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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/1447 – 1452 / 2008 –SM[BR] Date 03/08/2010

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

To :
M/S GAUTAM STEELS TRADERS
B-20, NEHRU GROUND,
N.I.T,
FARIDABAD-121001
M/S GAUTAM STEELS TRADERS

[2] M/S GAUTAM STEEL TRADERS
[3] M/S GAUTAM STEEL TRADERS
[4] M/S GAUTAM STEEL TRADERS
[5] M/S GAUTAM STEEL TRADERS
[6] M/S GAUTAM STEEL TRADERS
B-20 , NEHRU GROUND N.I.T. FARIDABAD-121001.

Appellant
Vs
Respondent

C.C.E. DELHI IV

I am directed to transmit herewith a certified copy of **Final order No**. 862 -867 / 2010 –SM[BR] dated 29.6.2010 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. DELHI IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult
   MR.N.L.JANGIR
   1530,SECTOR21-D,FARIDABAD
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.
Single Member Bench

Date of Hearing/Decision: 29.06.2010

For approval and signature:

Hon'ble Mr.Rakesh Kumar, 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?	
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?	

1. Excise Appeal No.1447 of 2008

(Arising out of Order-in-Appeal No.20 & 21/CE/Appl/DLH-IV/2008 dated 25.03.2008 passed by the Commissioner of Central Excise(Appeals), Delhi-IV, Faridabad

M/s.Gautam Steel Traders Appellant

Vs.

CCE, Delhi-IV Respondent

2. Excise Appeal No.1448 of 2008

(Arising out of Order-in-Appeal No.19/CE/Appl/DLH-IV/2008 dated 25.03.2008 passed by the Commissioner of Central Excise(Appeals), Delhi-IV, Faridabad

M/s.Gautam Steel Traders Appellant

Vs.

CCE, Delhi-IV Respondent

3. Excise Appeal No.1449 of 2008

(Arising out of Order-in-Appeal No.15 & 16/CE/Appl/DLH-IV/2008 dated 25.03.2008 passed by the Commissioner of Central Excise(Appeals), Delhi-IV, Faridabad

M/s.Gautam Steel Traders Appellant

Vs.

CCE, Delhi-IV Respondent

4. Excise Appeal No.1450 of 2008

(Arising out of Order-in-Appeal No.14/CE/Appl/DLH-IV/2008 dated 25.03.2008 passed by the Commissioner of Central Excise(Appeals), Delhi-IV, Faridabad

M/s.Gautam Steel Traders Appellant

Vs.

CCE, Delhi-IV Respondent

5. Excise Appeal No.1451 of 2008

(Arising out of Order-in-Appeal No.32 & 33/CE/Appl/DLH-IV/2008 dated 27.03.2008 passed by the Commissioner of Central Excise(Appeals), Delhi-IV, Faridabad

M/s.Gautam Steel Traders Appellant

Vs.

CCE, Delhi-IV Respondent

6. Excise Appeal No.1452 of 2008

(Arising out of Order-in-Appeal No.27 & 29/CE/Appl/DLH-IV/2008 dated 25.03.2008 passed by the Commissioner of Central Excise(Appeals), Delhi-IV, Faridabad

M/s.Gautam Steel Traders Appellant

Vs.

CCE, Delhi-IV Respondent

Present for the Appellant : Shri K.K.Sharma, Advocate
Present for the Respondent: Shri S.N.Singh, DR

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORDER No.** 862-867/2010 SM (Br)

PER: RAKESH KUMAR

The facts giving rise to these appeals are, in brief, as under:

