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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/54 /2008 – SM[BR]   Date 08/04/2010

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

To :
M/S SADASHIV CASTING LTD
VILL- MUBARIKPUR, TEHSIL-DERABASSI, PUNJAB.

M/S SADASHIV CASTING LTD   Appellant
Vs
C.C.E. CHANDIGARH   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 395 /2010-SM[BR] dated 18.3.2010 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI
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,
West Block No. 2, R.K. Puram, NEW DELHI

<u>COURT NO. III</u>

<u>CENTRAL EXCISE APPEAL NO. 54 OF 2008-SM</u>

[Arising out of Order-in-Appeal No. 309/CE/CHD/2007 dated 14.08.2007 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

<u>Dated of hearing/decision; 18th March, 2010</u>

For approval and signature:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

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 would 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. Sadashiv Casting Ltd., Appellants

Vs.

CCE, Chandigarh Respondent

Appearance:

Shri Atul Gupta, Advocate for the appellants;
Shri V.K. Saxena, Authorised Representative (Jt. CDR) for the Revenue

Coram:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

ORAL ORDER NO. 395/2010 **dated** 27

Per RAKESH KUMAR:

A show cause notice dated 23.8.2004 was issued to the appellants alleging that they had taken Cenvat credit amounting to Rs. 6,59,925/- on the basis of fake/invalid invoices and that though the Cenvat credit has been reversed, they are liable for payment of interest on the wrongly taken Cenvat credit and also liable for imposition of penalty under Rule 13 of Cenvat Credit Rules. The show cause notice was adjudicated by the Asst. Commissioner vide Order-in-Original dated 13.10.2004 by which interest demand of Rs. 1,09,562/- under Rule 12 of Cenvat Credit Rules read with Section 11AB of the Act was confirmed. Besides this, penalty of equal amount of Rs. 6,59,925/- was imposed on the appellants under Rule 13 of Cenvat Credit Rules read with Section 11AC of the Central Excise Act. The Asst. Commissioner also ordered for adjustment of Rs. 1,35,000/- which had already been deposited towards penalty and, extended the benefit of reduced penalty under the first proviso of Section 11AC in case the appellants deposits the balance amount of interest confirmed along with 25% of the amount of penalty within thirty days from the communication of the adjudication order. The appellants did not pay interest and 25% penalty within the period mentioned in the order of the Asst. Commissioner and filed appeal before the Commissioner

(Appeals). The Commissioner (Appeals) allowed the appeal setting aside the order of interest and penalty on the ground that the entire amount of Cenvat credit had reversed even prior to the issue of show cause notice. The Commissioner (Appeals) followed the Tribunal's Order in the case of CCE, vs. Machino Montell (I) Ltd., reported in 2004 (62) RLT 709 (CESTAT-LB). On appeal, being filed by the department against the order of the Commissioner (Appeals), the Tribunal vide Final Order No. 274/07-SM(BR) dated 19.12.2006 remanded the matter to the Commissioner (Appeals) for de novo decision in the light of the judgement of the Hon'ble Punjab & Haryana High Court in the case of Machino Montel (I) Ltd., reported in 2006 (202) ELT 348 (P & H) by which the Hon'ble High Court had reversed the Larger Bench decision of the Tribunal in the case of CCE vs. Machino Montel (I) Ltd. (supra). In de novo proceedings, the Commissioner (Appeals) vide Order-in-Appeal No. 309/CE/CHD/2007 dated 14.8.2007 upheld the order-in-original. It is against this order of the Commissioner (Appeals) that the present appeal has been filed.

