FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 31/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70739/2016-EX[DB] dated 29/06/2016

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
1	E/1648/2011	**RATHI INDUSTRIES LTD.** BULANDSHAHAR ROAD, CHHAPRAULA, GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s): SH UDIT CHANDRA AND SUBODH KUMAR,ADV
9, DRUMMOND ROAD
CIVIL LINES(NEAR DR NAITHANI HOSPITAL)
ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, 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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

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

Appeal No.E/1648/2011-EX[DB]

Arising out of O/O No.44-45/COMMR./GZB/2010-2011 dated 22.03.2011 passed by Commissioner, Customs, Central Excise & S. Tax, Ghaziabad.

For approval and signature:

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

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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 Rathi Industries Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Ghaziabad

...RESPONDENT (S)

APPEARANCE

Shri Udit Chandra & Shri Subodh Kumar, Advocates for the Appellant (s)
Shri S.J. Sahu Asstt. Commissioner, (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT:- 29.06.2016

FINAL ORDER NO. - 70739/2016

Per Mr. Anil Choudhary :

The appellant, a manufacturer of excisable goods namely MS Bar/Rods, S.S. Bars/Rods etc. is in appeal against Order-in-Original passed by Ld. Commissioner, order dated 23.03.2011, whereby Cenvat Credit amounting to Rs.2, 45, 49, 032/- for the period of 01.05.2000 to 31.12.2000, availed by the appellant on purchase of inputs, have been disallowed on the ground that the appellant have availed Cenvat Credit without actually receiving the material or inputs and also equal amount of penalty was imposed under Rule 57 AH read with Rule 173 Q of CER 1944, read with section 11 AC of the Act along with interest. Further plant, building, machinery etc. of the appellant have been confiscated under Rule 173 Q(2) with an option to redeem on payment of Rs.25 lakhs. Further, penalty amounting to Rs.21 lakhs have been imposed under Rule 173 Q(1) (bb) read with Rule 209A imposed for taking suo-moto credit of Rs.21,00,000/-. Personal penalty of Rs.5 lakhs was imposed on Shri P.K. Singhal, Manager (Finance) Excise & Taxation of the appellant Company who have also filed a separate appeal and a penalty of Rs.2 lakhs was imposed on Shri Pramod Sachdeva owner of the M/s Sachdeva Transporter, G.T. Road, Ghaziabad under Rule 209A.

2. The brief facts are that appellant is a registered manufacturer with the Central Excise Department since 1995. The appellant have been regularly filing statutory returns and maintains the records as required. The records of the appellant were

periodically audited by the Departmental officers and also by the officers of Accountant General, U.P. Under the compounded Levy scheme which came into effect from 01.09.1997, the appellant opted for it and declared parameters of both its rolling Millis for determination of annual production capacity. During the entire period of operation, under the compounded Levy Scheme, which was in effect till 31.03.2001, the appellant did not produce alloy steel products and discharged duty as per the annual capacity of production determined by the Ld. Commissioner. Upon withdrawal of the compounded Levy Scheme with effect from 01.04.2000, the appellant started discharging duty liability in terms of section 3 of the Act and also started availing Cenvat Credit of duty paid on inputs. The appellant started manufacturing both alloy and non-alloy steel products simultaneously. The production and clearance of both alloy and non-alloy steel products were duly reflected in the RT – 12 returns which are accepted by the Department after due verification. The appellant purchased its inputs namely billets, Ingots and S.S. Flats etc. on payment of duty from manufacturer like Tata Steel, Rathi Ispat, Ram Ganga Cement Pvt. Ltd., Shri Om Metals Ltd., etc., and availed credit of duty paid on such raw materials, on receipt of such materials in the unit along with the invoices. On receipt of the raw materials, they are weighed on the appellants own weigh bridge inside the factory premises and detailed weighment slip containing the full details of the goods received is prepared. Thereafter, entries were made in RG-23A and form-IV register. The appellant also has a trading division in the name and style of Rathi Steel Rolling Mills (a Unit of Rathi Industries Ltd, Bulandshahar Road, Ghaziabad) which is engaged exclusively in trading. The appellant maintains separate accounts for their trading division.

3. The revenue on the basis of intelligence that another company namely Rathi Ispat Ltd., a manufacturer of Iron and steel products have indulged in suppression of production and clandestine removal of excisable goods inspected the premises of the said Rathi Ispat Ltd. on 25/26 . 11.2000. In the course of search, some statement of the employees of the Rathi Ispat Ltd. were also recorded. The statement of one Pramod Sachdeva, who was transporter and proprietor of M/s Sachdeva Carrier, as well as statement of one D.C. Gupta (AR) of M/s Gauri Components Pvt. Ltd. and one Sardar Ahmad Director of M/s Asvad Steel Pvt. Ltd., were also recorded.

