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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/1919/2010 – SM[BR] & E/ STAY /1864/2010-SM[BR] Date 08/09/2010

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

To :
RSWM LTD

MANDAPAM, BHILWARA(RAJ)

RSWM LTD Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 956/2010-SM[BR]&S/397/2010 dated 31.8.2010 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. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASNT 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 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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Date of Hearing/ Decision:30.08.2010

E/Stay/1864 of 2010-SM (BR) in
Appeal No.1919 of 2010-SM (BR)

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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1. Whether Press Reporters may be allowed to see 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? :

(Arising out of Order-in-Appeal No.106(KKG)CE/JPR-II/2010 dated 09.03.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-I).

M/s. RSWM Ltd. Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance: Shri Bipin Garg, Advocate appeared for the appellants
Shri K.P.Singh, SDR represented the respondent/Deptt.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 956/2010 SM(BR)/Dated:30.08.2010
S-397/2010 SM(BR)

Per Ashok Jindal:

The appellant has filed appeal along with stay application. The facts of the case are that the appellants were denied Cenvat Credit taken on services availed by them on the strength of debit notes on which service tax has been paid and the other ground is that they have not produced any invoice and taken the credit without invoice.

2. Ld. Advocate for the appellants submitted that as per Rule 9(1) and Rule 4 A of the Service Tax Rules, 2002 to avail Cenvat Credit, the documents contain serial numbers, name, address and the registration number of service provider, name and address of the person receiving taxable service, description, classification and value of the taxable services provided or to be provided and service tax payable thereon. The debit notes against which the appellant has availed the credit of Rs.64,450/- contains all the requirements laid down in the above said rules. The credit on this ground cannot be denied. Secondly, he submitted that the denial of Cenvat Credit of Rs.46,174/- on the ground that no document has been produced and the credit has been taken without any document is not correct. He submitted that to support the availment of Cenvat Credit of Rs.46,174/- , the appellant has submitted the photocopy of the invoices to the Range Superintendent in the month of March, 2007.

He also admitted that although this ground was not taken before the adjudicating authority, but they have placed on record before the Commissioner (Appeals) that they have produced the invoices. Against which, they have availed the Cenvat Credit of Rs.46,174/-. Finally, he submitted that the impugned order also fails on limitation. As it is alleged in the show cause notice that there is a wilful suppression by the appellant with intent to avail wrong Cenvat Credit but in the adjudication order, the adjudicating authority has not given any finding about the wilful suppression or intention of the appellant to evade payment of duty. Hence, the extended period is also not invocable.

3. Heard.

4. Considering the submissions made by both the ld. Advocate, I find that the lower authorities has not considered the submissions made by the appellant. Accordingly, after waiving the condition of pre-deposit, I take up the appeal also for final disposal as agreed by both the sides.

5. Considering the submissions of the ld. Advocate that the debit note is containing all the requirements as prescribed in the law, and mere saying that it is a debit note, credit cannot be denied. Further, the credit taken by them on the strength of invoices, which was not considered by the lower authorities, I find that the matter needs further investigation. Hence, I remand back the matter to the Original Adjudicating Authority to examine the allegation afresh and pass necessary order after

considering the submissions made by the ld. Advocate as well as on merits and limitation after giving reasonable opportunity to the appellant to present their case. With these observations, the matter is remanded back to the Original Adjudicating Authority. The stay application is also disposed of in the above terms.

(Ashok Jindal)
Member (Judicial)

Ckp.