2. Heard both sides.

3. Shri Atul Gupta, learned Counsel for the appellants, pleaded that in this case the issue before the Tribunal is as to whether the interest is chargeable on Cenvat credit reversed by the appellants which was taken by the appellants. He pleaded that the appellants were instructed by the department to reverse the credit and at that point of time, credit was not

utilized, that in view of this, no interest is chargeable; that in this regard he relies upon decision of Hon'ble Punjab & Haryana High Court in the case of CCE, Delhi-III vs. Maruti Udyog Limited, reported in 2007 (214) ELT 173 (P & H); that looking to the cirumstances of the case, no penalty is imposable; that in any case since the entire amount of Cenvat credit was reversed prior to the issue of show cause notice, in accordance with first proviso to Section 11AC, the benefit of reduced penalty equal to 25% of the duty amount should have been given; that though the Asst. Commissioner had given this option to pay the interest and 25% of penalty within 30 days, the appellants had immediately filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) vide order dated 3.11.2004, which was issued within 30 days, set aside the order of the Asst. Commissioner; that the interest and 25% of the penalty amount was paid within 14 days of the de novo order-in-appeal passed by the Commissioner (Appeals); that in view of this, and keeping in view the decision of Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. vs. UOI, reported in 2008 (228) ELT 31 (Del.) benefit of reduced penalty under Section 11AC should have been given.

4. Shri V.K. Saxena, learned Jt. CDR, defending the impugned order, pleaded that this is a case where Cenvat credit had been taken on the basis of fake/invalid invoices in a fraudulent manner; that the findings to this effect have been given by the Asst. Commissioner as well as by the Commissioner (Appeals); that the appellants have not refuted this finding

by furnishing any cogent evidence; that in view of these circumstances the appellants cannot escape penal provisions of Rule 13 of Cenvat Credit Rules read with Section 11AC of the Central Excise Rules and for the same reason interest on such wrongly availed credit is also chargeable; that as per report submitted by the jurisdictional Asst. Commissioner, in pursuance of the direction of the Tribunal substantial portion of wrongly availed Cenvat credit had been utilized prior to reversal and that in view of this there is no infirmity in the impugned order.

5. I have carefully considered the submissions from both sides and perused the record. Show cause notice had been issued on the basis that the appellants had fraudulently availed Cenvat credit amounting to Rs. 6,59,925/- on the basis of fake/invalid invoices and that they reversed the Cenvat credit on this fraudulent credit being detected. Neither in the proceedings before the Asst. Commissioner nor before the Commissioner (Appeals), the appellants have seriously refuted the allegation of taken Cenvat credit fraudulently on the basis of fake/invalid invoices. In fact, the reversal of the credit has not been challenged by the appellants at any stage. Since this is a case of taking Cenvat credit fraudulently on the basis of fake/invalid invoices the judgement of Hon'ble Punjab & Haryana High Court in the case of Maruti Udyog Ltd. would not be applicable as in that case credit was only taken as an entry in the Modvat record and was not in fact utilized whereas in the instant case credit was taken fraudulently on the basis of fake/invalid invoice, though the same had not been utilized. Since this is a case when Cenvat credit has been taken in a fraudulent manner, the penal provisions of Rule 13 read with Section 11AC of Central Excise Act, 1944 would be attracted. The appellants plead that the benefit of reduced penalty under first proviso to

Section 11AC should be extended to them in view of the Hon'ble Delhi High Court in the case of K.P. Pouches (P) Ltd. (supra). However, in the case of K.P. Pouches (P) Ltd. the Hon'ble Delhi High Court judgement based on the fact that disputed duty had been paid along with interest prior to issue of show cause notice and the adjudicating authority while passing the adjudication order had not extended the option of paying reduced penalty within the stipulated period and, hence, benefit of reduced penalty could not be denied. But, in the present case, though the Asst. Commissioner had given such an option to the appellants but the same was not availed as the appellants did not pay the balance amount of interest and 25% penalty within the stipulated period. This amount was paid only after the de novo order-in-appeal passed by the Commissioner (Appeals). In view of this I hold that the judgement of Delhi High Court in the case of K.P. Pouches (P) Ltd. (supra) is not applicable.

6. In view of the above discussion, I do not find any infirmity in the impugned order. The Appeal is dismissed.

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RK