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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/683 /2008 -SM[BR] Date 27/01/2010

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

C.C.E. DELHI IV Appellant

Vs

M/S SDL AUTO PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 115 / 2010 -SM[BR] dated 19.1.2010 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 SDL AUTO PVT. LTD.
   44TH MILE STONE,
   DELHI MATHURA ROAD,
   VILLAGE SIKRI, FARIDABAD.

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 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.683 of 2008-SM Branch

[Arising out of Order-in-Appeal No.149 & 150/CE/Appl/DLH-IV/2007 dated 17.01.2008 of the Commissioner of Central Excise (Appeals), New Delhi]

Date of Hearing/ Decision:19.01.2010

For approval and signature:

Mr. M. Veeraiyan, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

Commissioner of Central Excise ...Appellants
(Rep. by Shri S.K. Bhaskar, SDR)

Vs.

M/s. SDL Auto (P) Ltd. ...Respondent
(Rep. by None.)

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**

Final Order No..115/2010 SM BR/Dated:19.01.2010

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner of Central Excise (Appeals) No.149 & 150/CE/Appl/DLH-IV/2007 dated 17.01.2008.

2. None appears for the respondent. However, written submissions dated 11.01.2010 have been filed and the same have been taken into account. Heard the ld. DR.

3. The relevant facts, in brief, are that the respondents received materials from M/s. Metal Trading Company, a registered dealer, who claims to have purchased the goods from M/s. Gautam Steel Traders, another registered dealer. The respondents have taken credit of duty on the basis of invoices issued by M/s. Metal Trading Company. The dispute relates to whether M/s. Metal Trading Company can be treated as the second stage dealer or not. The Original Authority held that the goods manufactured by M/s. Swastika Pipes Ltd., Rohtak has been sold to M/s. Rameshwar Das Devidayal (P) Ltd. and they are the first stage dealers and M/s. Gautam Steel Traders, at the most, can be considered as second stage dealer and, they in turn sold the goods to M/s. Metal Trading Company. It was thus held by the Original Authority that on the basis of sale invoices issued by M/s. Metal Trading Company, the respondent was not eligible to take credit. Accordingly, the Original Authority disallowed credit of Rs.5,109/- and ordered for recovery of the same along with interest; she imposed penalty of Rs.10,000/- each on M/s. S.D.L.Auto Pvt. Ltd. (the present respondent) and M/s. Metal Trading Company and M/s. Gautam Steel Traders. On appeal by M/s. S.D.L. Auto Pvt. Ltd. and M/s. Gautam

Steel Traders [(it appears that M/s. Metal Trading Company has not filed an appeal before the Commissioner (Appeals)], the Commissioner (Appeals) sustained the penalty on M/s. Gautam Steel Traders but set aside both the demand of duty and the penalty imposed on M/s. S.D.L. Auto Pvt. Ltd. on the ground that there was no knowledge on the part of M/s. S.D.L. Auto Pvt. Ltd. that invoices issued by M/s. Metal Trading Company was not the valid documents for the purpose of taking credit.

4. Ld. DR submits that the manufacturer of the impugned inputs was clearly M/s. Swastika Pipe Ltd; they have issued invoices to one, M/s. Rameshwar Das Devi Dayal (Pvt.) Ltd. as the buyer; M/s. Gautam Steel Traders were shown only as consignee of the goods. In other words, M/s. Gautam Steel Traders could have only purchased from M/s. Rameshwar Das Devi Dayal i.e. from a dealer and not directly from the manufacturer. Inasmuch as they have purchased from a dealer, these inputs M/s. Gautam Steel Traders could not be considered as first stage dealer in terms of Rule (2ij) of Cenvat Credit Rules, 2004. Once M/s. Gautam Steel Traders could not treated as first stage dealer, the question of treating M/s. Metal Trading Company as second stage dealer does not arise and, therefore, the documents based on which the respondents have taken the credit are not valid for the purpose of taking the credit. Therefore, the order of the Commissioner

(Appeals) insofar as the same relates to M/s. S.D.L. Auto Pvt. Ltd. deserves to be set aside and the order of the Original Authority deserves to be restored.

5. On behalf of the respondents, in their written submissions, it is claimed that M/s. Rameshwar Das Devi Dayal only acted as an agent of manufacturer for the sake of payment security. They cannot be treated as dealer as the possession was never transferred to them and the transfer of possession is a must for treating the transaction as a sale.

6. I have carefully considered the submissions and perused the records. Undisputedly, the manufacturer of the impugned inputs is M/s. Swastika Pipes Ltd., who raised the sale invoices on M/s. Rameshwar Das Devi Dayal. Therefore, the latter became buyer of the impugned inputs. The consignee, M/s. Gautam Steel Traders mentioned in the invoices issued to M/s. Rameshwar Das Devi Dayal cannot be treated as a buyer from the manufacturer directly. M/s. Gautam Steel Traders could have purchased the impugned inputs only from M/s. Rameshwar Das Devi Dayal. It is not clear whether M/s. Rameshwar Das Devi Dayal is a registered dealer in terms of Central Excise Rules, 2002 enabling them to act as a first stage dealer for the purpose of passing on the credit. Even if they were registered as first stage dealer the status of M/s. Gautam Steel Traders becomes that of

the second stage dealer insofar as the present transactions are involved.

6.2 In Cenvat Scheme, normally the indigenous inputs are required to be purchased from the manufacturer and credit of duty paid by the said manufacturer are permitted to be taken as Cenvat credit by the recipient of the inputs. Considering that the dealers are intermediary, they are permitted to be registered for the purpose of passing on the credit of duty paid by the manufacturer. As a safeguard, there is a restriction in the number of the dealers in-between the manufacturer and the recipient of the inputs, who actually uses the inputs and takes a credit towards payment of duty on the final products. This statutory condition cannot be relaxed by introducing one more person as a dealer. In the present case, the statuts of M/s. Gautam Steel Traders is that of a buyer of goods from M/s. Rameshwar Das Devi Dayal, whose status, as to whether they are registered dealer or not, is not clear. M/s. Gautam Steel Traders have not purchased the goods directly from the manufacturer and, therefore, they cannot be treated as first stage dealer and, therefore, the invoices issued by them are not valid to pass on the credit of duty paid by the manufacturer. Since the invoices issued, for these transactions, by M/s. Gautam Steel Traders is not valid, they and consequently the second stage dealer namely M/s. Metal Trading Company has no right to pass on the credit in respect of these consignments. Therefore, the invoices issued by M/s. Metal Trading Company cannot be held valid for the purpose of taking credit and, therefore, the order of the Original Authority in denying the credit and order for recovery of the same along with interest is justified. However, the penalty on M/s. S.D.L. Auto Pvt. Cannot be justified as there is no evidence that they knew about the irregular passing of the credit by M/s. Gautam Steel Traders to M/s. Metal Trading Company, who in turn passed on the credit to the respondents.

7. Therefore, the order of the Commissioner (Appeals) relating to M/s. S.D.L. Auto (Pvt.) Ltd. cannot be sustained. Therefore, the order of the Commissioner (Appeals) is set aside and the order of the Original Authority is restored insofar as the same relates to M/s. S.D.L. Auto (Pvt.) Ltd. and while restoring the order of the Original Authority, the penalty imposed on M/s. S.D.L. Auto (Pvt.) Ltd. is set aside.

8. The appeal is disposed of in the above terms.

Order dictated & pronounced in open court on 19.1.2010.

(M. Veeraiyan)
Member (Technical)

Ckp.