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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/525 - 526 / 2009 -SM[BR] Date 16/11/2010

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

To :
M/S LEADER VALVES LTD.
S-3 & S-4, INDUSTRIAL AREA, JALANDHAR.

[2] M/S ANNI ENTERPRISES
NEAR KALI MATA MANDIR, MITHA BAZZAR,JALANDHAR

M/S LEADER VALVES LTD. Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1258 – 1259 / 2010-SM[BR] dated 19.10.2010 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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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, COURT NO. III

Excise Appeal No. 525 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 07/CE/Appl/Jal/2009 dated 14.1.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh .]

Excise Appeal No. 526 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 14/CE/Appl/Jal/2009 dated 15.1.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Chandigarh .]

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? :

M/s. Leader Valves Ltd. Appellants
M/s. Annie Enterprises

Vs.

Commissioner of Central Excise Respondent
Jalandhar

Appearance: Shri Poojan Malhotra, Advocate for the Appellants
Shri Anil Khanna, SDR for the Respondent

Final

Date of Hearing/decision : 19.10.2010

ORAL ORDER NO. 1258-1259/2010 SM(BR)

Per Ashok Jindal:

The appellants have filed the appeals against the order of imposition of penalty on them under section 11AC of the Central Excise Act. 1944.

2. The brief facts of the case are that the on intelligence received by the Commissioner of Central Excise, Delhi that M/s. Ganpati Trade Link had been issuing fake cenvatable invoices to various manufacturers to avail inadmissible Cenvat credit and had issued fake cenvatable documents, the premises of appellant No. 2 M/s. Annie Enterprises was visited by the preventive staff. During the investigation M/s. Annie Enterprises admitted that they had purchased 9 consignments from M/s. Ganpati Trade Link and against these purchases, they have issued three cenvatable invoices to another appellant M/s. Leader Valves Ltd. The Cenvat credit wrongly availed by M/s. Annie Enterprises was reversed along with interest. A show cause notice was issued against both the appellants for appropriation of demand and imposition of penalty under section 11AC read with Rule 13 of Cenvat Credit Rules, 2002 and Rules 25 and 26 of Central Excise Rules, 2004 and same was confirmed against the appellants. Aggrieved from the said imposition of penalties, the appellants are in appeal before this Tribunal.

3. The learned advocate for the appellant M/s. Leader Valves Ltd. submitted that the appellants have availed the Cenvat credit on duty paid invoices along with goods and they are not aware that the invoices were

issued by M/s. Ganpati Trade Link. Infact, they have received the goods through M/s. Annie Enterprises on which duly they had discharged their duty liability and taken the credit in their Cenvat credit account. The payment of said goods were made through account payee cheques and goods were received by them against said invoice of registered dealer with relevant documents along with the goods.

4. In these circumstances, no charge of fraud, collusion can be made against the appellant . During the course of investigation, statements were also recorded and there is no charge against the appellant that they have not received the goods against the duty paid invoices. Hence, penalty on the appellant cannot be imposed.

5. With regard to M/s. Annie Enterprises, he submitted that the appellant was also not aware of the fact that M/s. Ganpati Trade Link issued fake invoices. Infact they received the goods against the invoices issued by M/s. Ganpati Trade Link and they have correctly issued the invoices to their buyers. As the appellants have already reversed the Cenvat credit availed by them without alleging used fraudulently, no penalty is being imposable on the appellants.

6. On the other hand, learned DR submitted that in this case, it is admitted the fact that M/s. Ganpati Trade Link has issued such invoices to M/s. Annie Enterprises and same has been admitted by Shri Rajeev Jain, proprietor of M/s. Annie Enterprises and on being pointed out by the department, they reversed the credit wrongly availed by them with interest. It is clear cut case of fraud, hence the appellants are liable for reversal of

credit alongwith interest. He also relied on the decision of the Supreme Court in the case of Commissioner of Customs vs. Candid Enterprises reported in [2001 (130) ELT 404 (SC)] wherein the Apex Court has held that in case of fraud, when it is proved by persons involved in that fraud, they are liable for penalty.

7. Heard both sides. On careful examination of the facts and submissions made by both the sides, I find that in this case, the appellants are not disputing reversal of credit along with interest. The appellants are only for waiver of penalties confirmed by the lower authorities.

8. With regard to penalty on the appellant M/s. Leader Valves Ltd., the appellant availed credit on duty paid invoices at the rate of goods indicated on it. In the show cause notice, it is not alleged against the appellant that they have not received the goods against those invoices. Infact these invoices were supported with the fact that the goods were received with transporters invoices also. And it has been admitted by another appellant M/s. Annie Enterprises that they have supplied the goods to M/s. Leader Valves Ltd. along with the duty paid invoices. In that situation, I hold that M/s. Leader Valves Ltd. has taken proper care while receiving the goods in their factory to avail the credit correctly by mentioning the documents which were given to them at the time of receipt of the goods. In that circumstances, no fraud collusion etc. can be levied by the department and hence penalty on M/s. Leader Valves Ltd. is not imposable in this case. Accordingly, the impugned order confirming the penalty on M/s. Leader Valves Ltd. is set aside.

9. In regard to penalty on M/s. Annie Enterprises, I find that it is admitted fact by the proprietor of M/s. Annie Enterprises Mr. Rajesh Kumar that they have received the invoices and they have not received the goods in that circumstances, they are liable to pay penalty equal to the duty. I have gone through the impugned records that no option has been given to the appellant to pay 25% of the duty confirmed as per proviso 1 and 2 of section 11AC of the Act. I, therefore, in the light of the decision of the Hon'ble High Court of Delhi in the case of K.P. Pouches Ltd. vs. Union of India reported in [2008 (228) ELT 31 (Del)] give an option to the appellant to pay 25% of duty confirmed as penalty within 30 days failing which the appellant shall pay 100% penalty as penalty confirmed. With these observations, appeals are disposed of.

(Ashok Jindal)
Member(Judicial)

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