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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

Date 06/01/2010

Appeal No. E/250 /2008 – SM[BR]

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

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002 Appellant
Vs
C.C.E. DELHI I Respondent

M/S CONCORD INDUSTRIES

I am directed to transmit herewith a certified copy of **Final order No.** 19 / 2010 –SM[BR] dated 23.12.2009 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 CONCORD INDUSTRIES
KHASRA NO. 137/6, SANT NAGAR, DELHI.
2. Adv. / Consult
NONE;-------------

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 Suncitv. 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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 23.12.2009

Excise Appeal No. 250 of 2008-SM

[Arising out of order in Appeal No. 120-121/CE/DLH/2007 dated 16.11.2007 passed by the Commissioner (Appeals) Central Excise, Delhi-I].

For approval and signature:

Hon'ble Shri 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 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, Delhi-I Appellants

Vs.

M/s Concord Industries Respondents

Appearance:

Appeared for the Appellants - Shri Sansar Chand, DR

Appeared for the Respondents - None

Coram: Hon'ble Shri Rakesh Kumar, Member (Technical)

final Oral Order 19/2010 SM(BR)

Per: Rakesh Kumar:

This is an appeal filed by the Revenue against the order in Appeal No. 120-121/CE/DLH/2007 dated 16.11.2007 passed by the Commissioner (Appeals) Central Excise, Delhi by which the Commissioner (Appeals) set aside the duty demand confirmed and penalty imposed on the appellants by the Assistant Commissioner vide order in original No.40/05-06 dated 31.1.2006. The facts leading to this appeal by the Revenue ~~and~~ are that the office of Delhi-I Commissioner conducted investigation against M/s Satvik Industries, Mayapuri, Delhi. During the course of investigation Shri Rajesh Jain, Director of M/s Satvik Industries disclosed that they have never received raw material but only received invoices and similarly they have not manufactured or sold any goods and only sent the invoices without any goods to the customers, for which he was charging 2.5% commission. On the basis of the invoices issued by him, the customers used to take modvat credit; and that he used to receive payment by cheque against such invoices, but subsequently, he used to return the money in cash to the customer after deducting his commission. From the statement of Sh. Rajesh Jain it was clear that his unit M/s Satvik Industries had not sold any material but had issued only the invoices enabling his customers to take modvat credit for which he was charging commission. It was subsequently found that the respondent had purchased some material under certain invoices issued by M/s Satvik Industries and had taken cenvat credit amounting to Rs. 95856/-. The invoices mentioned the vehicle No. DL9CB1541, DL9CB0981 and DL3CN2569 in which the material covered under those invoices were claimed to have been dispatched. But on enquiry it was found that these registration numbers are of Maruti van and Maruti car which were registered in the name of Shri Rajesh Jain or his company and these vehicles were not capable for transporting the material covered under those invoices. It is on this basis that enquiry was made against the respondent company in course of which the statement of Sh. Sushil Kumar Gupta, Partner of the respondent company was recorded and he could not given any explanation as to how the material more than 526 kgs. could have been transported in the vehicles ~~which~~ like Maruti Van and Maruti Car. After issue of show cause notice, the matter was adjudicated by the Assistant Commissioner vide order-in-original No. 50/05-06 dated 6.2.2006 by which the Assistant Commissioner confirmed the total cenvat credit demand of Rs.95856/- alongwith interest and imposed penalty of equal amount on Shri Sushil Gupta, Partner of the appellant's company. On appeal, the Commissioner (Appeals), vide the impugned order-in-appeal set aside the Assistant Commissioner's order on the ground that the entire case of the Department is based on the statement of the Partner of M/s Satvik Industries, which had been recorded behind the back of the appellant and no opportunity of cross-examination was given. The Commissioner (Appeals) also held that the cenvat credit demand is time barred as longer limitation period under proviso to Section 11A(1) is not available to the Department as there was no mis-statement, suppression of facts or fraud on the part of the respondent. Department has come in appeal against this order of CCE (Appeals).

