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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/2901 – 2903 / 2007 –SM[BR] Date 18/02/2010

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

To :
M/S JAI VEER CEMENT PVT. LTD.
VILL-MARKUNDI, ROBERTSGANJ, SONEBHADRA

M/S JAI VEER CEMENT PVT. LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 228 – 230 / 2010 –SM[BR] dated 15.2.2010 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 ALLAHABAD
   38,M.G.MARG, CIVIL LINES, ALLAHABAD
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
3. SHRI RAJEEV SHARMA, DIRECTOR
   M/S JAIVEER CEMENT VILL-MARKUNDI, ROBERTSGANJ,
   SONEBHADRA
3. SHRI RAVINDER SHARMA, DIRECTOR
   M/S JAIVEER CEMENT VILL-MARKUNDI, ROBERTSGANJ,
   SONEBHADRA

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal Nos. 2901-2903 /2007-SM(Br)

(Arising out of order in appeal No.141,142,143/CE/Alld/07 dated 28.6.07 passed by the Commissioner of Central Excise (Appeals), Allahabad)

1. M/s Jaiveer Cement — Appellant
2. Shri Rajeev Sharma
3. Shri Ravinder Sharma

Vs

CCE, Allahabad — Respondent

Appeared for Appellant : Shri Atul Gupta, Co. Secy
Appeared for Respondent : Shri S.N. Srivastava, SDR

Date of Hearing: 2.2.2010

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

Final Order No. 228-230 /2010 SM (Br)

Per D.N. Panda:

The Appellants being aggrieved by the order passed by the learned Commissioner (Appeals) in Appeal Case Nos.141,142, 143/CE/Alld/2007 dated 28.6.2007, have come in appeals challenging that the order passed has not considered the submissions of the appellants properly on both count of allegation. First count of allegation is relating to certain defects in numbering of the invoice and second allegation is relating to stock difference noticed from the records in respect of goods consigned to the Consignment Agent M/s Deep Chand Ram Chand Ram of Varanasi.

2. Learned A.R. Shri Gupta appearing on behalf of all the Appellants, submits that there was no malafide nor there was

discrepancy in entries in the numbering of invoices for which there shall be no demand on that account. On the second count, he argues that there was no appropriate stock taking done by Investigation at the level of consignment Agent. The documents were merely issued for the requirement of disclosure of stock position to bank for availing cash credit loan. In absence of discrepancy in stock, demand shall also not sustain. The Directors were not contributory to the allegation. They should not suffer.

3. Learned DR supports the order of the authorities below and points out that the learned Commissioner has properly examained the adjudication finding for which there should not be any interference.

4. Heard both sides and perused the record.

5. The allegations are on the aforesaid two counts. There was no cogent reason brought to record in respect of numbering of invoices whether caused prejudice to the interest of Revenue. In absence of cogent evidence to show that the invoices were issued malafidely causing any stock discrepancy by such invoice or clandestine removal, there cannot be any demand on that count.

6. So far as the stock discrepancy at the end of consignment agent is concerned, that was as a result of dubious practice. In the order, the learned Commissioner has brought out as follows:-

During the course of further investigation, it was revealed that the appellant No.1 had consigned cement to M/s Deep Chand Ram Chand Ram, Varanasi. As per the delivery challans for the period August, 2000 to March, 2001, a total quantity of 1228.5MT cement had been consigned to the said party by the appellants, however, as per the Cement Excise invoices available with the *appellants, a total quantity of only 556.5 MT cement was shown to have been consigned to the party at Varanasi. Thus there was a difference of 672 MT. Again in the month of April, 2002, challans revealed dispatch of 91 MT cement to said party, however, invoices were issued for only 76 MT, thus a difference of 15 MT."*

7. The allegation was examined by the authorities below and contentions of the appellants were dealt at page 8 of the appellate order. Learned Commissioner at page 9 of the appellate order has examined the issue. He has come to the conclusion that the discrepancy in the invoice issued to the consignment has proved the motive of the appellant. That has also been corroborated by issue of defective invoices and challans. Those were full proof of ill intent ~~interest~~ to cause prejudice to Revenue. The challans issued and invoices issued for dispatch of goods to consignment agent differed with each other.

8. Since entire demand of duty is said to have been paid duly and as agreed by both sides, penalty in Appeal No. 2901/2007 of Jaiveer Cement is restricted to 25% of duty demand and appeal is partly allowed confirming duty of Rs.1,49,310/-.

9. Appeal Nos. 2902 and 2903/2007 in case of Rajeev Sharma and Ravindra Sharma are allowed in absence of no reason patent from record attributing their role to allegation.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

MPS*