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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/2924/2009 – SM[BR]** Date **07/09/2011**

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

To :
M/S SAMPARK INDUSTRIES LTD
P-2/5,SITE-IV, UPSIDC INDL.AREA, GREATAR NOIDA.

M/S SAMPARK INDUSTRIES LTD Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 572/2011-SM[BR]** dated 19.7.2011 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. NOIDA
C-56/42, SECTOR-62,
NOIDA-201307

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.

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.2924 of 2009-SM

Date of Hearing/Decision: 19.07.2011

(Arsing out of Order-in-Appeal No.191-192/CE/NOIDA/09 dated 20.7.09 passed by the CCE(A), Noida)

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.Sampark Industries Ltd. Appellant

Vs.

CCE,Noida Respondent

Present for the Appellant: Shri S.D.Gaur, Consultant
Present for the Respondent: Shri Anil Khanna, SDR

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

Final **ORDER NO.** 572/2011 SM (BR)

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order for confirmation of demand of duty on account non reversal of input credit availed by them on the goods returned and the same has not been debited in their cenvat credit account alongwith interest and equivalent amount of penalty.

2. Learned Consultant appeared on behalf of the appellants and submitted that in fact the appellants have not availed input credit on these goods, therefore the question of reversal of credit does not arise. For rest of the submission, he submitted that as the appellants on pointing out by the department, have reversed the credit before issuance of show cause notice and availed credit under the bonafide belief that they are not liable to pay duty as they have not availed the credit, the finding of the adjudicating authority is totally incorrect.

3. On the other hand, learned SDR appeared on behalf of the Revenue and submitted that in this case the appellants have failed to produce the supporting evidence in support of their claim. Therefore, the adjudicating authority has asked to reverse the credit and returned the inputs by the appellants. He further submitted that the adjudicating authority has rightly confirmed the penalty on the appellant as held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills Ltd. vs. CCE reported in 2009 (20) STT 483 (SC) has held that if the elements of Section 11AC are present, the penalty under this section would be attracted even if the duty had been paid prior to issue of show cause notice.

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

5. On careful consideration of the submissions made by both sides, I find that categorical finding of the adjudicating authority in the impugned order that the appellants have failed to produce the supporting documents that they have not availed input credit on the

goods returned by them, therefore, the duty is demandable. It is also submitted by the learned Consultant that invoices and debit notes were produced by the appellants but the same had not been considered by the adjudicating authority. Therefore, it would be in the interest of natural justice if the matter is sent back for re-examination of the matter again by the adjudicating authority. The adjudicating authority shall verify the documents produced by the appellants to support their claim and to contest the matter accordingly. With regard to the penalty, the adjudicating authority shall decide the imposition of penalty within the provision of law after hearing the appellants. Therefore, the ~~matter~~ order is set aside to this extent only. The appeal is allowed by way of remand.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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