2. None appeared for the respondent, though a notice regarding hearing of this matter today had been sent to them.

3. Heard the learned DR Sh. Sansar Chand who pleaded that from statement of Sh. Rajesh Jain, Director of M/s Satvik Industries, it is clear that M/s Satvik Industries had never sent any material to there customers and

had only sent invoices for which they were charging the commission, that as per the statement of Sh. Rajesh Jain, though the payment was received from M/s Satvik Industries from their customer by cheque, they were subsequently returning the money to them in cash after deducting the commission, that the vehicles in which the goods supplied by M/s Satvik Industries are claimed to have been transported are small cars which are not capable of transporting the material covered under the invoices which is 500 to 600 Kg, that the Commissioner (Appeals) has not gone into the merits of the case and has not given any finding on merit and without giving any finding on merit, he has set aside the demand as time barred and that Commissioner (Appeals) has simply relied upon the claim of the respondent that they have received the material from M/s Satvik Industries under the cover of the invoices and the payments have been made by them by cheque, without taking into account the statement of Sh. Rajesh Jain, wherein he admitted that though M/s Satvik Industries were receiving payment by cheque, they were returning the money in cash after deducting their commission and M/s Satvik Industries has only sent invoices to their customer without dispatching any goods. Sh. Sansar Chand also submitted that Shri Rajesh Jain has not retracted his statement. In view of this he pleaded that the Tribunal's final order No. A/1167-1179/02 dated 29.11.2002 as the order in case of R.S. Industries vs. CCE, Delhi-I in the case of CCE, Calcutta-II vs. Lal Baba Industrial Corporation reported in 2005 (71) RLT 672 relied upon by the CCE (Appeals) and not applicable to the facts of this case. Sh. Sansar Chand, DR also pleaded that the fact that the respondent had taken cenvat credit on the basis of purchased invoices and that the respondent's transactions of purchase of the goods from M/s Satvik Industries were bogus, came to the notice only in the course of investigation and thus this case involves fraud and hence CCE(Appeals) finding that longer period of limitation is not applicable, is totally wrong.

4. I have carefully considered the submissions of the learned DR. While the respondent claim that they have purchased the material under the cover of invoices on the basis of which the cenvat credit amounting to Rs. 95856/- had been taken and that the payment for the goods purchased had been made to M/s Satvik Industries by cheque, Sh. Rajesh Jain, Director of M/s Satvik Industries in his statement dated 18.2.2003 has clearly stated that the sale transactions were bogus and they were neither manufacturing any goods nor selling any goods, that they were simply issuing the invoices to customers without dispatching any goods and that though they were receiving the payment from customers by cheque, the amount was being returned ~~the~~ by cheque after deducting 2.5% as commission and that the vehicles in which dispatch of the material was shown were only small cars not capable of carrying the goods covered under those invoices. I find that the Commissioner (Appeals) has not considered the statement of Sh. Rajesh Jain and in fact there is no finding of the Commissioner (Appeals) on merit, that is, on point as to whether the allegation of taking cenvat credit on the basis of bogus invoices without receiving any goods, is correct or otherwise. I also find that the Commissioner (Appeals) has not considered the judgement of the Tribunal in the case of Ranjeev alloys vs. CCE, Chandigarh reported in 2009 (236) ELT 124 (Tri. Del.) wherein it was held that when a manufacturer takes credit on the basis of invoices which mention certain vehicle no., which on enquiry have been found to be bogus, the burden of proving that the material cover under those invoices, has actually been received, would be on the assessee. In this case when the supplier himself

admits that they have not dispatched any material and had sent only the invoices and have also gone extent of admitting thought the payments were being received by cheque, after encashment of cheque, the amount was having returned in cash after deducting the commission and this statement of Director of the supplier company, has not been retracted, the burden of proving that the goods had been received by the respondent would be on them, more so, where the vehicle no. mentioned in the invoices turn out to be of the small car which are not capable of transporting the material covered under those invoices. In view of this, the impugned order is not sustainable and the same is set aside. The matter is remanded to the Commissioner (Appeals) for denovo adjudication in the light of the judgement of the Tribunal in the case of Ranjeev Alloys (supra). The Commissioner (Appeals) is also directed to give his clear finding on the merits of the case. The Revenue's appeal is accordingly allowed.

(Rakesh Kumar)
Member (Technical)

/Pant/