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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/1189/2008 – SM[BR] Date 25/05/2010

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA Appellant

Vs

M/S PRIME INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 576 / 2010-SM[BR] dated 10.5.2010 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 PRIME INDUSTRIES LTD.
VILL.-GOBINDGARH,MALOUT ROAD,ABOHAR.
2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASNT KUNJ NEW DELHI-70.

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
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 (Haryana)
13 Office Copy
14 Guard file
15 TAXINDIAONLINE.COM PVT. LTD. UNIT NO. 1, 2ND FLOOR, VASANT ARCADE, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI -110070.

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.1189/2008-SM(Br)

(Arising out of order in appeal No.186/CE/Appl/Ldh/08 dated 4.3.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

For approval and Signature:

Hon'ble Mr. Ashok Jindal, Judicial Member

1.	Whether Press Reports 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 ?	

CCE, Ludhiana　　Appellant

Vs

M/s Prime Industries Ltd　　Respondent

Appeared for Appellant : Shri S.K. Bhatnagar, DR
Appeared for Respondent : Shri Bipin Garg, Advocate

Date of Hearing:28.4.2010

Coram: **Hon'ble Mr.Ashok Jindal, Judicial Member**

Final Order No. 576 /2010 SM(Br)

Per Ashok Jindal:

This appeal has been filed by the Revenue against the impugned order wherein the Commissioner (Appeals) after observing that the demand/clandestine removal is based upon the statements of the persons who were not allowed to be cross examined and set aside the order in original.

2. Brief facts of the case are that on scrutiny of the records of respondents, it was observed that the respondent has availed Cenvat credit of duty paid on different kinds of refined oils and vanaspati claimed to be used in the manufacture of Vanaspati. On investigation, it was found that in some of the invoices, where the vehicle number was mentioned, the transporter had stated that they have not transported any goods to the respondent and in some cases, the vehicle numbers mentioned in the invoices were found to be non-existent vehicle.

3. A show cause notice was issued. Demand alongwith interest and penalty was confirmed against the same. The appellant filed appeal before the lower appellate authority who set side the demand, interest and penalty. Against the same, the Revenue is before me.

4. Learned DR appearing on behalf of the Revenue submitted that it is a case of clearly availing of wrong cenvat credit as the respondent has never received the goods and the vehicle numbers which were mentioned in the invoices were found to be non-existent. He also submitted that in the present case, the demand is based on the statement of transporters who have admitted that they have not transported the goods to the factory of the respondents. Hence the Revenue is having a strong case and the Commissioner (Appeals) has not considered that aspect and hence the impugned order is liable to be set aside.

5. On the other hand, learned Advocate appearing on behalf of the respondent submitted that in this case, the demands are based on the statements of transporters and the respondents asked for the cross examination of the said transporters which was denied. Hence the principles of natural justice was violated and the Commissioner (Appeals) has considered the same and dropped the demand against the respondents. Hence the impugned order should be sustained.

6. Heard both sides.

7. On careful examination of the facts and circumstances of the case, I find that in this case, the respondent has asked in reply to the show cause notice for cross-examination of the transporter as the demand has been confirmed on the basis of statements of these transporters. In order in original, the Assistant Commissioner has recorded that a request was made by the appellants for cross examination of the witnesses at the time of personal hearing and in reply also. But his request for cross examination of witnesses was rejected as Shri Naresh Garg, Advocate agreed not to take up the issue of cross examination of witnesses. The recording of personal hearing and the finding of the Assistant Commissioner are contrary to each other. It is fact that the respondent was denied the cross examination of the persons whose statements are sole basis of confirmation of demand. The Commissioner (Appeals) has rightly held in his order that no cross examination was allowed of the persons whose statements are the sole basis of the Department. To arrive at the

decision, the Commissioner (Appeals) has relied on certain case laws. I find that the respondents were not given any opportunity for cross examination of the persons whose statements were relied and the demand was confirmed. In the facts and circumstances of this case, the denial of cross examination amounts to violation of principles of natural justice and it is the case that this demand has been raised on the basis of statements of the transporters and no independent corroborative evidence has been brought on record to confirm the demand. In absence of any independent corroborative evidence, denial of cross examination amounts to violation of principles of natural justice. Accordingly, I do not find any infirmity in the impugned order. The same is upheld. The appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(Ashok Jindal)
Judicial Member

MPS*