

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 10/05/2010

Appeal No. E/1425/2007 - SM[BR]

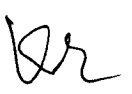
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. RAIPUR
CENTRAL EXCISE BUILDING, DHAMTARI ROAD,
TIKRAPARA, RAIPUR 492001.
C.C.E. RAIPUR

Appellant
Vs
Respondent

M/S VISHWA VISHAL ENGINEERING LTD.

I am directed to transmit herewith a certified copy of Final order No. 500 / 2010 -SM[BR] dated 7.5.2010
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S VISHWA VISHAL ENGINEERING LTD.

4/5, INDUSTRIAL ESTATE, BHILAI, DISTT. DURG (C.G.)

2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
A-5, BASMENT LAJPAT NAGAR -III,
NEW DELHI -24.

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 Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

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10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

11 Easy Service Tax Online Dot Com Pvt.Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)

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15 TAXINDIAONLINE. COM PVT. LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE,
NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.


Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No. E/1425/07 & E/CO/194/07-SM

[Arising out of Order-in-Appeal No.107/RPR-II/2006 dated 31.10.2006 passed by the Commissioner (Appeals),Raipur]

Date of Hearing: 24.12.2009

Date of decision: 07.05.2010

CCE, Raipur

...Appellant

Vs.

M/s. Vishwa Vishal Engg. Ltd.

... Respondent

Present for the Appellant :Shri.Vijay Kumar, SDR
Present for the Respondent :Shri.Hemant Bajaj, Advocate

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

Final **ORDER NO. 500/2010-SM(BR) DATED: 7.5.2010**

PER: D.N.PANDA

Revenue being aggrieved by the order passed by the Id. Commissioner (Appeals) granting relief to the respondent assessee came in appeal before the Tribunal. In the adjudication, assessee was disallowed modvat/cenvat credit of Rs.1,58,224/- invoking Rule 57-I of Central Excise Rules 1944 read with section 11A of Central Excise Act 1944. Equal penalty was also imposed under section 11AC of the said Act. So also there was penalty imposed under Rule 173Q of the above Rules. The reason for levy of excise duty and penalty was that the assessee availed above amount of cenvat credit in respect of 103.010 MT of concast slab against the invoices issued by M/s. Bhilai Steel Plant, Bhilai vide their RG 23A, part

II entry No.453 to 456 dated 9.12.1999. On the basis of invoice so received, the respondent-assessee issued invoice/delivery challan No.359 to 362 all dated 9.12.1999 under Rule 57I(2) of Central Excise Rules 1944 to M/s. Sidharth Industries, Bhilai for transfer of these goods. But investigation revealed that the respondent-assessee without receiving the above goods from M/s.Bhilai Steel Plant transferred the said goods to a third party i.e. M/s. Manmeet Steels, Bhilai making entry in the record of the respondent issuing accommodation invoices in the name of M/s.Sri Sidhartha Industries, Bhilai. Accordingly the Modvat/Cenvat Credit claim was deniable when goods were not received by respondent in their factory.

2. Ld. Adjudicating Authority found that the respondent-assessee availed inadmissible credit fraudulently without receiving the goods at its factory. Statement of the driver of the Transporter established that the vehicle number appearing in invoice was not used for transportation of the impugned goods. M/s. Sidharth Industries was registered under Central Excise Law as a dealer. The respondent and the dealer without receiving the goods produced false document of receipt of goods and made entry in their stock account.

3. Ld. Appellate Authority below found that the seller of the goods was M/s. Bhilai Steel Plant, Bhilai and purchase was made under invoice dated 26.10.1999. The transporter of the goods only denied transportation of the goods to the premises of the appellant. No evidence was adduced except the defaced

copy of invoice issued by Bhilai Steel Plant. That authority came to the conclusion that the appellant has not received the goods within its factory even though, the goods were cleared by M/s.Bhilai Steel Plant on payment of duty accompanied with duty paying invoice. He held that there was no intention to evade duty liability. He proceeded on the premises that arrangement was made by the respondent to send the goods to the ultimate buyer to reduce the transportation cost for which the demand was unsustainable being time barred.

4. Learned DR appearing on behalf of Revenue supported the order of Adjudication on the ground that when goods were not received at the factory of the respondent no clearance thereafter was made for which inadmissibility of Cenvat Credit of the aforesaid amount was justified. Accordingly, the Order-in-Original may be restored.

5. Ld. Counsel appearing on behalf of the respondent submits that the order passed by the Id. Appellate Authority was categorically clear about suffering of the duty on the goods. He submitted that the copies of invoices under Annexure 'A' to the Cross Objection clearly establishes that the goods were sold by Bhilai Steel Plant to the respondent and that has suffered duty. When such suffering was established, respondent was granted relief for no intention to evade duty and the proceeding was held to be time barred by the Id. Appellate Authority below. Therefore, there should be no interference to the first appellate order.

6. Heard both sides and perused the records.

7. The order passed by the Original Authority was based on the oral evidence and outcome of investigation not rebutted. While the impugned goods were borne by invoices/challan No.359 to 362 all dated 9.12.99 and were stated to be transported by vehicle No. MP 23-3566 and MP 24 A-6696, was denied by the owner of those vehicles. Statement recorded from the Dy. Manager (Excise) of M/s. BEC Ltd., Bhilai showed that the vehicle registered as MP 24A 6696 had not transported or lifted the impugned goods from the factory of the respondents to the premises of M/s.Sidharth Industries on 9.12.99. In his statement he still stated that M/s.BEC Ltd. used this vehicle for internal loading and unloading of goods of their company. While this is the position relating to the vehicle No.MP 24A – 6696, the statement of Shri Sukh Swaran Singh owner of vehicle No.MP23A-3566 resulted with denial of lifting of any goods from the factory of the respondent to the place of the business of the dealer M/s. Shri Sidharth Industries.

8. While Id. Commissioner (Appeals) as well as the Adjudicating Authorities agreed that, invoice (challan) in question has occasioned clearance of goods of M/s.Bhilai Steel Plant, there is no evidence coming out to show whether impugned goods were transported by the respondent through the vehicles as aforesaid. Id. Adjudicating authority has a clear finding that the vehicles in question were not used for transportation of that goods by the respondents for carrying the goods to its factory. Once there is no evidence for

reaching of the goods at the destination i.e. factory of the appellant the case proves to be a case of diversification. Once there is a diversification, the respondent had burden to prove that there was no such event. Rather, without the respondent proving its bonafide, Id. Commissioner (Appeals) made assumptions and presumptions of saving of transportation cost and allowed appeal of the respondent. It is made clear that once there is no such claim by the respondent, the order of Id. Commissioner (Appeals) suffers from legal infirmity. Cogent evidence having been brought by Id. Adjudicating Authority for no use of vehicles in question for transportation of the impugned goods and statement of the driver proving no movement of goods by the claimed vehicle, the respondent does not deserve any consideration. Rather it is a case where Revenue was prejudiced with intent to evade duty. Such a decision is possible to be taken in view of the decision of the Hon'ble High Court of Punjab & Haryana in CEA No.13 of 2004 in the case of CCE, Ludhiana vs. M/s.Krishna Wire Products Pvt. Ltd. and Others decided on 9.2.2010. Accordingly, the impugned order is set aside and Order-in-Original is restored allowing appeal of the revenue.

[Pronounced in the open Court on 07.05.2010].

(D.N.PANDA)
JUDICIAL MEMBER

Anita

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