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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

Date **30/06/2011**

Appeal No. **E/3151/2009 – SM[BR]**

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

To :
M/S. FORMATIVE ENGG. PVT. LTD. Appellant
INDUSTRIAL AREA-C, SUA ROAD, LUDHIANA.
Vs
M/S. FORMATIVE ENGG. PVT. LTD. Respondent

C.C.E. CHANDIGARH

Dated 31.5.2011

I am directed to transmit herewith a certified copy of **Final order No. 365 / 2011-SM[BR]** 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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.KAMALJEET SINGH
J-144, PATEL NAGAR -I,GHAZIABAD.

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

Assistant Registra
(SM Appeal Branch

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

COURT NO. IV
Excise Appeal No. 3151 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 168/CE/Ldh/2009 dated 02/09/2009 passed by The Commissioner of Central Excise (Appeals), Chandigarh.]

For Approval and signature :
Hon'ble Shri 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 would 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 Department Authorities?	:

M/s Formative Engg. Pvt. Ltd. Appellant

Versus

CCE, Chandigarh Respondent

Appearance

Shri Kamaljit Singh, Advocate – for the appellant.

Shri Anil Khanna, Authorized Representative (SDR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 31/05/2011.

Final Order No. 365/2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The facts giving rise to this appeal are, in brief, as under.

1.1 The appellant are manufacturers of the goods falling under Chapter 73 of the Central Excise Act. They also avail the facility of Cenvat credit in respect of inputs and capital goods under Cenvat Credit Rules, 2004. The period of dispute in this case is from June 2006 to February 2007. It was found that during this period, the appellant claiming to have received M.S. Steel Bars under 21 invoices from a registered dealer M/s Sidh Industries, Mandi Gobindgarh, had availed Cenvat credit amounting to Rs. 6,34,412/-. The invoices showed M/s Sidh Industries as a registered dealer, who had obtained the goods from M/s Rehal Steel Industries, Mandi Gobindgarh and M/s Uttam Steel Rolling Mills Pvt. Ltd., Mandi Gobindgarh. On inquiry in respect of M/s Sidh Industries, it was found that its address was fictitious and there was no godown or business premises of M/s Sidh Industries and no account had been maintained by them of the goods received and sold. Inquiry was also conducted with M/s Uttam Steel Rolling Mills Pvt. Ltd. and M/s Rehal Steel Industries, Mandi Gobindgarh and both the units informed that no material had been supplied to M/s Sidh Industries. Subsequently, even the registration certificate of M/s Sidh Industries was cancelled. From these facts it appeared that the transactions of the appellant with M/s Sidh Industries were bogus transactions. A show cause notice dated 30th April 2008 was, therefore, issued to the appellant for –

(a) recovery of wrongly taken Cenvat credit amounting to Rs. 6,34,412/- from the appellant alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 readwith proviso to Section 11A (1) of Central Excise Act, 1944 ; and

(b) imposition of penalty on the appellant under Rule 15 (2) of Cenvat Credit Rules, 2004 readwith Section 11AC of Central Excise Act. The show cause notice also proposed imposition of penalty on M/s Sidh Industries under Rule 25 of the Cenvat Credit Rules 2002.

1.2 The show cause notice was adjudicated by the Joint Commissioner vide order-in-original dated 19/1/09 by which the Cenvat credit demand as made in the show cause notice was confirmed alongwith interest and penalty of equal amount was imposed on them under Rule 15 (2) of Cenvat Credit Rules, 2004 readwith Section 11AC ibid of Central Excise Act. Beside this, penalty of same amount i.e. Rs. 6,34,412/- was imposed on M/s Sidh Industries under Rule 25 of Central Excise Rules.

1.3 On appeal being filed by the appellant against this order, the Commissioner (Appeals) vide impugned order-in-appeal dated 2/9/09 upheld the Joint Commissioner's order except for reducing the penalty on the appellant to 25% of the duty demand confirmed, as they had paid the disputed amount of Cenvat credit alongwith interest and also an amount equal to 25% of the Cenvat credit demand towards penalty before the adjudication of this matter. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Kamaljeet Singh, Advocate, the learned Counsel for the Appellant, pleaded that the appellant had received the material covered under the invoices, in question, from M/s Sidh Industries, that during the period of dispute when this material had been received, the registration of M/s Sidh Industries had not been cancelled, and as such the invoices issued were valid invoices, that the registration had been cancelled only on 9/7/07 w.e.f. 1/4/06 and during the period of dispute the registration of M/s Sidh Industries was there, that no inquiry had been conducted by the department with the transporters, that M/s Sidh Industries had maintained the required records and the prescribed returns were being filed by them with the department, that in view of these circumstances, it cannot be concluded that the appellant had not received any material from M/s Sidh Industries and only invoices had been received, and that in view of this, the impugned order is not correct.

