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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/2497/2008 – SM[BR] Date 11/11/2010

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

To :
M/S STEEL SERVICES
149-137, IDC, HISAR ROAD, ROHTAK(HR)

M/S STEEL SERVICES Appellant

Vs

C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1222 / 2010-SM[BR] dated 7.10.2010 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. ROHTAK
   SCO NO,6 SECTOR 1, ROHTAK.
2. Adv. / Consult
   MR.R.K.JAIN & ASSOCIATES
   610, POADMA TOWER-1, RAJENDRA PLACE, N 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Date of Hearing/Decision:07.10.2010

Excise Appeal No.E/2497/08-SM

[Arising out of Order-in-Appeal No.174/ANS/RTK/2008 dated 12.8.08 passed by the Commissioner, Central Excise Gurgaon].

M/s. Steel Services ...Appellant

Vs.

CCE, Rohtak ... Respondent

Present for the Appellant :None
Present for the Respondent:Shri.R.K.Gupta, SDR.

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final **ORDER NO.** 1222/2010 SM (BR) **DATED:07.10.2010**

PER: D.N.PANDA

None present for the appellant nor there is any adjournment application, although today is second date of hearing, after issuing notices.

2. Record reveals from page No.55 & 56 of the appeal folder that there are deposit of Rs.5,442/- and Rs.69,768/- respectively. Probably for such deposit made on 23.11.2007 and 21.11.2007 respectively, ld. Commissioner heard the appeal.

3. The sum and substance of the appellate order is that the appellant without receiving the goods availed cenvat credit and

the goods said to have been transported by vehicle No. DL1G-2714 was not in existence. He had recorded such fact at page 4 of the appellate order. The finding of the ld. Appellate Authority to the above extent is reproduced for ready reference:-

> *"In the present case, the goods on which the appellant had taken the Cenvat credit had not been received by them physically in their premises and only invoice had been received by the appellant to avail Cenvat credit. As such the appellant has contravened the provisions of rule 3 & 4 of Cenvat Credit Rules, 2002 and appellant has suppressed the material fact from the department which is sufficient cause to invoke the extended period under Section 11A of Central Excise Act, 1944 in the present case. The ratio of judgements cited by the appellant are not applicable in the present case as in the present case it has been established that the appellant has clearly contravened the provisions of Central Excise Law by wrongly availing the Cenvat Credit on the basis of invoice only, without receiving the goods mentioned in the invoice. This gets well substantiated by the statement of Nand Kishore, Authorised Signatory of the party in his statement dt.09.12.2006 recorded under Section 14 of the Act, 1944 where under he stated that he has not seen the vehicle practically in the factory premises. From the above, I find that the goods were not loaded in the vehicle No.DL-IG-2714 and the goods were never received in the factory premises.*
>
> *Secondly, it was found that vehicle No.DL-IG-2714 stated to have transported goods from Faridabad to Rohtak was fictitious. Investigation was conducted*

from the office of Assistant Regional Transport Authority, Lakhimpur, Khiri. The District Transport Authorities vide their letter dated 08.11.2004 have stated that vehicle No.DL-IG-2714 was not in existence on the date of issuance of the invoice as the vehicle No.DL-IG-2714 had already been re-allotted another Registration No. UP 31D9731 on 09.11.2001 long before the issuance of invoice No.01 dated 22.04.2002."

4. Although the appellant was issued notice for causing appearance, there is failure by the appellant on 25.08.2010 and today.

5. When the appellate finding reproduced above does not give any scope to entertain the present appeal and the grounds of appeal of the appellant yields no scope to impeach the appellate order, it would not be proper to grant further adjournment but to dismiss the appeal, when the notice for hearing today was served on 13.9.2010 as per acknowledgement available on record.

In the result, appeal is dismissed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita