**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD**

Dated: 31/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70124/2016 SM dated 23/03/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| | E/52122/2014 | TRIBHUVAN INDUSTRIES LTD GINDANKHERA, AMAUSI LUCKNOW(UP) |
| | Name and Address of Respondent | COMMISSIONER OF CENTRAL EXCISE, LUCKNOW 7-A, ASHOK MARG, LUCKNOW |

Other Appellants and Respondents as per Annexure

**Copy To**

3Advocate(s) / Consultant(s

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3

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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, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**REGIONAL BENCH : ALLAHABAD**

**Ex. Appeal No.52122/14**

Arising out of OIA No.01/CE/LKO/2014 dated 08.01.2014 passed by Commissioner of Central Excise (Appeals), Customs & S.Tax, Lucknow.

**For approval and signature:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

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|---|---|---|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : No |
| 2. | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : Yes |
| 3. | Whether His Lordship wishes to see the fair copy of the Order? | : Seen |
| 4. | Whether Order is to be circulated to the Departmental Authorities? | : Yes |

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M/s Tribhuvan Industries Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Customs & S.Tax, Lucknow

RESPONDENT (S)

APPEARANCE

Written Submission made the Appellant (s)
Shri D. K. Deb, Asstt.Commr. (A.R.) for the Department

**CORAM:**

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 23. 03. 2016

Final ORDER NO. 70124/2016

**Per Mr. Anil Choudhary :**

The appellant is in appeal against order in appeal dated 8/1/14 by which denial of Cenvat credit on purchase of raw material have been upheld.

2. The brief facts are that the appellant is a manufacturer of MS ingots duly registered with the Central Excise Department and used to file returns required from time to time. During the financial year 2007-2008, the appellant had purchased sponge iron being the raw material/inputs from M/s Chachan Metal Pvt. Ltd., Shamli, Muzaffarnagar, a registered dealer under the Central Excise Act and had taken Cenvat credit amounting to Rs.2,04,875/-.

3. An enquiry was made by way of audit by the Central Excise Audit Party in the premises of the Seller of the raw material, that is, M/s Chachan Metal Pvt. Ltd., Shamli during the period 22/10/2008 to 23/10/2008. It was observed by the audit party that M/s Chachan Metal Pvt. Ltd. had issued the invoices on the basis of the goods received on endorsed invoices and have taken credit of Cenvat in RG-23D register, which were ordinarily issued in the name of M/s Chachan Metal Pvt. Ltd., Kanpur, having a separate Central Excise Registration number, which is also registered dealer under Central Excise. M/s Chachan Metal Pvt. Ltd., Shamli, neither at the time of audit nor thereafter was able to submit any proof regarding movement of material from Kanpur to Shamli, under the cover of the said endorsed invoices. According to the records, M/s Chachan Metals Pvt. Ltd.,

Shamli, had issued 10 invoices to the appellant-M/s Tribhuvan Industries Ltd., Lucknow. This information was communicated to the Asstt. Commissioner having jurisdiction over the appellant by the Suptd. of Central Excise in Shamli vide letter dated 28/8/2012. Based on this letter, show cause notice dated 18/9/12 was issued on the appellant proposing to disallow the Cenvat credit of Rs.2,04,875/- on the purchase made from the said M/s Chachan Metals Pvt. Ltd.,Shamli, In September 2007, as it appeared to revenue that the appellant have taken Cenvat credit on the basis of invalid invoices. It further appeared that burden of proof for the availability of credit lies with person taking credit as required under Rule 9 (5) of CCR and further, penalty was also proposed under Rule 15 of CCR read with Section 11 AC of the Act.

4. The appellant contested the show cause notice by filing reply. It was stated that credit was taken on receipt of inputs along with valid duty paying documents, namely, Invoices Nos. 19, 20, 21 and 22 all dated 18/9/2007 issued by M/s Chachan Metals Pvt. Ltd.. The invoices contained all particulars which are essential for the taking of Cenvat credit. The invoices issued by duly registered first stage dealers contained particulars of payment of duty by the manufacturer and all relevant information prescribed under the Rules, had been given therein. There was no reason to doubt the validity of the documents/invoices. Further pointed out that in paragraph 2 of the SCN, it is stated that the invoices in question were issued on the basis of the goods received on the endorsed invoices, which clarifies that the

goods were definitely received at the registered premises, at Shamli, accordingly, taken credit and subsequently. Credit was transferred to the appellant on sale of sponge iron. For any lapse on the part of M/s Chachan Metals Pvt. Ltd., Shamli to show the documents in support of transportation from Kanpur office to Shamli, cannot lead to adverse inference against the appellant. It was also pleaded that if there is any shortcoming on the part of the supplier, M/s Chachan Metals Pvt. Ltd., then revenue can take action on them but not on the present appellant under the facts and circumstances of the case. There is no malafide or contumacious conduct on the part of the appellants, hence, extended period of limitation is not invokable. Further, reliance was placed on the ruling of this Tribunal in the case of M/s Sadashiv Castings : 2005 (187) ELT 487, wherein invoices under which, assessee had received the inputs from registered dealers, having contained all information. The Tribunal took a view that assessee was not required to cause further investigation to ensure that appropriate duty is paid on inputs. It was also held that in absence of fraud, collusion, et cetera on the part of the assessee or not established by Revenue extended period of limitation is not invokable. It was also held that the revenue case is based on assumption and presumptions and there is no material to proceed against the present appellant. It was further stated that, it was admitted by the revenue that the goods were received by the seller, M/s Chachan Metals Pvt. Ltd., Shamli, on endorsed invoices. Thus, the Revenue have found nothing wrong in taking of cenvat credit by the supplier that is M/s Chachan Metals Pvt. Ltd., Shamli. In this view of the matter, no adverse inference can be drawn on the present appellant. It was also stated that it appears that the some lorries/truck on which the goods started from Ramchandrapur (Orissa) to Kanpur, were diverted to Shamli, as a same company/Person have got office at Kanpur & Shamli. It was also contended that in the course of audit, the goods in question were found to have reached at Shamli which is sufficient to prove that the sponge iron in question did reach at Shambli office of the supplier-M/s Chachan Metals Pvt. Ltd.. Reliance is also placed on the ruling of this Tribunal in the case of M/s Laxmi Metal Industries 2013 (287) ELT 487, wherein the Tribunal had observed that the goods have been received with proper documents showing payment of duty and there being no dispute about the credentials of the cenvatable invoices issued by registered dealer and accompanying goods, the buyer cannot be expected to go beyond that to verify and find out, as to whether the registered dealer had purchased the same legally or not.

5. The SCN was adjudicated vide OIO dated 16.08.2013, wherein the proposed demand of duty was confirmed with interest and equal amount of penalty was imposed under Rule 15 of CCR read with section 11 AC of the Central Excise Act, 1944. It was also observed that the invoice issued by M/s Chachan Metals Pvt. Ltd. Shambli, are not issued by first stage dealer and M/s Chachan Metals Pvt. Ltd., Shamli have not received the goods directly from the manufacturer located at Ramchandrapur, (Orissa) instead of the goods have been supplied by the manufacturer to M/s Chachan Metals Pvt. Ltd., Kanpur, who have further sentfor the said the goods to M/s Chachan Metals

Pvt. Ltd., Shamli. As M/s Chachan Metals Pvt. Ltd., have failed to provide details of transportation from Kanpur to Shambli and moreover, transport documents/GR pertaining to the subject goods showed destination at Kanpur. Thus, it was concluded that in absence of evidence of movement of goods from Lucknow to Shamli the movement of goods from the M/s Chachan Metals Pvt. Ltd., Shamli to the appellant at Lucknow is also not established. It was further observed that the cenvatable invoices issued by M/s Chachan Metals Pvt. Ltd., Shambli, which are the basis of credit by the appellant, at the bottom) of the invoices debit endorsed the clearing bustard duly stamped and signed by Director of Tribhuwan Industries Ltd., 30 find that the goods under reference have been sent by them directly from the manufacturer, that is, M/s Orion Ispat Ltd. Orissa had on specific dates. The dates on which invoices by them were issued. It was further observed that invoice number 1238 dated 6/9/2007 issued by M/s Orion Ispat Ltd., Orissa, are ostensibly received by M/s Chachan Metals Pvt. Ltd., Shamli on 12/9/2007 (as per Sl.No. 22 of the RG-23 Register) whereas the certificate entries of inputs in both on Invoice Number 19 dated 18/9/2007 issued by M/s Chachan Metals Pvt. Ltd., Shamli showed the goods as received at Ramchandrapur on 10/9/2007. The bilty/consignment note number 726 dated 6/9/2007, issued one M/s Kaushalya Roadways,, Orissa for Truck No.UP78 BN-4321 showed the consignment to be heading to Kanpur from Keonjhar, (Orissa) on 6/9/2007 also as the goods were allegedly forwarded/transferred to M/s Chachan Metals Pvt. Ltd., Shamli by M/s Chachan Metals Pvt. Ltd., Kanpur and received by the dealer at Shamli on 12/9/2007, they cannot claim to have the possession of subject goods at Ramchandrapur on 10/9/2007. Accordingly the invoices were held to be not proper duty paying documents as it appeared to revenue's that goods did not accompany with the Cenvatable invoices issued by M/s Chachan Metals Pvt. Ltd., Shamli.

6. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order dated 8/1/14 was pleased to reject the appeal, agreeing with the findings of the adjudicating authority.

7. Being aggrieved the appellant have preferred the present appeal before this Tribunal.

8. The appellant have prayed for disposal of the appeal on merits and submitted written submissions. It is urged that the SCN was served and no case is made out. The SCN is based on assumption and presumptions. The SCN lacks on the material facts for lack of proper investigation, as no investigation has been made at the end of the transporter, who transported the goods from Orissa to Kanpur and then onwards to Shamli. It is further urged that in view of the fact that the Revenue is satisfied with taking of cenvat credit by M/s Chachan Metals Pvt. Ltd., Shamli, there can be no disallowance in the cenvat credit taken by the appellant, duly passed by the seller to M/s Chachan Metals Pvt. Ltd., Shamli on sale of input to them, and further argued that without any contrary finding, the demand has been confirmed only on presumption and assumption. Further It is stated that the extended period of limitation is not invokable under the facts

and circumstances, relying on the ruling of the Hon'ble Supreme Court in the case of M/s Pragathi Concrete Products (P) Ltd. : 2015 (322) ELT 819, under the fact that the unit of assessee was audited several times and physical inspections carried out by the Revenue during the period of dispute, case of suppression is not made out and accordingly, it was held that extended period of limitation is not attracted. Reliance is also placed on the ruling of this Tribunal in the case of S. K. Foils Ltd. Vs. Commr. of Central Excise, Rohtak : 2015 (315) ELT 258 (Delhi-Tribunal) wherein the allegation by the Revenue that the first stage dealer was not in existence under the fact that raw materials received by the assessee which were used by him in the manufacture of the final products on which appropriate duty of Excise was paid and monthly returns, were filed, It was held that the burden placed upon manufacture under Rule 7 (2) of Cenvat Credit Rules, 2004 stands discharged. It was also held that manufacture cannot be expected to undertake the investigations, like Revenue officers as long as he is receiving the goods from a known dealer under the cover of invoices and making payment by cheques for the same. He is deemed to have discharged the onus placed upon them, under the said Rules..

7. The ld.A.R. for Revenue relies on the impugned order. He has taken me through the copies of invoices in question, which has been placed in the appeal book at pages 77 to 80.

8. Having considered the rival contentions, from a perusal of the invoices in question, I find that the so-called certificate (invoices) as mentioned in the Order-in-Original, in the invoices, has been mis-

conceived by the adjudicating authority as a certificate by the appellant. In fact, it is certified by the seller of inputs - M/s Chachan Metals Pvt. Ltd., Shamli dated 18/9/2007, certifying that the goods covered by the invoice where received directly from factory/Depot/consignment agent located at Ramchandrapur, Orissa. I find that the adjudicating authority misread the document by interpreting it as this certificate is given by the appellant leading to the illogical conclusion drawn. Thus, I find that the impugned orders suffer with mistake of fact and accordingly, the same is fit to be set aside. Further it is the admitted case of Revenue that M/s Chachan Metals Pvt. Ltd., Shamli, received the goods along with the endorsed invoices, which is a normal trade practice where goods are resold during transit. That there is nothing wrong in diverting the goods in transit by the same Company, that is M/s Chachan Metals Pvt. Ltd., Kanpur to their own office at Shamli. Further, I find that it is an admitted fact that the revenue have accepted the taking of credit by M/s Chachan Metals Pvt. Ltd., Shamli. Accordingly, I allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefits, in accordance with law.

(Pronounced in the open Court)

**(Anil Choudhary)**
**Member (Judicial)**

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प्रमाणित प्रति / Certified True Copy
6.6.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
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