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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 12/10/2011

Appeal No. E/619 – 621 ,667 – 668 / 2004-SM[BR]

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

To :
INTERNATIONAL ENGINEERS
D-13, FOCAL POINT PHAGWARA ROAD, HOSHIARPUR.

INTERNATIONAL ENGINEERS Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No. 670 – 674 /2011-SM[BR]** dated 1.9.2011 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. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.

2. Adv. / Consult SHRI NAVEEN MULLICK ADV.
B-13, MEERA BAGH, NEW DELHI-63.

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)

2. **INTERNATIONAL ENGINEERS**
D-13, FOCAL POINT PHAGWARA ROAD, HOSHIARPUR.

3. **INTERNATIONAL ENGINEERS**
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4. **INTERNATIONAL ENGINEERS**
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5. **INTERNATIONAL ENGINEERS**
D-13, FOCAL POINT PHAGWARA ROAD, HOSHIARPUR

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/619-621, 667-668/04-SM

[Arising out of Order-in-Appeal No.686-690/CE/JAL/03 dated 30.10.2003 passed by the Commissioner (Appeals) of Central Excise, Chandigarh].

M/s. International Engineers (5 appeals) ...Appellant

Vs.

CCE, Jallandhar ... Respondent

Present for the Appellant : Shri Naveen Mullick, Advocate
Present for the Respondent: Shri.Fateh Singh,D.R.

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:01.09.2011

Final **ORDER NO.** 670 - 674/2011 SM (BR) **DATED:**________

PER: D.N.PANDA

There is no dispute by either side that all the five cases emanated from the common cause and also from the common appeal order dated 30th October, 2003 passed by ld. Commissioner (Appeals), Jallandhar (Headquarter at Chandigarh). He found that adjudicating authority had allowed the claim of the assessee without proper interpretation of

Notification 58/97-CE dated 1.9.97 for which Revenue's appeal before the said authority was allowed. He did so making an elaborate discussion in page 3 and 4 of his order. Looking into conditions of the Notification No.58/97-CE dated 1.9.97 he opined that the conditions were safeguard in nature to protect Revenue. According to him the input used by the appellant were procured from a manufacturer who was subject to compounding levy under section 3 A of Central Excise Act 1944 did not pay the duty duty and claim of suffering of duty on those goods was found to be not in consonance with the Notification requirement. He accordingly disallowed the claim.

2. Ld. Counsel Shri Mullick submits that deemed credit is a facility given to avail that as cenvat credit by a manufacturer by virtue of use of inputs entitled to deemed credit. Input in question was not in dispute which enjoyed deemed credit having fallen into the class of the goods under the Notification No.58/97-CE dated 30th August, 1997. He relied on two certificate issued by Superintendant of Central Excise which are appearing at page 15 & 16 of appeal folder in E/620/04 to buttress the claim submitting that the Superintendent was satisfied about payment of duty in terms of those two certificates. When the duty has been paid on the goods subject to compounding levy appearing in the Notification, deemed credit should not be denied. The appellate authority

committed an error in law to allow Revenue's appeal setting aside the adjudication order which entertained claim of appellant. Shri Mullick relies on the judgement of Hon'ble High Court of Punjab & Haryana in the case of Vikas Pipe vs. CCE, Chandigarh-II - 2003 (158) ELT 680 (P & H) to buttress the claim on the ground that late payment of duty by supplier of input can be considered as appropriate payment of duty to get the deemed credit for set off of the same ultimate duty liability on the out put.

3. On the Other hand ld. DR supports the appellate order.

4. Heard both sides and perused the record.

5. It is strange how a Superintendant could issue the certificates available on record which were relied upon by the appellant for the claim of deemed credit. Perusal of the definition of Adjudicating Authority under section 2(a) and definition of Central Excise Officers appearing in section 2(b) of Central Excise Act 1944 does not appear to have recognised a Superintendant as Adjudicating Authority or Central Excise Officer. He was not competent to issue the certificate relied upon by the appellant for no prescription in law. There is no Notification available on record to appreciate that he is an officer authorised by section 2 (b) of Central Excise Act 1944 under Central Board of Revenue Act, 1963. If such an Officer is not competent and recognised by law to issue certificate the department should

take action against the Officer those who issue the certificates not recognised by law. Ld.CDR is requested to send a copy of this order to the Jurisdictional Commissioner where the Superintendent is working, for appropriate action. So also the Board may be intimated for appropriate redressal if any required.

