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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1151/2011-1156/2011 - EX[DB] Date **16/02/2012**
E/S/1474-1479/2011-EX

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

To :
M/S TRUSINE ELECTRONICS PVT. LTD.,
B-17/2, OKHLA INDUSTRIAL AREA, PHASE-II, NEW
DELHI.
110020

M/S TRUSINE ELECTRONICS PVT. LTD., Appellant

Vs

C.C.E. DELHI II **STAY ORDER NO. 247-252/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/159-164/ 2012 EX[DB]** dated 31-1-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.V.LAKSHMI KUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 Delhi-3
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 - 110005
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
(Excise Appeal Branch)

P.T.O.-2

14. BALKISHAN BANSAL, MANAGER,
M/S BANSAL INSULATION PRODUCTS LIMITED,
C-54/3, OKHLA INDUSTRIAL AREA,PHASE-II, NEW DELHI.

15. M/S BANSAL INSULATION PRODUCTS LIMITED,
C-54/3, OKHLA INDUSTRIAL AREA,PHASE-II, NEW DELHI.

16. M/S SHREE METAL INDUSTRIES ,
B79, OKHLA INDUSTRIAL AREA,PHASE-II, NEW DELHI.

17. VINOD KUMAR, DIRCTOR,
M/S TRUSINE ELECTRONICS PVT. LTD.,
B-17/2, OKHLA INDUSTRIAL AREA, PHASE-II, NEW DELHI.

18. DEVKINANDAN BANSAL, PARTNER OF,
M/S SHREE METAL INDUSTRIES ,
B-79, OKHLA INDUSTRIAL AREA,PHASE-II, NEW DELHI.

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

Date of Hearing : 12.12.2011

<u>Coram:</u>

Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

Excise Stay No. 1474 of 2011 and Excise Appeal No. 1151 of 2011

(All appeals arising out of common Order-in-Original No. 11/2010-11 dated 10.2.2011 passed by the Commissioner, Central Excise, New Delhi)

M/s Trusine Electronics Pvt. Ltd. — Appellant

Vs.

CCE, Delhi-II — Respondent

Excise Stay No. 1475 of 2011 and Excise Appeal No. 1152 of 2011

Vinod Kumar, Director — Appellant

Vs.

CCE, Delhi-II — Respondent

Excise Stay No. 1476 of 2011 and Excise Appeal No. 1153 of 2011

M/s Shree Metal Industries — Appellant

Vs.

CCE, Delhi-II — Respondent

Excise Stay No. 1477 of 2011 and Excise Appeal No. 1154 of 2011

Devkinand Bansal — Appellant

Vs.

CCE, Delhi-II — Respondent

Excise Stay No. 1478 of 2011 and Excise Appeal No. 1155 of 2011

M/s Bansal Insulations Pvt. Ltd. — Appellant

Vs.

CCE, Delhi-II — Respondent

Excise Stay No. 1479 of 2011 and Excise Appeal No. 1156 of 2011

Balkishan Bansal — Appellant

Vs.

CCE, Delhi-II — Respondent

Appearance:

Appeared for Appellant : Shri Amit Jain, Advocate
Appeared for Respondent : Shri I. Baig, A.R.

CORAM: Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

STAY ORDER No. 247-252/2012-EX (BR)
FINAL Order No. A/159-164/2012-EX(BR) dated...........

Per Mathew John :

Six Stay petitions filed in six appeals are being considered in this proceeding. The main appellant is Trusine Electronics Pvt Ltd were manufacturing Transformers. Another two Appellants M/s Bansal Insulation Products (Pvt) Ltd (BIPL for short) and M/s Shree Metal Industries (SMI for short) were supplying the main raw material namely insulated copper wire to the main appellants. The other three appellants are persons concerned with BIPL and SMI.

2. Revenue has made a case that the main appellant had taken Cenvat credit during the period Dec 2004 to Jan 2009 based on invoices showing receipt of copper wire, their main raw material, from M/s Bansal Insulation Products (Pvt) Ltd (BIPL for short) and M/s Shree Metal Industries (SMI for short) without actual receipt of such raw material. A Show cause notice issued to demand such credit with interest and penalty has been adjudicated by the impugned order confirming a demand of Rs. 5,01,69,276/-along with interest. Further penalty of Rs. 5,01,69,276/- each is imposed on the first three appellants. Further penalty of Rs. 25,00,000/- each is imposed on Shri. Balkishan Bansal, Manager and Authorized Signatory of BIPL and Shri Devaki Nandan Bansal Partner of SMI. Further penalty of Rs. 10,00,000/- is imposed on Shri. Vinod Kumar Director of the appellant-company. During investigation the appellant-company had made a deposit of Rs. 1,00,00,000/- towards the impugned liability.

3. The evidences relied upon by Revenue to prove the case are the following:

(a) The records maintained by M/s A. R. Chauhan Transport, the transport company whose vehicles were used for transporting the impugned goods and the statement of its proprietor Shri Atmaram Chauhan.

(b) Statement Shri. Balabrishan Bansal, Manager of BIPL confirming that in the case of four invoices issued by BIPL, shown to him by investigating officers, goods were not supplied.

(c) Statement of Shri. Devaki Nandan Bansal Partner of SMI stating that they never supplied any goods to the M/s Trusine Electronics Pvt. Ltd

(d) Statement of Shri. Hrishikesh Dubey Accountant of BIPL and SMI stating that sometimes invoices were issued to the First Appellant without supply of goods.

(e) Statement of Shri. Mamraj Singh Negi Manager of the Appellant that in the case of invoices received from SMI, against which Cenvat credit has been taken, no goods were received.

