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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. ST/976 /2009 – SM[BR] **Date 23/12/2011**

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

To :
M/S INVICTA,

C-11/219, SECTOR-3, ROHINI, NEW DELHI. 110085

M/S INVICTA, Appellant

Vs

C.S.T. DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. 921 / 2011-SM[BR]** dated 13.12.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.S.T. DELHI
17-B, I.P. ESTATE, IAEA HOUSE,
NEW DELHI.

2. Adv. / Consult
MR.A.K.BATRA & ASSOCIATES
A-36, FIRST FLOOR, RAJOURI GARDEN, RING ROAD, N 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 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file

Assistant Registrar
(SM Appeal Branch)

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

COURT NO. II

Service Tax appeal No. 976/2009-SM

[Arising out of Order-in-Appeal No. 75/ST/DLH/2009 dated 7.9.2009 passed by the Commissioner (Appeals), Central Excise, New Delhi].

Date of Hearing/decision: 13th December, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

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. Invicta — Appellant

Vs.

CCE, New Delhi — Respondent

Present for the Appellant : Shri A.K. Batra, C.A.
Present for the Respondent : Shri Anil Khanna, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 921/2011 SM(BR)

Per D.N. Panda:

Shri Batra, learned Chartered Accountant submits that mere appearance of the name "Invicta" in some of the documents like invoices does not dis-entitle the appellant who is "Invicta Advertising and Promotion", and that remained uncontroverted without any evidence led against the appellant. So far as address of the appellant is concerned, the change of address to their own premises from rented premises also does not alter claim of the appellant. Therefore, proper fact was recorded in the stay order in this direction on 30.4.2011. The affidavit filed by the Revenue does not controvert fact finding of the Tribunal made in stay order dated 30.4.2011. Therefore, the appellant's claim of Cenvat credit cannot be disputed by the Revenue without bringing any contrary evidence.

2.Learned D.R. on the other hand relying on communication dated 6.9.2010 vide letter No. DL/1/ST/R/III/Invicta/463/05 and counter affidavit of the learned Commissioner dated 6.9.2010 submits that the appellant has not given proper address but has given different addresses as well as it has used different names in the invoices for which it was disentitled to Cenvat credit.

3.Heard both sides and perused the record.

4.Revenue was made aware by stay order dated 30.4.2010 what that was the material fact as is apparent from Para 2 & 3 of the stay order. Although five months after stay order, affidavit and communication has been relied by Revenue, that has not controverted the preliminary fact finding of the Tribunal made in the stay order. It is also surprising that communication dated 6.9.2010 expressed inability of field inquiry. Such failure of

Revenue handicapped it to succeed on the allegation made. For the failure of Revenue in above manner appeal is allowed.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK