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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1127,1391,1157,1158/2009 - EX[DB] WITH E/S/1106,1434,1140,1141/2009-EX

Date 07/04/2010

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

To :
M/S ISHWAR STEELS ,
18, NAVYUG MARKET, GHAZIABAD, (U.P.)

M/S ISHWAR STEELS , Appellant

Vs

C.C.E. NOIDA STAY ORDER NO.244-247/2010-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No. 157-160/ 2010 EX[DB]** dated 12-3-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult SH. RAVI RAGHAVAN, ADV.,
B-6/10, S. J. ENCLAVE,
N. DELHI -29
3 C.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
18, HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

19. SHRI INDER JEET ARORA, C/O M/S ISHWAR STEELS,
18, NAVYUG MARKET, GHAZIABAD, (U.P.)
20. M/S. D.R. AUTO INDUSTRIES,
E-43, SECTOR-8, NOIDA DISTT. G.B.N.
21. SHRI KRISHAN KUMAR DHINGRA,

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

DATE OF HEARING : 12.03.2010
DATE OF DECISION : 12.03.2010

(i) Excise Appeal No. 1127 of 2009 with
Excise Stay Application No. 1106 of 2009

M/s Ishwar Steels .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

AND

(ii) Excise Appeal No. 1391 of 2009 with
Excise Stay Application No. 1434 of 2009

Sh. Inderjeet Aroa .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

AND

(iii) Excise Appeal No. 1157 of 2009 with
Excise Stay Application No. 1140 of 2009

M/s D.R. Auto Industries .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

AND

(iv) Excise Appeal No. 1158 of 2009 with
Excise Stay Application No. 1141 of 2009

Sh. Krishan Kumar Dhingra .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. S.K. GAULE, MEMBER (TECHNICAL)

stay **ORAL ORDER NOS** 244 To 247/2010

PER JUSTICE R.M.S. KHANDEPARKAR :

Having heard the matter, we find it appropriate to dispose of the appeals themselves and, therefore, these ~~appeals~~ applications are disposed of while directing the Registry to place the corresponding appeals for hearing forthwith. Applications stand disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(S.K. GAULE)
MEMBER (TECHNICAL)

Golay

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

DATE OF HEARING : 12.03.2010
DATE OF DECISION : 12.03.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. S.K. GAULE, 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 ?	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	No
3.	Whether their Lordships wish to see the fair copy of the Order ?	
4.	Whether Order is to be circulated to the Departmental Authorities?	

(i) Excise Appeal No. 1127 of 2009 with
Excise Stay Application No. 1106 of 2009

(Arising out of Order-in-Order No. 05/Commr/Noida/2009 dated 28.01.2009 passed by the Commissioner, Central Excise, Noida).

M/s Ishwar Steels .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

AND

(ii) Excise Appeal No. 1391 of 2009 with
Excise Stay Application No. 1434 of 2009

Sh. Inderjeet Aroa .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

AND

(iii) Excise Appeal No. 1157 of 2009 with
Excise Stay Application No. 1140 of 2009

M/s D.R. Auto Industries .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

AND

(iv) Excise Appeal No. 1158 of 2009 with
Excise Stay Application No. 1141 of 2009

Sh. Krishan Kumar Dhingra .... **Appellants**
(Rep by Sh. Ravi Raghavan, Adv.)

VERSUS

CCE, Noida .... **Respondent**
(Rep. by Sh. Anil Khanna, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. S.K. GAULE, MEMBER (TECHNICAL)

Final **ORAL ORDER NOS** 157 To 160/2010

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard. Since common question of law and facts arises in all these appeals, they are heard together and are being disposed of by this common order.

2. The appellants challenge the order dated 28.01.2009 passed by the Commissioner, Noida. By the impugned order the learned Commissioner has confirmed the demand of Cenvat Credit of Rs. 1,00,03,601/- against the appellants, M/s D.R. Auto Industries, in terms of the provisions of Rule 12 of Cenvat Credit Rules, 2002 and Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11-A of the Central Excise Act, 1944 having wrongly availed the same on the

strength of invoices issued by M/s Ishwar Steels, Ghaziabad, and has confirmed demand of interest on the said amount. The impugned order further confirms the demand of excise duty to the tune of Rs. 1,45,931/- from the appellants, M/s D.R. Auto, in relation to the goods found short in the factory and has imposed penalty of Rs. 1,01,49,532/- against the said firm. The learned Commissioner has also imposed penalty of Rs.80,00,000/- against Shri Krishan Kumar Dhingra, Partner of the said firm, and penalty of Rs. 1,00,03,601/- upon M/s Ishwar Steels, Ghaziabad, as also penalty of Rs. 75,00,000/- upon Shri Inder Arora, Partner of M/s Ishwar Steels.

3. Amongst various grounds on which the impugned order is sought to be challenged, two of the grounds are that - (i) the respondent failed to comply with the basic principles of natural justice inasmuch as no sufficient opportunity was given to the appellants to file their reply to the show cause notice and the appellants were not furnished with the copies of any relied upon documents which were specifically asked for, and (ii) the findings arrived at about non-receipt of the inputs in the factory of the appellants are not based on any cogent and material evidence, but the findings in that regard are merely on assumptions, and assuming that there is any evidence as such on record, it can at the most support the claim of the Department to the extent of Rs. 41 lacs and odd.