(f) Statement of Shri. Vinod Kumar Director of the Appellant company admitting that they had taken cenvat credit based on some wrong invoices and payment of an amount of Rs. One crore towards such credit fraudulently availed.

(g) Statement of some of the owners or drivers of the vehicles shown in the fraudulent invoices.

4. The Appellants challenge the impugned order on the following main grounds:

(A) The impugned order passed by the ld. Commissioner is non-speaking and vague.

(B) Transporters statements alone cannot be the basis for confirming the demand. Moreover statements relied upon without giving appellants an opportunity to cross-examine is against natural justice.

(C) Credit availed by the appellants during the relevant period is correct in law.

(D) Finished goods could not have been manufactured if goods would not have been received from BIPL & SMI.

(E) The entire purchases duly certified and accepted by other governmental authorities.

(F) Purchase from BIPL & SMI under valid forms issued by the Sales Tax authorities.

(G) Statements of various transporters not supplied.

(H) Submission of the appellants also supported by the fact that no discrepancy in stock/cash was found regarding the materials on the date of the visit.

(I) No evidence by the department regarding substitution of material.

(J) Documentary evidences maintained by BIPL & SMI which have been duly verified and accepted by the departmental authorities at their end also justify the clearance of goods and availment of credit.

(K) Denial of credit on the basis of few invoices not bearing vehicles numbers/correct vehicle numbers not correct.

(L) No evidence shown by the department with regard to replacement of materials.

(M) Mention of wrong vehicle number only on few invoices cannot be a ground to deny substantive benefit of credit in respect of all the invoices issued by BIPL & SMI during the period.

(N) The correctness of Cenvat availment is also supported by staying of proceedings initiated under Notification No. 32/2006-CE(NT) by the Hon'ble Delhi High Court.

(O) Quantification of demand is incorrect.

(P) Extended period of limitation is not invokable.

(Q) Penalty not imposable and interest not chargeable.

5. The detailed submissions under the above headings are recorded in the impugned order as faithful reproduction of the replies of the noticees.

6. After considering the submissions of both sides we find that against a duty demand of Rs. 5,01,69,276/-, the Appellant has already deposited an amount of Rs. 1,00,00,000/- (Rs. One crore). Considering the quality of evidences produced we consider this deposit to be sufficient to admit the appeal. We also note that the impugned order suffers from serious infirmities and there is a need to re-adjudicate the matter more diligently. Since no purpose will be served by keeping this appeal pending in Tribunal we find it fit to remand the matter with certain guidelines.

7. The Appellants present that the case of the department is not that no inputs were received by the Appellants but final products were manufactured out of nothing. This is just a play of words and to some extent due to the lack of proper language skills or legal skills of the officers of the department. This cannot a reason for setting aside the order. The case of the department is that the appellant did not receive materials from the manufacturer who issued the

invoice. The fact that the Appellant manufactured final product is not a complete defense against this proposition if proved correct. This is because the appellants might have procured material from non-duty paying sector and covered it with invoices from the impugned persons. It can also be that the appellants have shown procurement of raw material more than what is required for manufacture of goods produced. It can also be that the appellants themselves were engaged in just passing on the bogus credit by issue of invoices without supply of goods. It would have been desirable if the matter was investigated for such possibilities. But the fact that such investigations were not done cannot also be fatal if the basic allegation is proved on the basis of preponderance of probability. What we notice is that this issue can be decided only by a proper examination of evidence appearing against the appellants and their defense which has not been done by the adjudicating authority. A simple reliance on the statements of third parties without allowing the cross examination of the witnesses is not sufficient for this.

8. The main two defects that we notice are that the adjudicating authority has not given any finding on the various submissions made by the appellant in reply to the show cause notice and the appellants were not given an opportunity to cross examine the witnesses whose statements were relied upon. We find that all the submissions made by the Appellants are countered by the only argument that all the statements are voluntary and retracted and the onus is on the appellants "to prove beyond doubt that there have been no violations and willful deviations which results into evasion of excise duty". There is also a finding that three of the vehicle numbers shown in the invoice were bogus for concluding that none of the purchases of raw materials were

covered by the invoices produced. He also relies on the act that in the past also there were cases of fraudulent availment of cenvat credit booked against them.

6. The adjudicating authority is under the wrong impression that a statement recorded under section 14 of the Central Excise Act from one person can be used against another as a gospel truth. This is not a correct legal position. Normally a statement given under section 14 of Central Excise Act can be used as evidence against him in further proceedings. This is not the case when statement against one person is used against another person because the person giving statement may be just wanting to get rid of the officers by making any statement that the officers wants from them. He can afford to do so because that involves no risk to him and it is the easiest way to handle the situation. This is why the judicial forums always insist that cross examination of the person making the statement by the person against whom the statement is proposed to be used is essential. The adjudicating authority has not allowed cross examination which is a fatal fault. If all statements which are not tested by cross examination is discarded in this case there is hardly any evidence appearing against the appellants and the main evidence remaining is the admission by Shri. Vinod Kumar Director and some employees to the effect that in some cases the invoices from BIPL and SMI were not accompanied by goods. But this cannot be reason to conclude that all the supplies by these two firms which amounted to about 44% of such raw material required was without supply of goods. A statement from persons in charge of SMI that they have not supplied any goods to Trusine Electronics cannot be extrapolated to mean that BIMPL also did not supply any goods. We also note

that the various evidences produced by the Appellants which have not been examined by the adjudicating officer at all.

10. So we remand the matter to the adjudicating authority to allow the cross examination of the persons whose statements Revenue wants to rely upon and also to examine each of the submissions made in the reply to the Show Cause Notice and give finding thereon and thereafter pass an order rather than blindly relying on the statements of third parties not supported by any other documentary evidence.

(Pronounced in Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

RM