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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/1646/2011-1647/2011 - EX[DB] Date **09/01/2012**
E/S/2150-2151/2011-EX

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

To :
MALHOTRA CABLES PVT. LTD.
69/2-A, NAJAFGARH ROAD, NEW DELHI.
110015

MALHOTRA CABLES PVT. LTD. Appellant
Vs
C.E. DELHI I **STAY ORDER NO. 25-26/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/ 11-12/ 2012 **EX|DB|** dated 19-12-11 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 I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.NAVEEN MULLICK,ADV
B-388, MEERA BAGH, N.DELHI

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
14. JAGDISH MALHOTRA, DIRECTOR OF MALHOTRA CABLES PVT. LTD., 69/2-A, NAJAFGARH ROAD, NEW DELHI.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.I

E/Stay No.2150/201 in /A No.1646/201

(Arising out of order in original No.3/D.1/2011 dated 6.4.2011 passed by the Commissioner of Customs & Central Excise, Delhi-I)

Date of Hearing: 7.12.2011

For Approval and signature:

Hon'ble Mr S.S. Kang, Vice President
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters 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 lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

M/s Malhotra Cables Pvt Ltd — Appellants

Vs

CCE, Delhi -I — Respondent

E/Stay No.2151/201 in /A No.1647/201

Shri Jagdish Malhotra — Appellant

Vs

CCE, Delhi-I — Respondent

Appeared for the Appellant: Shri Naveen Malik, Advocate
Appeared for the Respondent: Shri Ishtikhar Baig, SDR

Coram: **Hon'ble Mr. S.S. Kang, Vice President**
Hon'ble Mr. Mathew John, Member (Technical)

STAY ORDER No 25-26/2012-EX (BR)
FINAL ORDER No. A/11-12/2012-EX (BR)

Per Mathew John:

There are two appeals arising from the same impugned order and two stay petitions being considered in this proceeding. After hearing both the parties for some time we find that the impugned order is not maintainable and the matter has to be remanded for compliance with principles of natural justice. So we waived the requirement for pre-deposit of dues and proceeded to decide the appeals itself.

2. The appellants are manufacturers of copper wires and cables and are situated in New Delhi. They were showing purchases of Copper Ingots from M/s V. K. Metal works in Jammu. Investigations conducted t Jammu showed that the supplier had no facility to manufacture copper ingots, at least for the quantity involved, but were issuing invoices showing manufacture of such goods making payment of duty passing on the duty for Cenvat credit to the appellants and then taking refund of the duty paid under provisions of Notification 56/2002-Cex applicable for goods manufactured in Jammu without procuring any raw material or doing any manufacturing activity in Jammu.

3. Investigations have been done to establish the fraud at the end of V. K. Metals. It appears SCN is issued against them. But the Counsel submits that the SCN is not yet adjudicated.

4. Since the Appellant had taken Cenvat credit to the extent of Rs.5,85,45,742/- during the period Apr 05 to Dec 06 on the basis of invoices issued by V. K. Metal Works, Revenue issued a Show Cause Notice demanding such duty amount along with interest and penalty under section 11AC of the Act. The notice is adjudicated by the impugned order confirming the duty demand of Rs. 5,85,45,742 along with interest and imposing a penalty equal to the said amount on the Appellant Company under section 11 AC

and imposing a penalty of Rs. 50,00,000/- on Shri. Jagdish Malhotra, Director of the company under Rule 15(1) of Cenvat Credit Rules 2004. Aggrieved by this order the Appellants have filed this appeal along with an application for waiver of pre-deposit of the dues arising from the impugned order for hearing of the Appeal.

5. The Appellants had no facility to draw wire rods from ingots. So the goods claimed to be bought from M/s V. K. Metal Works were sent to two job workers , namely M/s Ganapati Rollings Pvt. Ltd Shahdara, New Delhi and M/s J. V. Industries Shahdara, New Delhi directly from V. K. Metal Works and wire rods were got manufactured on job-work basis under provisions of Notification 214/86-CE.

6. The Appellants submissions are the following:

(i) There is no dispute that they had obtained the raw materials, manufactured copper wires from it and paid duty on the final products. The only dispute is that the copper ingots have not been bought from M/s V. K. Metal Works, Jammu.

(ii) The issue whether V. K. Metal Works had issued any fraudulent invoice is presently under adjudication in Jammu Commissionerate and no finding has been given by completing the adjudication proceeding.

