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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/2586/2008 – SM[BR] Date 16/11/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

M/S AMAN ISPAT UDYOG, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1237 /2010-SM[BR] dated 13.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S AMAN ISPAT UDYOG,
MOTIA KHAN, NEAR MATHAROO PHOTOSTATE, MANDI GOBINDGARH.
2. Adv. / Consult SHRI AJAY JAIN ADV.
1293 SECTOR-18-C, CHANDIGARH

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
NEW DELHI
Court No.IV

E/Appeal No. 2586/08-SM

(Arising out of order in appeal No.487/CE/CHD/08 dated 23.9.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

Date of Hearing: 13.10.2010

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

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?

CCE, Chandigarh — Appellants

Vs

M/s Aman Ispat Udyog — Respondent

Appeared for the Appellant: Shri R.K. Gupta, SDR
Appeared for the Respondent: Shri Ajay Jain, Advocate

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

Final ORDER 1237/2010 SM (BR)

Per Ashok Jindal:

The Revenue is in appeal against the dropping of penalties by the lower appellate authority against the respondent.

2. The facts of the case are that one M/s Friends Alloys Ltd (who is availing area based exemption) sent the goods to the respondents under a cover of invoice but during the investigation, the truck who was carrying the impugned goods, was not having the invoice. As the goods had to go to one M/s Mittul Steel Industries who is registered with the Central Excise Department, a case was made out against the respondent by the department that with an intention to evade duty, the goods have been received by them without Central Excise invoice. Accordingly, a penalty of Rs. 10,000/- was imposed by the adjudicating authority against the respondent. The said adjudication was challenged by the respondent before the Commissioner (Appeals) who set aside the penalty holding that the department has failed to prove the invoice issued is not genuine. Hence the goods are not dutiable goods. There is no demand against the main party. Aggrieved from the said findings, the Revenue is in appeal.

3. The learned DR reiterated ~~retired~~ the adjudication order and submitted that the respondent was involved in a case to deal with the goods which are not having the invoice number and investigation in their premises, is liable for penal action.

4. On the other hand, learned Advocate for the respondent submitted that the proceedings of penalty against the main party has already been dropped by this Tribunal vide order No. 895-896/2010-SM dated 4.8.2010 holding that the allegations has not been done in a proper manner, the respondent has to succeed because he has not faced the charges at the initial stage. Hence the appeal filed by the Revenue was rejected.

5. Heard both sides.

6. Considering the submissions made by both the sides, I find that in this case, it is admitted that the impugned goods are not liable to pay any duty. When there is no duty involved, the charge that the respondent is involved in the activity to evade payment of duty, cannot be sustained. There is no allegation against the respondent that they have cleared any goods or they are the manufacturer of any excisable goods. The Commissioner (Appeals) has rightly observed that an invoice was issued which the department failed to prove as not genuine. If the appellants had not issued any invoice further to M/s Mittul Steel Industries, there was a reason that the office of the appellants was closed due to ill health of its partner. Even, otherwise the appellants are not answerable to the department because they are not registered with the department and they do not deal in cenvatable inputs/goods and the goods for which they have been booked are exempted and do not involve any Central Excise duty. The allegations against the appellants are not sustainable and accordingly, the penalty is set aside. I do not find any infirmity with the same. Accordingly, I uphold the same. The appeal field by the Revenue is rejected.

(ASHOK JINDAL)
Judicial Member

MPS*