2.2 Shri Anil Khanna, the learned Departmental Representative defended the impugned order by reiterating the findings of the Commissioner (Appeals) and emphasized that the supplier of the goods in respect of which Cenvat credit had been taken – M/s Sidh Industries is a bogus entity, that their registration certificate as registered dealer had been cancelled w.e.f. 1/4/06 and their appeal against the Commissioner (Appeals)'s order upholding the cancellation of the registration has been dismissed by the Tribunal vide order reported in **2010 (257) E.L.T. 454 (Tri. – Del.)**, that filing of return by M/s Sidh Industries is of no meaning, as on inquiry it was found that the address of the premises given by them was bogus and they never produced the records maintained by them, that even the suppliers of the goods to M/s Sidh Industries – M/s Rehal Steel Industries and M/s Uttam Steel Rolling Mills Pvt. Ltd., have stated that no material had been supplied by them to M/s Sidh Industries, that in view of this evidence on record, it is clear that the transactions of the appellant with M/s Sidh Industries was a bogus transaction, in which only the invoices had been supplied without supplying any material and that in view of this, there is no infirmity in the impugned order.

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

4. The Cenvat credit, in question, had been taken by the appellant on the basis of 21 invoices regarding M.S. Bars issued by M/s Sidh Industries during the period from June 2006 to February 2007. However, subsequent investigations indicated that M/s Sidh Industries were a bogus entity not having any business premises or godown and that after conducting inquiries in respect of them, the Assistant Commissioner vide order dated 9/7/09 had cancelled their registration w.e.f. 1/4/06. The cancellation of the registration certificate of M/s Sidh Industries was upheld by the Commissioner (Appeals) and their appeal against the Commissioner (Appeals)'s order was dismissed by the Tribunal vide judgment reported in **2010 (257) E.L.T. 454**. In this regard, para 3 of the judgment dated 28/5/2010 is reproduced below :-

"3. I have carefully considered the submissions from both the sides and perused the records. The Appellant firm is a registered dealer dealing in iron steel items of Chapter 72. They had been issued registration certificate for operating as registered dealer on 6-12-05 and the address of the premises was Jassran Road, Mandi Gobindgarh which was subsequently allotted Plot No. 200. As discussed in show cause notice and order-in-original, the records indicate that though this premises had been taken by the Appellant on rent on 9-6-05, they had vacated the same within six months i.e. around Dec. 05 when the registration certificate had been issued to them. This is clear from the statement of Sh. Anil Thukral, the landlord and also the statement of owner of the neighbouring premises of Sh. Davinder Dhiman. It is also found that when during enquiry with Sh. Sachin Aggarvanshi in April, 2007 when he was asked as to from where he was conducting his business as registered dealer, he could not give any address and not only this, even the accounts which are supposed to maintained by a registered dealer i.e. RG-23D etc. also could not be produced by him. While he stated that the records of the firm were lying with the Chartered Accountant Sh. Samir Garg and on enquiry with Sh. Samir Garg, he denied having the records of the Appellant firm. All this evidence shows that ever since the Appellant firm had been given registration in Dec'05 for operating as registered dealer in iron steel items of Chapter 72 of Central Excise Tariff, they neither had any office or any premises nor they were maintaining any accounts. In view of this evidence, it is doubtful as to whether any goods were actually sold against invoices, if any, issued by them. In view of these circumstances, I am of the view that Asstt. Commissioner has rightly cancelled the registration certificate of the Appellant firm as continuing the registration of such firm would have encouraged mal-practices like issue of bogus invoices without selling of any goods as it is unconceivable as to how a registered dealer can do business without having any office premises, without having any godown, and without maintaining any prescribed account. In view of these circumstances, I hold that the registration certificate has been rightly cancelled and as such I do not find any infirmity in the impugned order. The appeals are dismissed."

5. From the above findings of the Tribunal in respect of Sidh Industries, it is clear that it was a bogus entity. Beside this, M/s Rehal Steel Industries and M/s Uttam Steel Rolling Mills Pvt. Ltd. who as per the invoices, in question, had supplied the goods to M/s Sidh Industries, which, in turn, were shown to have been supplied to the appellant, have informed the Investigating Officer, that no material have been

supplied. This further proves that the transaction of the appellant with M/s Sidh Industries were bogus transaction in which only the invoices had been supplied without supplying any material. In view of the above discussion, I do not find any infirmity in the impugned order. The appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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