(iii) The only evidence appearing against the appellant are the statements of Sh. Shankar Lal Gupta, Authorized Signatory of M/s V. K. Metal Works and Sh. Vinod Kumar Jain of M/s V. K Metal Works. They had asked for cross-examination of these two persons which was not allowed. Since these are the only evidence appearing against them they should have been given an opportunity to cross-examine these witnesses. Without any cross-examination these statements have no evidentiary value and therefore the case against them is not sustainable.

(iv) The adjudicating authority gave a ruling that cross-examination of these two witness will be of no help to the appellants. This is clearly fallacious. Only after cross examination is given it can be decided whether their deposition in cross-examination is going to exonerate the appellants or not. This ruling given by the adjudicating authority shows that he had pre-judged the issue.

(v) The appellants had purchased copper ingots from V. K. Metal Works and paid the value by cheques and cheques were encashed by V. K. Metals. They had done all the transactions in a bonafide manner. It is contested that the SCN does not contest the fact that the appellant had purchased copper ingots from V. K. Metals.

(vi) The adjudication order in para 10 of the order relies on verification report from RTO Jammu to the effect that Vehicle Nos. JK 02 E 9871 and JK 02 U 1301 and JK 02 7302 were scooter, motor cycle etc. But the concerned invoices No. 480 dated 20-12-2005 and 515 dated 08-01-06 do not show these vehicle numbers. In the case of Invoice No. 527 dated 14-01-06 they admit that it shows vehicle number JK 02 U 7302. But they contest that they did receive the material involved.

(vii) They contest that the obligation under Rule 9(3) of Cenvat credit Rules is discharged once they identify the supplier of goods and they can do not have any other means to verify the bonafide nature of each invoice issued by them. From their side they have ensured that they have taken credit only on material received on payment of value through cheques.

7. The Ld. AR for Revenue on the other hand points out that, the appellants were instruments in perpetrating a massive fraud by M/s V. K. Metal Works. Though the fraud is initiated by M/s V. K. Metal Works the real loss of Revenue occurred at the end of the appellants because they utilized the Cenvat credit. He says that from the facts of the case it is very obvious that the manufacturer of ingots had adequate facility to manufacture copper ingots for which they issued invoices and therefore it is very obvious that the Appellants had full knowledge of the fraudulent activities of V. K. Metal and hence there is a prima facie strong case against the appellants and the appellants should be asked to make substantial deposit for hearing the appeal in detail.

8. We have considered arguments on both sides and perused the records. This case critically depends on proving that M/s V. K. Metal Works did not have the facility to manufacture the impugned copper ingots. What we find is that there are only three documents relied upon in the SCN issued to the appellants. These are,-

(i) Statement dated 21-01-09 given by Sh. Shankar Lal Gupta authorized Signatory of M/s V.K Metal Works.

(ii) Statement dated 05-04-10 of Shri. Jagdish Malhotra Director of the appellant company.

(iii) Another statement dated 13-04-10 of Shri. Jagdish Malhotra.

9. From para 19 and 20 of SCN it is seen that the statements of Shri. Jagdish Malhotra does not lead to any firm conclusion. So the only evidence appearing against the appellant is the statement of Sh. Shankar Lal Gupta authorized Signatory of M/s V.K Metals. His cross-examination is not allowed. The SCN issued to V. K. Metal Works showing all the evidences against them is not disclosed to the appellants. Further a Show cause Notice by itself cannot prove any fact stated in the SCN.

10. The facts of the case can cause a strong suspicion of massive fraud. However such suspicion is not good enough to give any finding of evasion of duty by the appellant.

11. If Revenue wants to rely on the facts that are appearing against Shri. V. K. Metal Works, there is a need to at least show the result of the first adjudication of the SCN issued to V. K. Metal Works. It might have been desirable to adjudicate this case along with the case against Shri. V .K. Metal Works by furnishing all the evidences against M/s V. K. Metals to this appellant also. This possibility can still be explored. If the SCN is to be adjudicated on the bare evidence relied upon in the SCN, cross-examination of Sh. Shankar Lal Gupta is necessary. So the matter is remitted back to the adjudicating authority to proceed as he deems fit in the matter but we make it clear that simply re-confirming the demand based on a statement which is not tested in cross-examination will not be appropriate.

12. Thus the stay Petitions and appeals are disposed of.

(Pronounced in Open Court)

(S. S. Kang)
Vice President

(Mathew John)
Member (Technical)

MPS*