4. Taking us through the records and the impugned order, the learned Advocate for the appellants submitted that, undisputedly, the appellants had been repeatedly asking for the copies of various documents since February, 2008 onwards and till the date of disposal of the matter by the learned Commissioner, the appellants were not furnished with copies of documents. Besides, the last lot of documents which were supplied to the appellants was on 24th December, 2008 and the matter was disposed of by the final order passed on 28th January,

2009. In between the said period, the appellants had specifically filed an application dated 19th January, 2009 seeking time to file the reply to the show cause notice which was wrongly assumed as the defence of the appellants and without giving any opportunity to the appellants to produce the evidence in support of their contention, the matter was disposed of on 28th January, 2009. Our attention was specifically drawn to para nos. 29.3 and 29.4 as also to para nos. 30.8 and 30.9 of the impugned order while submitting that the findings arrived at by the learned Commissioner, apparently, disclose admission on the part of the Department that the Department could not furnish copies of all the documents till 24th December, 2008 even though the show cause notice was served upon the appellants in January, 2008. It also discloses that the Department in the course of the investigation had recorded certain statements of the transporters, however, copies thereof were not furnished in spite of specific demand thereof by the appellants till the disposal of the appeals on the ground that they were not relevant and material for the decision in the matter. It is the contention on behalf of the appellants that those submissions clearly support the case of the appellants and the fact that the goods were actually supplied to the appellants in their factory.

5. Placing on record a chart of the 31 invoices, the learned Advocate for the appellants submitted that, without admitting but assuming that the appellants have not produced any evidence to substantiate any allegation in relation to such 31 invoices, the duty liability of the appellants would at the most be to the extent of Rs. 41 lacs and odd and not beyond it. He, however, submitted that even in that regard, there was no proper opportunity given to the appellants to place on record their defence.

6. Drawing our attention to the copy of the letter which was filed on 19th January, 2009, the learned Advocate submitted that it, apparently, discloses that request for extension of time for filing the reply was made and para 5 thereof merely refers to the *prima facie* view expressed in the said letter and it could not have been termed as the complete defence of the assessee.

7. Further drawing our attention to the copies of the statements of Shri Mahesh Kumar son of Shri Mukand Lal and Shri Lalit Kumar son of Shri Ram Saran Kumar recorded by the Department, the learned Advocate submitted that, bare reading of both these statements would lend support to the case of the appellants. However, the learned Commissioner has ignored the documents while considering the matter as also has not furnished the copies of various such statements which were recorded by the Department in the course of the investigation.

8. The learned DR, on the other hand, submitted that, the learned Commissioner after taking note of the fact that the matter was sought to be delayed by the assessee since January, 2008 and after giving sufficient opportunity to the assessee to put forth their reply and also taking note of the fact that they had failed to respond to the show cause notice in detail till the disposal of the matter, passed the impugned order on whatever materials available on record, and considering the same there is no cause for interference in the impugned order. He further submitted that, as regards the copies of the documents which were not furnished to the appellants, there is a clear finding by the Commissioner that the same were not relevant for the decision in the matter and, therefore, they have no bearing upon the decision in the case and no fault can be found with the Department for not furnishing the copies thereof to the appellants.

9. Perusal of the impugned order itself discloses, as rightly pointed out by the learned advocate for the appellants, that the copies of the documents, even some of those which were relied upon, were not furnished to the appellants till 23rd December, 2008 and they were made available to the appellants only on 24th December, 2008 even though the show cause notice was served upon the appellants as long back in January, 2008. The impugned order also discloses reference to various letters written by the appellants to the Department asking for the copies of the documents. This apparently shows that the appellants on their part were making every effort to get the copies of the documents to enable them to place on record their defence. In fact, the letter which was filed with the Department on 19.01.2009 discloses various difficulties which were faced by the appellants in preparing the reply in the absence of the copies of the relevant documents which were asked for by the appellants and which were made available to them only on 24th December, 2008. Undoubtedly, in the application the appellants had asked for three months' time to file the reply to the show cause notice. It was in the discretion of the Commissioner to grant an appropriate time. However, the Commissioner could not have treated the said letter to be the defence of the appellants. When the appellants themselves have filed the said letter only for the purpose of seeking time to place their defence on record, the findings of the learned Commissioner that the letter dated 19th January, 2009 to be the defence is totally perverse and cannot be sustained.

10. As regards the unrelated documents, undisputedly, those documents pertain to the statements of the transporters recorded by the Department in the course of the investigation in relation to the matter in issue. Whether the statements support the case of the Department or the case of the assessee is totally immaterial at this stage. Once those documents were recorded in the course of the investigation and relate to the matter in issue, and once copies thereof were asked for by the

assessee, it was highly improper on the part of the adjudicating authority to reject the copies thereof to the assessee without any justification. This clearly amounts to denial of principles of natural justice. Delay, if any, was not on account of the appellants.

11. In the facts and circumstances of the case, therefore, the findings that the assessee failed to produce evidence to negate the allegations against the assessee cannot be sustained. In fact, there was no fair opportunity given to the assessee to put forth its defence and then to produce the necessary material in support of its defence.

12. Being so, the impugned order for the reasons stated above cannot be sustained and is liable to be set aside and the matter remanded to the Commissioner to give an opportunity to the appellants to file the reply to the show cause notice and further to lead necessary evidence in the matter. Needless to say that the Department would also be entitled to lead the evidence if so required.

13. In the facts and circumstances, the appellants shall file its reply to the show cause notice on 26th April, 2010 and thereafter the matter shall proceed in accordance with the provisions of law before the learned Commissioner.

14. The appeals are accordingly allowed in the above terms while setting aside the impugned order. Considering the view that we are taking in the matter, it is not necessary to deal with the second ground of challenge in the matter, at this stage. Appeals stand disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(S/K. GAULE)
MEMBER (TECHNICAL)

Golay