1.1. The appellants are registered as first stage dealers of CR sheets. In these cases, the appellants as first stage dealers sold the materials under cenvatable invoices to other registered dealers - M/s. Golden Steel Co.,Faridabad; M/s.Shiva Associates, M/s.Shiva Industrial Corporation, M/s.Metal Trading Co. and Shri Bihari Ji Steels, who in turn sold the materials under their cenvatable invoices to M/s.Sai Ram Industries, M/s. Velmoid Plastics (P) Ltd., M/s.Duro Engineering Works, M/s.Khurbros Automotive Industries, M/s.J.S. Industries and M/s. Super Steel Engineers, who took cenvat credit on the basis of their invoices. The Department's allegation is that the appellants M/s.Gautam Steel Traders had not purchased the materials directly from the manufacturer M/s.Swastika Pipes Ltd., but had purchased the same from M/s.Rameshwar Das Devi Dayal (P) Ltd., who in turn had purchased from M/s.Swastika Pipes Ltd. and this fact is clear from the invoices of M/s.Swastika Pipes Ltd. as each invoice issued by M/s.Swastika Pipe Ltd. mentioned M/s.Rameshwar Das Devi Dayal Pvt.Ltd as the "buyer' and M/s.Gautam Steel Traders as consignee of the goods which indicated that the appellants had purchased the materials from M/s.Rameshwar Das Devi Dayal Pvt.Ltd. It is on this basis that the Department alleged that the appellants are not first stage dealers, as they had not purchased the material directly from the manufacturers nor from the consignment agent of the manufacturer. The Department, therefore, alleged that the invoices issued by M/s. Golden Steel Co., M/s.Shiva Associates, M/s.Shiva Industrial Corporation, M/s.Metal Trading Co. and Shri Bihari Ji Steels, who had purchased the goods from the appellants are not the invoices issued by the second stage dealers and hence no cenvat credit could be taken on those invoices. On this basis, the SCNs were issued to the end users - i.e. M/s. Velmoid Plastics (P) Ltd., M/s.Duro Engineering Works, M/s.Khurbros Automotive Industries, M/s.J.S. Industries, M/s. Super Steel Engineers and M/s.Sai Ram Industries for recovery of wrongly taken credit by them and also to the appellants as well as to M/s. Golden Steel Co., M/s.Shiva Associates, M/s.Shiva Industrial Corporation, M/s.Metal Trading Co and Shri Bihari Ji Steels for imposition of penalty under Rule 25 of the Central Excise Rules.

1.2 These SCNs were adjudicated by the Assistant Commissioner by which the credit demand of Rs.35,758/-, Rs.17,840/-, Rs.1,194/- Rs. 2,232/-, 17,937/- and Rs.9,586/- were confirmed alongwith interest against M/s. Velmoid Plastics (P) Ltd., M/s.Duro Engineering Works, M/s.Khurbros Automotive Industries, M/s.J.S. Industries, M/s. Super Steel Engineers and M/s.Sai Ram Industries respectively. Besides this, the penalties were imposed on them as well as on the appellants and on M/s. Golden Steel Co., M/s.Shiva Associates, M/s.Shiva Industrial Corporation and M/s.Metal Trading Co and Shri Bihari Ji Steels.

1.3 On appeal to the Commissioner (Appeals), the Commissioner (Appeals) set aside the Assistant Commissioner's order regarding denial of credit to the manufacturers and allowed the cenvat credit and also set aside the penalties on the manufacturers as well as on the dealers namely, M/s. Golden Steel Co., M/s.Shiva Associates, M/s.Shiva Industrial Corporation and M/s.Metal Trading Co and Shri Bihari Ji Steels on the ground that it is the appellant who had knowingly concealed the fact of the purchase of goods from a dealer i.e. M/s.Rameshwar Das Devi Dayal (P) Ltd., instead of direct from the manufacturer, while issuing the invoices in respect of the goods, by posing themselves as first stage dealer with an intent to enable the dealers i.e. M/s.Golden Steel Co. etc. to pass on the cenvat credit to the end users. The Commissioner (Appeals), however, upheld the penalties imposed on the appellant on the ground that though the appellant had purchased the goods from a dealer M/s.Rameshwar

Das Devi Dayal (P) Ltd., they still issued invoices as first stage dealers. It is against this order of the Commissioner (Appeals) that the present appeals have been filed.