6. When the certificates aforesaid were relied upon by the appellant, which have not originated under law those are not evidence admissible in law and do not come to rescue of the appellant.

7. Aforesaid facts and circumstances call for reading of Notification under which the claim is made by the appellant which is Notification No.50/97-CE dated 30th August, 1997. The prescription, restriction and intention of the Notification is as under:-

A. The goods which shall enjoy deemed credit like cenvat credit are classified and depicted in the first part of the Notification.

B. Para 2 of the Notification prescribes the quantum of benefits if user of the prescribed input uses that in the manufacture of final out put.

C. The compounding levy input enjoys deemed credit at a prescribed rate subject to fulfilment of condition of deemed credit scheme.

D. The input should form part of the invoice issued by the manufacturer of the input under Compounding Levy Scheme.

E. The deemed credit arising in terms of para 1 and 2 of the Notification shall only be utilised for payment of excise duty leviable on the final product.

F. Exporting unit can also get benefit of deemed credit if they consume compounding levy input for manufacture of DTA sales goods.

G. If for any reason the deemed credit could not be adjusted against any duty payment due to export or duty draw back ~~they~~ is not claimed, unutilised deemed credit is refundable subject to fulfilment of prescribed condition.

H. The benefit of the Notification applies only to those manufacturers who receive directly notified inputs enjoying compounding levy from the factory of the manufacturer under cover of an invoice with a clear declaration of payment of appropriate excise duty in terms of section 3 of Central Excise Act 1944.

I. The Notification does not apply if there is no declaration of payment of duty or invoice price is not declared in the invoice. There is further safeguard measure that if the invoice price is not declared correctly benefit of the Notification is lost.

J. The amount indicated in the invoice should have been paid by the manufacturer to the seller of the input who is under Compounding Levy Scheme by Bank Draft or Banker Cheque or a Cheque drawn on own bank account of the buyer claimant of deemed credit.

8. In these appeals there was violation of conditions of the Notification for no declaration of payment of duty when the invoices were issued. Law does not permit belated payment of duty to extend deemed credit facility to the buyer of compounding levy inputs. The appellate authority, therefore, rightly recorded that belated payment of compounding levy by input supplier does not entitle the Appellant to the deemed credit in respect of input subjected to such levy. There is no material on record to show due payment of duty if any made. Ld. Counsel's submissions would have received consideration had the invoices declared that the duty was paid in respect of the goods covered by invoices and the appellant would have been benefited by the ratio laid down by the Hon'ble Punjab & Haryana High Court in terms of the citation relied upon by Appellant. No doubt Revenue may not

insist the evidence of payment of compounding levy, but Revenue has every power to see the benefit granted by the Notification is supported by lawful declaration. In view of the aforesaid observations, all the five appeals fail on merit for which levy of duty is confirmed.

10. So far as the penalty aspect is concerned, there was imposition of penalty of Rs.7,500/-, Rs.10,000/-, Rs.8,000/-, Rs.25,000/- and Rs.15,000/- in these appeals invoking section 57 I (4) of the Central Excise Rules, 1944. Ld. Counsel submits that when the appellate authority below could not make any finding that the ingredients of fraud, wilful misstatement, collusion or suppression of fact or contraventions of provisions of the Act and rules made there-under exist with intent to evade payment of duty, the appellant gets immunity from penalty. But Revenue opposes such a proposition on the ground that non-compliance to the Notification itself calls for penalty.

11. Perusal of sub-rule 4 of Rule 57 I of Central Excise Rules 1944 throws light that the said rule appears to have been designed to counter act evasion. But to invoke that sub-rule there should necessarily be a finding about presence of ingredients of evasion prescribed therein. The appellate order has failed to bring existence of any of the elements for penalising

the appellant to the extent indicated above in these appeals. Finding no existence of ingredients of any intention to evade duty, the appellants gets total relief in respect of penalties waiving the same.

12. In the result, appeals are partly allowed confirming the duty but waiving penalties in all the five cases.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita