN ADV.
157, IIIRD FLOOR, VINOBA PURI NEW DELHI

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
Excise Appeal No. 1631 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 28/CE/LDH/2009, dated 20.02.2009 passed by The Commissioner (Appeals), Chandigarh.]

For Approval and signature :
Hon'ble Shri M.V.Ravindran, 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?	:	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

CCE, Ludhiana Appellant

Versus

Standard Wires & Cables Respondent

Appearance
Shri S.K.Bhaskar, DR - for the appellant.
Shri Jatin Mahajan, Advocate – for the respondent.

CORAM : **Hon'ble Shri M.V.Ravindran, Member (Judicial)**

DATE OF HEARING / DEICISION : 23/06/2011.

Final Order No. 429/2011 SM (BR) Dated : ____________

Per M.V.Ravindran

This appeal is filed by the Revenue against Order-In-Original No. 30/CE/DC/-LDH-I/2008, dated 18.08.08.

2. The relevant facts that arises for consideration are the respondent herein were engaged in the manufacturing of electric wires and cables. The respondent availed Cenvat credit of Rs.53,120/- on the strength of three invoices issued by the M/s Kashish Import Pvt. Ltd., Delhi. During the investigation conducted by the staff of Central Excise Commissioner at Delhi-I, it was found that the said M/s Kashish Products Impex Pvt. Ltd. had indulged in sale of PVC component without undertaking any manufacturing activity and without physically removing the goods and had issued only invoices to pass on the Cenvat credit. As a follow up of such an investigation, Show Cause Notice dated 30/11/07 was issued to the respondent assessee directing to him to show cause as to why the Cenvat credit of Rs.52,120/- be not demanded for improper availment of Cenvat credit in respect of the goods from M/s Kashish Products Impex Pvt. Ltd., Delhi. Respondent contested the Show Cause Notice before the adjudicating authority. The adjudicating authority did not agree with the contention of the respondent only on the ground that M/s Kashish Products Impex Pvt. Ltd. was found to be indulging in selling PVC component without undertaking any activity. Subject to such findings, there are no other findings given by the adjudicating authority for confirmation of the demand. Aggrieved by such an order, respondent filed an appeal before the Ld. Commissioner(Appeals). Before the Ld. Commissioner (Appeals),

respondent assessee produce evidence indicating the receipt of the goods in their factory premises. Ld. Commissioner(Appeals) further appreciating the said evidences, set aside the impugned order, hence, appeal by the Revenue.

3. Ld. DR would submit that grounds of appeals may be read. It is his submission that the Ld. Commissioner(Appeals) has not appreciated the entire evidence on record and has also failed to note judgement of Tribunal in the case of HBR Steel Corporation in Final Order No.1579-1580/07-SM(BR), dated 28/09/07. It is his submission that the proposition for which he relies on this judgement is for the reason that the goods were not physically transported from M/s Kashish Products Impex Pvt. Ltd. to the respondent's factory. It is his next submission that during the course of investigation conducted at M/s Kashish Products Impex Pvt. Ltd., it was found that the said unit had indulged in sale of PVC component without undertaking any manufacturing activity and without physically removing of the goods against the invoices issued by them. It is his submission that the contention of the respondent that they have received inputs and the same were properly entered in their books is not sustainable because when the goods were not manufactured and the same cannot be received by the respondent. It is his further submission that the Ld. Commissioner(Appeals) had considered the various other documents and upheld that the receipts submitted by them in support of their claim but has not considered the entire evidence to appreciate that there was established nexus between the party and the trader.

4. Ld. Counsel on behalf of the respondent supports the findings of the Commissioner(Appeals). He would submit that they have produced evidence before the adjudicating authority who has not considered the same.

5. On careful consideration of the facts, I find that the issue involved in this case is denial of Cenvat credit to the respondent assessee.

6. On perusal of the records I find that there is no dispute as regards the evidence submitted by the respondent before the Ld. Commissioner(Appeals). Paragraph 4 of the Order-In-Appeal shows the Commissioner(Appeals) had appreciated the evidences produced before him. As against factual findings based upon the evidences, I find that these are only bald allegations in the grounds of appeal and no contrary evidence is produced. There is no contrary evidence produced to the Commissioner(Appeals) or before me in the appeal memoranda nor in submissions made before me.

7. In my considered view, in the facts and circumstances of this case, conclusion arrived by the Commissioner (Appeals) is correct and legal does not suffer from any infirmity. Appeal filed by the Revenue is rejected.

(Dictated and pronounced in open court.)

(M.V.Ravindran)
Member (Judicial)

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