3. Heard both sides.

4. Shri K.K.Sharma, Advocate, the learned Counsel representing the appellants, pleaded that the Commissioner (Appeals) has accepted M/s. Golden Steel Co., M/s.Shiva Associates, M/s.Shiva Industrial Corporation, M/s.Metal Trading Co and Shri Bihari Ji Steels as second stage dealers and allowed the cenvat credit on the basis of invoices issued by them to M/s. Velmoid Plastics (P) Ltd., M/s.Duro Engineering Works, M/s.Khurbros Automotive Industries, M/s.J.S. Industries, M/s. Super Steel Engineers and M/s.Sai Ram Industries respectively; that there is no justification for not treating the appellant as first stage dealer and on this basis upholding the penalty on them, that the appellants had never concealed any fact; that in the ER-1 returns filed by the appellants, the details of the invoices regarding purchase of the goods from M/s.Swastika Pipes Ltd. had been mentioned but no objection was raised at any point of time questioning their status as first stage dealer; that the department has not filed the appeals against the part of the Commissioner(Appeals)'s order wherein the Commissioner(Appeals) has accepted M/s. Golden Steel Co., M/s.Shiva Associates, M/s.Shiva Industrial Corporation, M/s.Metal Trading Co and Shri Bihari Ji Steels as second stage dealers; that the penalties imposed on the appellants are equal to the cenvat credit demand and in some cases more than the cenvat credit demand, which in view of the circumstances, are not justified; that the penalties on the appellant have been imposed under Rule 25 which is not attracted, as no goods have been held liable for confiscation, and that in view of this,

the impugned orders upholding the penalties on the appellants are not correct.

4.1. Shri K.K.Sharma also pleaded that there was absolutely no malafide intention on the part of the appellants in issuing the invoices as fist stage dealers for passing on cenvat credit. In view of this, imposition of penalties equal to cenvat credit demand involved and in some cases more than the cenvat credit demand was not called for.

5. Shri S.N.Singh, learned DR, defending the impugned orders pleaded that the Commissioner (Appeals) in his impugned orders has given a clear finding that since the appellants had neither purchased the goods from the manufacturer M/s.Swastika Pipe Ltd. nor from the their consignment agent - rather they had purchased the goods from M/s.Rameshwar Das Devi Dayal (P) Ltd., who was only an indenting agent and not the consignment agent of the manufacturer, that the appellants are not covered by the definition of first stage dealer as rightly held by the adjudicating authority; that the fact that the appellants knew that in respect of the goods purchased from M/s.Swastika Pipes Ltd. they were not the first stage dealers and could not issue invoices as first stage dealers, is clear from the statement dated 27.5.2005 of Shri Kamal Kishore Sharma, Accountant of the appellants, wherein he stated that he had issued such invoices to other dealers to enable them to pass on the cenvat credit but he felt that the appellants (M/s.Gautam Steel Traders) were second state dealer in respect of invoices of M/s.Swastika Pipes Ltd.; that the appellant (M/s.Gautam Steel Traders) had not specifically mentioned the stage of the invoices raised by them to the registered dealers; that there was no tick mark or specification as to whether the invoices had been raises as a first stage dealer or

second stage dealer; that this admission of the accountant, Shri Kamal Kishore Sharma of the appellant clearly shows that the appellant were aware that in respect of the goods purchased from M/s.Swastika Pipes Ltd., they are not the first stage dealer but they still issued invoices by posing themselves as first stage dealer; that the goods had been purchased by the appellant from M/s.Rameshwar Dass Devi Dayal (P) Ltd. who had, in turn, purchased from M/s.Swastika Pipes Ltd., that in the case of CCE vs. M/s.SDL Auto (P) Ltd., decided by the Tribunal vide Final Order No.115/2010-SM (BR) dated 19.01.2010 wherein the appellant M/s.Gautam Steel Traders after purchasing the goods manufactured by M/s.Swastika Pipes Ltd from M/s.Rameshwar Dass Devi Dayal (P) Ltd. sold the same to M/s.Metal Trading Company, which, in turn, had sold the goods to M/s.SDL Auto (P) Ltd., the Tribunal held that M/s.Gautam Steel Traders cannot be treated as first stage dealers, and that in view of this, the penalties have been rightly imposed on the appellant.

