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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/467 /2008 –SM[BR]** Date **25/04/2011**

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

To :
SHREE GANESH INDUSTRIES
E-411, PHASE-IV, FOCAL POINT, LUDHIANA (PB)

SHREE GANESH INDUSTRIES Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 209 / 2011 –SM[BR]** dated 23.3.2011 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. III

Date of Hearing : 23.3.2011

Excise Appeal No. 467 of 2008-SM
[Arising out of the Order-in-Appeal No. 384-385/CE/LDH/2007 dated 14.12.2007 passed by the Commissioner of Central Excise (Appeals), Jalandhar]

Coram:
Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Shree Ganesh Industries Appellant

Vs.

CCE, Ludhiana Respondent

Appearance:

Appeared for Appellant : Shri Saurabh Yadava, Advocate
Appeared for Respondent : Shri S.K. Bhaskar, DR

CORAM: Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. 209/2011 SM (BR) dated............

Per Mathew John:

The Appellants are manufacturers of products of iron and steel falling under Heading Nos. 7311, 7326 and 8708 of the Central Excise Tariff. They were receiving raw material like M.S. rounds from different suppliers and taking Cenvat credit of duty paid on such raw material. One such supplier of raw material was M/s HBR Steel Corporation, Gali No.2, Sunder Singh Market, Gill road, Ludhiana. Visit made on 07-02-2001 by central excise officers to the premises of the said supplier and subsequent investigations indicated that that supplier was issuing invoices without actual supply of any goods. The vehicle numbers indicated in the invoices issued by the said dealer were fraudulent and fictitious. It was seen that in the return filed by the Appellant for the period January 2001 to March 2001, the Appellant had claimed credit amounting to Rs. 45,263/- against one such invoice issued by the said supplier to the Appellant. A show cause notice dated 02-11-05 was issued for denying such credit availed against the impugned invoice no.309 dated 29-01-2001, for levy of interest on the said amount and proposing penalty. Adjudication of the SCN resulted in confirmation of the above said duty amount, interest payable on the amount and a penalty equal to the said duty amount.

2. Aggrieved by the adjudication order, the Appellant filed first appeal with the Commissioner (Appeal) who did not give any relief. Aggrieved by the order of the Commissioner (Appeal) the Appellant is before this Tribunal.

3. The case of the Appellant is that the impugned goods were received by them in their factory. But since these goods, that is, M.S. rounds, were found to be defective, the goods were returned to the seller, viz. M/s HBR Corporation under invoice No. 2 dated 28-04-2001.

It is contested that since the duty amount is already reversed in their records there is hardly any cause for taking action against them.

4. Though the claim regarding the reversal of the credit was made before the first appellate authority, he rejected this claim on the ground that this claim and evidence was not produced before the adjudicating authority and new evidence cannot be admitted at appellate stage.

5. It is seen that the date (28-04-2001) on which the Appellant claims to have reversed the credit is much after the date (07-02-2001) on which investigations were started by the department against the supplier. This claim of return of the goods in itself supports the case of the department that the credit was fraudulent when seen with the other attendant circumstances. It is also to be noted that the goods are M.S. rounds for manufacturing products under tariff items 7311, 7326 etc. wherein rejection of raw material on quality disputes normally does not occur. It is also strange that the party did not appear before the adjudicating authority to plead this submission. These facts show that this claim of reversal is only a strategy adopted by the Appellant to avoid penal consequences.

6. There is also a contention that the Show cause Notice is time barred since the department was aware, from the return filed, of the credit taken. The plea is that SCN was not issued within one year from taking credit. This argument is not correct because this is a case involving a fraudulent document and the time limit for issue of SCN in such cases is five years from the relevant date as per the proviso to the Section 11A of the Central Excise Act.

7. However, the claim of reversal of the credit is to be taken into account while demanding duty from the Appellant because if this is not done, it will amount to recovering the amount twice from him for which

there is no justification. An argument was raised in the First Appeal about interest payable on the ground that section 11AB was not applicable prior to 11-05-2001. This argument has not been dealt with in the first appellate order. Prior to 11-05-2001 section 11AA was applicable for payment of interest. Under this section the interest was to be paid only for the period after three months from the date of order confirming the demand. If the submission that credit was reversed on 28-04-2001 is correct, this argument becomes relevant in the matter of interest payable also.

8. I also find that the order-in-original has not intimated the option available to the Appellant to pay interest and 25% of the penalty within 30 days of receipt of the order to close the matter. Hence following the decision of the Delhi High Court in the case of **K.P. Pouches** (2008 (228) ELT 0031-Del), I now give an opportunity to the Appellant to pay 25% of the penalty imposed within thirty days of receipt of this order for a final closure of the matter. If such amount is not paid within the time limit, the full amount of penalty will be payable. It is also made clear that this order is subject to verification of the claim of the Appellant that the credit taken on the impugned goods were reversed on 28-04-2001. If thus fact is not proved correct, the order-in-original will get restored.

9. The Appeal is disposed of as per the above terms.

(Mathew John)
Member (Technical)

RM