4. That subsequently after two days, the revenue officers also visited and inspected the premises of the appellant on 28/11/2000 and verified the records including consumption of billets. The statement of manager of the appellant, was recorded in relation to inputs namely MS billets, MS ingots received by the appellant from the Rathi Ispat Ltd. The appellant on being coerced by the revenue, reversed the Cenvat Credit of Rs.21, 00, 000/-. Which was legitimately taken on purchase of inputs. The inspecting officers also coerced the appellant to make

another debit entry on the next page of the register being Page No.56 towards penalty for an amount of Rs.21, 00, 000/-. The appellant protested by filing a representation before the Commissioner on 14.12.2000. On not getting any relief, the appellant also preferred a Writ Petition No.21/2001, before Hon'ble Allahabad High Court, wherein the Commissioner was directed to decide the representation. On not getting any relief from the Ld. Commissioner, the appellant again filed another Writ Application, challenging the order of the Commissioner, vide Writ Petition No.632/2001, which was allowed by the High Court setting aside the order of the Commissioner. The appellant under intimation to the revenue took re-credit of the said amount of Rs.21 lakhs on 14.6.2001. The said re-credit was also disclosed in the RT-12 returns for the month of June 2001. The appellant also filed the declarations under rule 173 B read with rule 57AA, wherein it was informed that the input-SS Flats were being used for manufacturing of SS Bars/Rods in the factory of appellant. The revenue issued SCN dated 8.07.2002 as it appeared that the appellant have wrongly taken re-credit of the amount of Rs.21 lakhs on 14.06.2001. In view of the interference of the Hon'ble High Court, this show cause notice is dropped and/or not decided. The appellant had also disclosed in the RT-12 returns the details of consumption of SS Flats and M.S. billets physically received from Rathi Ispat Ltd. and others, in production of taxable finished goods.

5. That another show cause notice dated 13.08.2002 was issued alleging that the appellant had availed credit on MS billets/Ingots, SS Flats on the basis of invoices in respect of these goods without receiving the same from Rathi Ispat Ltd. It was further alleged that Rathi Ispat Ltd. do not manufacture MS billets/Ingots and the appellant do not have the facility for further rolling of SS Flats into SS Rods. It is also alleged that the appellant has shown clearance of SS Flats in the shape of S.S. Rods in order to improve their turnover. Accordingly it was proposed to disallow Cenvat credit amounting to Rs.2,45, 49, 032/- for the period of May 2000 to December 2000 availed by the appellant on S.S. flats, MS billets and Ingots, and utilised for payment of duty in terms of Rule 57 AH (2) of CER, 1944 read with section 11 A of the Central Excise Act. Further penalty was proposed under rule 57 AH and rule 173 Q(1) along with proposal to confiscate plant, building, machinery etc.

6. The appellant contested the show cause notice, firstly raising the preliminary objection that the provisions of section 11 A provide for recovery of duty not levied or not paid or short levy or short paid or erroneously refunded within a period of one year from the relevant date. There being no element of suppression, the SCN is bad for invoking the extended period of limitation. The request was also made for supply of 'relied upon documents' referred to in the SCN. The appellant subsequently filed their detailed submissions on 27.12 .2005, stating inter alia that they

