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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/879 /2009 – SM[BR] & ST/ STAY/3088/2009-SM[BR] Date 08/04/2010

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

To :
M/S KITPLY INDUSTRIES LTD.
SHAHABAD ROAD, RAMPUR, UTTAR PRADESH.

M/S KITPLY INDUSTRIES LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 393/2010-SM[BR]& S/138/2010 dated 6.4.2010 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.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.SAURABH MATHUR
   LASA CONSULTANTS, CIVIL LINES, MORADABAD.

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

ST/S/3088/09, ST/Appeal No.879/2009-SM(Br)

(Arising out of order in appeal No.255/ST/CE/MRT/II/09 dated 30.9.09 passed by the Commissioner of Central Excise (Appeals), Meerut-II)

M/s Kitply Industries Ltd — Appellant

Vs

CCE, Meerut-II — Respondent

Appeared for Appellant : Shri S.K. Mathur, CA
Appeared for Respondent : Shri R.S. Meena, SDR

Date of Hearing: 19.2.2010

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

Final Order No. 393 /2010 SM(Br) + Stay Order No. 138/2010 SM(Br)

Per D.N. Panda:

The Stay Application has been filed for stay of duty demand of Rs. 12,897/- and penalty of Rs. 1,60,718/- on two counts. The first count is disallowance of Cenvat credit of Rs.2,013/- in respect of service tax paid on Cellular phone services availed while bill thereof was not in the name of the assessee and the second count of demand is disallowance of credit of Rs.10,884/- on account of payment of service tax for availing insurance services on the strength of photocopy of insurance policy.

2. Shri S.K. Mathur, Chartered Accountant submits that there was evidence to allow the Cenvat credit in respect of the service

tax paid. Similarly penalty was imposed unreasonably. Therefore, stay application has been filed for waiver of pre-deposit.

3. Learned DR submits that inadmissibility of Cenvat credit was rightly done and penalty was imposed for erratic use of Cenvat credit.

4. Heard both sides and perused the record.

5. Although the matter was fixed for hearing of the stay application today, in view of the smallness of demand, keeping of the matter pending is uncalled for. Therefore, both the stay application and appeal are disposed by this common order dispensing pre-deposit.

6. So far as the demand raised disallowing Cenvat credit of Service tax on the Cellular phones is concerned, integrity, dependability and relevancy test was applied by learned Adjudicating Authority following the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd reported in 2009 (240) ELT 641 (SC) to reach to the conclusion. Accordingly, the adjudicating authority is justified to disallow the claim.

7. So far as service tax on insurance service is concerned, the appellant if produces relevant documents having force of evidence, the authority shall reconsider its claim. If that authority finds that service tax was paid on the input service meeting all the three tests aforesaid, the claim shall be admissible.

8. So far as penalty is concerned, nothing malafide has been brought by the authorities on the face of record to confirm

imposition of penalty. Therefore, the appellant gets full relief on this count.

9. In the result, the appeal is allowed to the extent indicated aforesaid, remanding the matter to the learned adjudicating authority for reconsideration of set off of service tax paid against ultimate duty liability. The stay application is disposed of in the manner indicated above.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*