TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/2322/2005 – SM[BR]** Date **22/09/2011**

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

To :
M/S B.S.AGRICULTURE INDUSTRIES INDIA
12/15-AA,NAWAL GANG AGRA

M/S B.S.AGRICULTURE INDUSTRIES INDIA Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 624 / 2011-SM[BR]** dated 1.9.2011 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. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

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. 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 (Haryana)
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 Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/2322/05-SM

[Arising out of Order-in-Appeal No.59/CE/APPL/KNP/05 dated 28.01.2005 passed by the Commissioner (Appeals) Kanpur].

M/s.B.S. Agriculture Industries (India) ...Appellant

Vs.

CCE, Kanpur ... Respondent

Present for the Appellant : Ms.Sukriti Das, Advocate
Present for the Respondent: Shri. S.K.Panda, JCDR

Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Date of Hearing/Decision:01.09.2011

Final **ORDER NO.** 624/2011-SM(BR) **DATED:**________

PER: D.N.PANDA

Ld. Counsel submits that the invoice copy exists at page 25 of appellate order and supports the case of appellant because the date mentioned on the invoice is a clerical mistake stating that to be 22.11.94 instead of 22.11.93. Such a clerical error should not deprive the appellant to get cenvat credit. Secondly, she argues that the copy of invoice issued by M/s. Allied Agencies appearing at page 24 indicates a reference to copy of invoice at page 25 & 26 of the appeal record which were invoice issued by Goetze (India) ltd. She claims that all the documents relied upon were genuine document for grant of cenvat credit.

2. Ld. JCDR on the other hand shows that there is prescribed procedure by Circular No. 68/68/64-CX dated 24.10.94 to entertain loss of supporting documents to consider cenvat credit claim if any.

3. According to Revenue When the appellant did not come forward to comply to the laid down procedure, the appellate authority has rightly decided against the appellant.

4. Heard both sides and perused the record.

5. Cenvat credit is a benefit given to the claimant who discharges burden of proof bringing evidence with clean hands. Perusal of page 27 to which attention was invited shows that the invoice was issued by Goetze (India) ltd on 27.11.93. That was relied upon as supporting document for the copy of invoice appearing at page 28 of the appeal folder. But page 28 indicates Sl. No.671/I/13 dated 30.6.94. There is another date appearing is 22.11.94 just below that. The plea of the appellant that there was a clerical mistake does not appeal to commonsense for the reason that if there was a clerical

date

mistake at one place indicating the to be 22.11.94 instead of 22.11.93 similar mistake would have appeared where the sl. No. of invoice exists. The plea made does not carry any force because page 28 is not the proper document which does not support the case for the appellant. Therefore, on this count the claim of the appellant was rightly denied.

6. In so far as document relied upon at page 24 & 25 is concerned, appellant's statement that page 24 is based on page 25 of the appeal folder does not get support without any authentication by the Range Superintendent who has simply recorded that duty paying document defaced. Such a declaration does not come to the rescue of the appellant by merely making an entry that page 24 as emanated out of number of the goods covered by page 25 & 26 of the appeal folder. When the appellant did not come forward to make its claim adducing proper evidence, ld. JCDR is correct to say that failure to follow the prescribed procedure disentitle the appellant to the claim of cenvat credit. Accordingly appeal of the appellant is dismissed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita