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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/2779/2009 – SM[BR] **Date 18/08/2011**

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017
C.C.E. CHANDIGARH Appellant

Vs

M/S GILLARD ELECTRONICS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 476 / 2011 –SM[BR]** dated 14.7.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S GILLARD ELECTRONICS PVT. LTD.
C-132, INDUSTRIAL AREA,
PHASE-VIII, MOHALI.

2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
H.NO.5, SECTORE10-A, CHANDIGARH.

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)

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

SINGLE MEMBER BENCH
Court-IV
Excise Appeal No.2779 of 2009-SM

Date of Hearing/Decision: 14.07.2010

(Arsing out of Order-in-Appeal No.251-CE/CHD/2009 dated 20.07.2009 passed by the CCE(A), Chandigarh)

For approval and signature:

Hon'ble Mr.Ashok Jindal, Member (Judicial)

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?	

CCE, Chandigarh-I — Appellant

Vs.

M/s.Gillard Electronics (P) Ltd. — Respondent

Present for the Appellant: Ms. R.K.Jagdev, SDR
Present for the Respondent: None

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 476/2011 SM (BR)

PER: ASHOK JINDAL

The Revenue is in appeal against the impugned order wherein the mandatory penalty under Section 11AC of Central Excise Act, 1944 has been dropped.

2. The brief facts of the case are that in the course of manufacturing business, the respondents had purchased inputs, namely, brass strip coil from 100% EOU and had taken cenvat credit of duty. On scrutiny it was found that the credit of Rs.88,694/- was inadmissible, therefore, recoverable under Cenvat Credit Rules, 2004. On pointing out, the respondents paid duty alongwith interest. Thereafter a show cause notice was issued to the respondents for appropriation of duty and interest and proposing penalty of Rs.88,694/- under Rule 15 ibid read with Section 11AC of Central Excise Act, 1944 for wrongful availment of cenvat credit. The adjudicating authority confirmed the demand and interest which was appropriated against the amount already paid by the assessee and the penalty of Rs.88,694/- was also imposed on the respondents under Rule 15 ibid read with Section 11AC of Central Excise Act, 1944. The respondents have filed appeal before the Commissioner (Appeals) against imposition of penalty on the assessee. The Commissioner (Appeals) after considering the submissions of the respondents held that the concerned clerk had taken the credit on the EOU invoice without noticing the supplier's status as an EOU was different, as it was bonafide mistake on the part of concerned clerk who was not aware the fact that the credit is inadmissible for procuring the goods from 100% EOU. Therefore, he dropped penalty imposed on the respondents. Aggrieved by the said order, the Revenue is in appeal before this Tribunal.

3. Learned SDR submitted that as the assessee is a manufacturer of excisable goods and registered with the department, it cannot be presumed that the respondents are not aware of the provisions of

law. They have taken the credit which is not admissible to them. Therefore, mandatory penalty is imposable on the respondents. She further submitted that if the audit team had not pointed out during the course of audit, this inadmissible credit could not be recovered from the respondents. Therefore, the mandatory penalty is to be imposed and in the impugned order is to be upheld.

4. None appeared on behalf of the respondents but a request for adjournment was received. Considering the fact that the issue involved is in a narrow compass, therefore, the matter is taken up in the absence of respondents.

5. Heard learned SDR and perused the records.

6. On perusal of the show cause notice, the charge against the respondents is that they have wrongly taken the credit. If the charge is that then there is no malafide intention to avail wrong credit on the part of the respondents. Moreover, the Commissioner (Appeals) in the impugned order had dealt with the issue in detail in para 8 which is reproduced herein below:

"In my view, being assessee for a long time does not necessarily meant that he cannot make a bonafide mistake. It is on record in the impugned order itself that it was for the first time that the appellant had availed cenvat credit on an invoice issued by an EOU and were ignorant as to what duty was actually cenvatable in such cases. I see genuineness in the explanation of the appellant that the concerned dealing clerk had taken the credit on the EOU invoice without noticing that the supplier's status as an EOU was different. He acted in a bonafide manner. A long time assessee would not in ordinarily course, indulge in an unlawful act for a paltry sum. I do not see any intent to the fact that duty and interest

has been deposited at a time which is prior to the issue of show cause notice. The case would be covered by Section 11A(2B) of the Central Excise Act, 1944 and in such a situation no show cause notice is required to be issued. Consequently, no penalty is imposable."

7. After going through the order of the Commissioner (Appeals), I find that the Commissioner (appeals) has considered the submissions of the respondents that there was no intention to take inadmissible credit and the same has bee taken by inadvertent mistake of the concerned clerk and on pointing out by the audit party without any protest, the respondents immediately reversed the credit alongwith interest. Therefore, the benefit of doubt was given to the respondents.

8. In view above observations, I do not find any merits in the Revenue's appeal. Therefore, the appeal is dismissed.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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