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/2038/2009 – SM[BR] **Date 22/09/2011**

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

To :
M/S KASHISH PRODUCTS IMPEX PVT. LTD.
KHASRA NO. 915-916, RITHALA INDUSTRIAL AREA,
DELHI-85.

M/S KASHISH PRODUCTS IMPEX PVT. LTD. Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. 627 /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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult SHRI BIPIN GARG ADV.
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/2038/09-SM

[Arising out of Order-in-Appeal No.30 to 32/CE/Appl/DLH-IV/2009 dated 06.04.2009 passed by the Commissioner of CE (Appeals), Faridabad].

M/s.Kashish Products Impex Pvt. Ltd. ...Appellant

Vs.

CCE, Faridabad ... Respondent

Present for the Appellant : Ms. Sukriti Das, Advocate
Present for the Respondent:Shri. B.L. Soni,D.R.

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

Date of Hearing/Decision:01.09.2011

Final **ORDER NO.** 627/2011 SM (BR) **DATED:**________

PER: D.N.PANDA

Ld. Counsel submits that the show cause notice did not indicate the provision of law under which penalty can be demanded against the appellant. For that reason, the appellant made application to the authority to inform under which provision penalty was proposed to be levied. By letter dated 21.5.08 the authorities specified that penal action was proposed for the alleged acts of omission and commission detailed in the show cause notice and appears to be imposable for the said acts under rule 26 of Central Excise Rules, 2002. The appellant accordingly prayed for waiver of penalty setting aside the impugned order. It is also the prayer of appellant that when sub-rule(2)was enacted in rule 26 dealing with issuance of excise invoice with effect from 1.3.07 the past act should not be brought to the ambit of penal consequence. She relies on the judgement of Amrit Foods vs. CCE, U.P. reported in 2005 (190) ELT 433 (S.C.).

2. Ld. DR on the other hand says that when goods did not move, the documents only made, the manufacture is not entitled to the cenvat credit claimed fraudulently. Therefore, the appellate authority has rightly dismissed the appeal of the appellant.

3. Heard both sides and perused the record.

4. Perusal of para 3 of the appellate order indicates that M/s. Chand Industry was beneficiary of the fraud committed by the appellant. Investigation came to know about spurious document issued by the appellant when they recorded the statement of Shri Naresh Guleria, Director of the appellant on 26.5.2006. The appellant categorically admitted that goods were not delivered but only invoices were issued to the

manufacture M/s. Chand Industries It was also said in the statement that there was no manufacture of PVC compound and master batches by the appellant for which the goods could not move. The piece of evidence recorded under section 14 of Central Excise Act 1944 is a cogent evidence against the appellant and cannot be brushed aside following the Apex Court judgement in the case of CCE, Mumbai vs. Kalvert Foods India Pvt. Ltd. reported in 2011 (270) ELT 643 (S.C.). When the fraud surfaced that has nullified every solemn act and all that emanate out of fraud should extinct because fruit of forbidden tree is always forbidden. When the appellant could not produce evidence to defend properly on 26.5.06 while recording statement in the course of judicial proceeding under section 14 of Central Excise Act 1944, there is nothing rebuttal today to discard the statement of the director of the appellant. Ld. Counsel when relies on the decision of Apex Court in Amrit Foods case it should show that it has acted in all fairness in the eyes of law. Therefore, when the Revenue disclosed that the omission and commission brought the appellant to the fold of penalty due to fraud committed against Revenue, the appellant has no scope to get the benefit of judgement of the Apex Court because fraud nullifies everything. Such a ground itself is only to hold that the appellant had fraudulently issued the invoices to enable the beneficiary to be enriched at the cost of Revenue.

When fraud nullifies a degree, the appellant should face penalty for which the appeal is dismissed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita

TELEGRAM : CEGCANAL **REGISTERED / AD**
Website : www.cestat.gov.in **Mail : cestat08@gmail.com**

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
SINGLE MEMBER APPEAL BRANCH

Dated: **28/06/2012**

MISC Order No : 176/2012 –SM[BR]

ROM Application No. : E/ROM/6/2012
Appeal No. : E/2038/2009-EX[SM]

1. Appellant :
KASHISH PRODUCTS IMPEX PVT. LTD.
KHASRA NO. 915-916, RITHALA INDUSTRIAL AREA, DELHI-85.

2. Respondent :
C.C.E. DELHI IV
New CGO Complex, NH-IV, Faridabad, Haryana 121001.

3. Advocate(s) / Consultant(s) :
SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI

4. C.D.R

5. Bar Association, CESTAT, New Delhi

6. Director Publications, Customs, Excise. I.P. Estate, New Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-110003

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-600017

9. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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. Gaurd File

Assistant Registrar
SINGLE MEMBER Appeal Branch

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram,
NEW DELHI

COURT NO. II

E/ROM/6/2012 in appeal No.2038/2009-SM

Date of hearing/decision: 22nd June, 2012

M/s. Kashish Products Impex Pvt. Ltd., Appellant
None

Versus

CCE, Delhi Respondent
Reptd. By Shri Sanjay Jain, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;

Misc ~~STAY~~ ORDER NO. 176/2012-SM DATED

Per D.N. Panda:

None present for the appellant. Written submissions call for review of the order. There is no mistake apparent from the record which can be discovered by mere glance. Accordingly, M.A. filed for review of the entire order is dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

RK