6. I have carefully considered the submissions from both sides and perused the records.

7. As per definition of "First stage dealer" given in Rule 2(ii) of the Cenvat Credit Rules, 2004, "first stage dealer" means a dealer, who purchases the goods directly from –

(i) The manufacturer under the cover of an invoice in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice.

7.1 As per definition of "second stage dealer" given in Cenvat Credit Rules, 2004, "second stage dealer means a dealer who purchases the goods from a first stage dealer.

7.2 There is no doubt about the fact that in all these case the appellants purchased the goods from M/s.Rameshwar Dass Devi Dayal (P) Ltd. and not directly from M/s.Swastika Pipes Ltd. In the invoices of the manufacturer M/s.Swastika Pipe Ltd., M/s.Rameshwar Das Devi Dayal Pvt.Ltd. are mentioned as the "buyer' and M/s.Gautam Steel Traders are mentioned as consignee of the goods, which shows that the goods had been sold by M/s.Swastika Pipe Ltd. to M/s.Rameshwar Das Devi Dayal Pvt.Ltd and the appellants had purchased the goods from M/s.Rameshwar Das Devi Dayal Pvt.Ltd. Just because the manufacturers consigned the goods directly to the appellant, the appellant cannot be treated purchasers of the goods directly from the manufacturer, as for being treated as the "first stage dealer", a dealer must purchase the goods directly from the manufacturer/importer or from the depot of the said manufacturer/importer or from the premises of the consignment agent of the said manufacturer/importer or from any other premises from where the goods are sold by or on behalf of the said manufacturer/importer under a cover of invoice and thus receiving the goods directly from the manufacturer/importer, is not enough. In these cases, it is not the case of the appellants that M/s.Rameshwar Das Devi Dayal Pvt.Ltd. were consignment agents of the manufacturers. In view of this, I hold that the Commissioner (Appeals) has rightly treated the appellants as other than the first stage dealers. The appellants have cited the judgement of the Tribunal in the case of Balaji Iron & Steel Traders vs. CCE, Visakhapatnam reported in 2008-TIOL-618-CESTAT-MAD wherein it was held that while the appellants M/s.Balaji Iron & Steel Traders first received the duty paid goods directly from M/s.Rashtriya Ispat Nigam Ltd., who had issued invoices mentioning their Long Term Contractor (LTC) as a "customer" and the appellant as a "consignee", they have to be treated as first stage dealer. But the LTC in this case could be a consignment agent of RINL. In the persent case, there is no such evidence that M/s.Rameshwar Das Devi Dayal Pvt.Ltd. were consignment agents of M/s.Swastika Pipes Ltd. Therefore, the judgment cited by the appellant is not applicable to their cases. The statement of Shri Kamal Kishore Sharma shows that the appellants in respect of the goods purchased from M/s.Swastika Pipes Ltd. and sold to other registered dealers, M/s. Golden Steel Co., M/s.Shiva Associates, M/s.Shiva Industrial Corporation and M/s.Metal Trading Co and Shri Bihari Ji Steels, were aware of their status as the second stage dealers, on such goods had not been purchased directly from the manufacturers, but they still issued the invoices, as if they were the first stage dealers. In view of this, I hold that the penalties have rightly been imposed on the appellants. However, in view of nature of contravention and the fact that the cenvat credit has been allowed by the Commissioner (Appeals) to the end users, the penalties on the appellant are reduced to 25% of cenvat credit demand.

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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