are manufacturing various items of Iron & Steel. (The fact of fabrication of the rolling mills was declared to the revenue and no duty was paid on the machinery manufactured since they were captively consumed). Since 1997, they were manufacturing alloy and non-alloy steel rolled products like M.S. Rods, S.S. Rods etc. During the compounded Levy period with effect from 1.09.1997, they were discharging duty on annual capacity of production determined by the Commissioner. Consequent to withdrawal of compounded Levy scheme with effect from 01.04.2000, for Iron and Steel products the appellant started paying duty under section 3 of the Act and also started availing Cenvat credit under the provisions of CCR. They cleared the entire quantity of rolled products manufactured, on payment of appropriate duty of Excise under the cover of proper invoices. They have regularly filed RT-12 returns, wherein the goods manufactured are disclosed as MS Bars, Rods/Tor steel, under chapter-72. The returns also disclosed manufacture of bars and rods of stainless steel. The appellant purchased the inputs/raw materials from various sources on payment of appropriate duty. Further on receipt of the materials proper, goods receipt note was prepared containing details of the Seller, vehicle number, quantity, Tare weigh and gross weight. On the basis of the invoice and goods receipt note Cenvat credit was availed. Proper entries were made in the normal course of business in RG-23A Part-I register and form-IV register maintained for this purpose. The issue of raw materials for production was accounted for in form IV register. The quantity of finished goods manufactured was accounted for in the RG-1 register. Finished goods were cleared or removed under the cover of proper invoices on payment of appropriate duty. The allegations in the show cause notice are vague and unsubstantiated. The allegation in the notice that the appellant did not have facility for the rolling of stainless steel products is also vague and bad. Further, the statement of the employees of Rathi Ispat Ltd., namely Shri Haridwar Rai and Vinod Sharma are contrary to the documentary evidence available. The Cenvat credit of Rs.36, 61, 459/- allegedly availed on SS Flats is bad as the same were purchased by the trading division and in respect of which no Cenvat credit, whatsoever, was availed by the appellant manufacturer. The revenue have at no stage disbelieved the returns filed periodically, which disclosed manufacture of stainless steel rolled products. The SCN also proposes to deny credit of Rs.34, 68, 749/- availed as credit in respect of 115 invoices issued by Rathi Ispat Ltd. in respect of purchase of MS billets. Relying on the statement of the said two employees of R.I. Ltd., stating that they did not manufacture MS billets/Ingots is bad and vague and fit to be dropped. There is no dispute by the revenue as regard the duty paid by the supplier in respect of the inputs received by the appellant. Further, there is no dispute by revenue on the manufacture of the finished goods and the entry is made in RG-1 register and cleared by the appellant on payment of duty. The passing reference is made by revenue in the SCN that the appellant have mischievously disclosed clearance of SS rods, to balance its books and/or registers is vague and untenable. There is also no case of the revenue that the appellant have received the inputs from some undisclosed sources and utilised the same in manufacture of the goods cleared. Further the allegation is also bad being revenue neutral as it alleges taking of credit on SS flats and clearance of fake finished products – SS rods for balancing of the books. The appellant has capacity to manufacture or roll out both alloy and non-alloy steel products since 1997. It is also a matter of record that the appellants soon after withdrawal of the compounded, Levy Scheme had approached the department authority to amend the registration certificate for the inclusion of stainless steel rods and bars, as one of the products manufactured. Such request was accepted by the revenue upon verification and the registration certificate was amended accordingly. The fact of availability of rolling machines with the appellant, capable of rolling alloy steel and non-alloy steel products is also supported by certificate of the chartered engineer **Shri H.K. Bhansaly of IIT Kanpur**. Further, he relied upon documents namely certificates given by National Iron and Steel Industries and M/s Prince Steel industries, both manufacturers were supplying rolls to the appellant including during the relevant period which were used in the rolling mills, then both alloy and Non-alloy steel products were being rolled. The allegation of the revenue that the appellant was not capable of rolling alloy steel products is only a wild imagination and not backed by any techno feasibility report. That the appellant had categorically informed the revenue, after closure of the compounded Levy scheme that they are also going to manufacture alloy steel products and further such production was declared in the monthly returns. In the returns filed for the period of June 2000 to February 2001, the appellant has regularly manufactured and cleared bars and rods of stainless steel and paid the appropriate duty thereon. The appellant have paid duty of Rs.1.94 crores during the relevant period on the clearance of SS steel products and tools manufactured from SS flats. Further these facts have also been supported in the statement of Shri Prashant Dayal, their In-charge of production, recorded by the revenue under section 14 of the Act. Further, it is an admitted fact that Rathi Ispat Ltd.(supplier) were manufacturing S. S. flats which is also supported from their documents as well as statement of their employees. So far the reliance has been placed on the statement of one Pramod Sachdeva transporter and his truck movement register based on which it has been alleged that the appellants did not receive the S.S. flats in their premises. Infact, the appellant have received 4561.10 MT of SS flats from Rathi Ispat Ltd. The revenue has not been able to lead any evidence to show that the appellant have received the SS flats from any other source. Further, the appellant have maintained proper records of the transactions which have not been found untrue. Moreover, payments have been made to Rathi Ispat through banking Channel. The purchase and utilisation of other inputs being ferro alloys, ferro manganese, ferro silica etc. also support the manufacture of SS Bars. Further, the Ledger account of the transporter M/s Sachdeva, in the books of the appellant clearly evidences that they have received the inputs in question and made payments for transport charges to the transporter. Further, the appellant have also deducted income tax at source from the bills of the transporter. Further, it is evident that the transporter's documents are incomplete and/or incorrect and hence not reliable for the purpose of allegations made by the revenue, on the basis of the same. Further, the distance from Rathi Ispat to the appellant's factory is only four kilometers and for such short distances, normally the transporters do not maintain proper records. As the case of revenue was based on statements of some persons, the appellant prayed for opportunity to cross-examine. The SCN was adjudicated on contest and the proposed demand confirmed, and penalties imposed, as morefully stated in para 1 above.

