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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/621 - 622 /2009 – SM[BR] Date 08/11/2010

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

To :
M/S TARSEN POLYFAB PVT. LTD.
H-16, SITE-IV, SURAJPUR INDUSTRIAL AREA,
KASNA ROAD, GREATER NOIDA.

M/S TARSEN POLYFAB PVT. LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No**.1157 – 1158 /2010-SM[BR] dated 21.10.2010 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult

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)

2. SHRI RAVI BANSAL, MANAGING DIRECTOR OF
M/S TARSEN POLYFAB PVT. LTD. H-16, SITE-IV, SURAJPUR
INDUSTRIAL AREA, KASNA ROAD, GREATER NOIDA.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 621 -622 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 144-CE/NOIDA/2008 dated 27.11.2008 passed by the Commissioner of Customs & Central Excise (Appeals I), NOIDA.]

For approval and signature:

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

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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? :

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1. M/s. Tarsen Polyfab Pvt. Ltd.
2. Shri Ravi Bansal

Appellants

Vs.

Commissioner of Central Excise
NOIDA

Respondent

Appearance: Shri Ravi Bansal, Director for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 21.10.2010

Final **ORAL ORDER NO. 1157- 1158/2010** SM (BR)

Per Ashok Jindal:

By the impugned order the demand of Rs.24,256/- was confirmed against the appellants along with penalties on both the appellants. The facts of the case are that on information that M/s. Hindustan Electronics issued invoices for the capital goods but they have not supplied any capital goods with the impugned invoices and the appellants had taken the credit on said fake invoices. Accordingly, the premises of the appellants was searched and during the course of investigation panchnama was drawn. The statement of appellant No. 2 was recorded. As per the statement on record, show cause notice was issued and demand was confirmed and penalty was imposed on both the appellants. Aggrieved with the same, the appellants are in appeal before the Tribunal.

2. Shri Ravi Bansal, Managing Director, appellant No. 2 appeared and submitted that as per panchnama, it is on record that the machines which are in question, which they procured against the duty paid invoices were available in their factory and they have procured these machines against proper duty paid invoices and availed 50% of the Cenvat Credit on duty paid on these machines. On persuasion of the departmental officers during the course of visit to their factory premises, they took the 50% of the credit and reversed the credit taken on the invoices against which they procured these machines. Infact, there is no allegation against the appellants that these machines were not available in their factory and they hadprocured

these machines from the open market or somewhere else without any invoices. In these circumstances, he prayed that the impugned order may be set aside and their appeal be allowed with consequential relief.

3. On the other hand, learned DR reiterated the impugned order.

4. Heard both sides. I have carefully examined the submissions made by both sides and the statement of the appellants during the course of investigation and the show cause notice also. There is no allegation against the appellants that the capital goods in question which were procured against the said invoices were not available in the factory of the appellants. Moreover, the department has not corroborated with any evidence from where these capital goods were procured, if they are not procured against the impugned invoices. The only allegation in this case that the supplier has done some 'ghapla' of central excise duty. In that case, if at all any demand that is to be is to be made against the supplier M/s. Hindustan Electronics. The appellants have taken due care while procuring capital goods. Hence, in the facts and circumstances of this case, the duty demand and penalties are not sustainable.

5. Accordingly, appeals are allowed with consequential relief.

(Ashok Jindal)
Member(Judicial)

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