7. Being aggrieved, the appellant is before this Tribunal on amongst others, the following grounds:-

7.1 That the impugned order is vitiated as it proceeds on wrong assumption of fact that the appellant-company and Rathi Ispat Ltd. are family concerns. There is no manner of concern by way of inter connected holding or common directors. No averments have been made by the Revenue in support of their allegation that being family concerns, they have been provided with the facility of receiving Cenvat Credit from Rathi Ispat Ltd.

7.2 The whole case of Revenue is based on statements of employees of Rathi Ispat Ltd., who have nowhere stated that goods have been supplied to the appellant by way of paper transaction only. In other words, the appellant have received ineligible Cenvat Credit without receiving the materials.

7.3 The employees of Rathi Ispat Ltd. namely Haridwar Rai and Vinod Sharma have nowhere stated that the goods in question were not supplied with the invoices issued to the appellant. The statements of the said two employees is also contradictory as on the one hand, they say that Rathi Ispat Ltd. did not manufacture M.S. Billets/Ingots since May, 2000, and on the other hand, they say that M.S. Billets and Ingots were found in the dump or scrap stock which was cleared on payment of duty.

7.4 So far, the statement of Mr. P.K. Singhal-Manager (Finance) of the appellant is concerned there is no admission on his part of non-receipt of materials from Rathi Ispat in saying that the physical receipt of material is looked after by the staff deployed at the concerned department and requested the Central Excise Officials to make appropriate enquiry from those persons in the said department. The Revenue Officers did not make any enquiry from them and have drawn the presumption that M.S. Billets and SS Billets/Flats were not received by the appellant (Company). The debit entry made of Rs.25 lakhs in the Cevat Register on the date of inspection and further, undertaking by him deposit Rs.13,02,298/- within a week, on account of the allegation of non-receipt of M.S. Billets from Rathi Ispat, does not lead to any adverse interference, as the appellant soon thereafter, protested the behaviour of the inspecting officials bringing same to the knowledge of the jurisdictional Commissioner, wherein it was informed that the debit in Cenvat Register were made as the inspecting officials exercised undue influence and/or prevailed on Mr. Singhal. Further, permission was sought to re-credit the amount debited. The appellant was finally permitted to take the re-credit pursuant to the order passed in Writ Petition by the Hon'ble High Court of Allahabad.

7.5 So far, the statement of Pramod Sachdeva-Transporter and Proprietor of Sachdeva Carriers is concerned, he has said in his statement that he is not maintaining any records in respect of movement of SS Flats from Rathi Ispat Ltd. to the appellants factory. It is further evident from the statement of Pramod Sachdeva that they do not maintain proper records of their transportation business. The Revenue have no where disclosed the source of the invoices from where they were recovered which were shown to the Transporter, issued by Rathi Ispat Ltd., on the appellant for sale of inputs/raw materials. These invoices are neither part of the RUD in the SCN. The denial of some Truck numbers appearing on the said unexplained invoices does not lead to any conclusion, as it is evident that Pramod Sachdeva have made irresponsible statements based on his memory in absence of proper books of accounts maintained for the transactions by them. Further, the said transporter have agreed that several truck numbers mentioned in the invoices relate to their transport. The transporter have also not disputed the raising of Bills for transport charges on the appellant. Further, the appellant have deducted income tax at source before payment of such transport charges and issued the TDS certificates to the transporter which have been not denied by the transporters. Evidently, the denial made by the said transporters appeared to have made under undue influence exercised by the inspecting officials. It is humanely impossible for the said Mr. Sachdeva to re-collect and comment from his memory, without reference to any records, on 100's of invoices (495+125), spread over a period of several months.

7.6 So far, the statements of the transporter to the effect that he did not send his truck for loading or transport of Scrap from Rathi Ispat to M/s Asvad Steel & Alloys (p) Ltd. and M/s Gauri Components (P) Ltd. and further, admission by the responsible person of said two concerns that they have availed ineligible Cenvat Credit based on invoices of Rathi Ispat and further voluntarily reversed/deposited the credit taken, does not lead to any conclusion against the appellant.

7.7 There is no basis of alleging connivance between the appellant and the said Rathi Ispat Ltd., save and except the allegation of both, as family concern.

7.8 It is also evident that Revenue had not made any enquiry from the other transporter namely Vedanshu Transport, who have also transported materials from Rathi Ispat Ltd. to the factory of appellant.

7.9 Further, the statements of the aforementioned persons and others cannot be relied upon by the Revenue against the appellants as the appellant had categorically requested for cross-examination of all these persons, whose statements have been relied upon by Revenue in the SCN. By not providing such opportunity, there have been miscarriage of justice. Thereby, vitiating the impugned order. On the issue of cross-examination, the Ld. Commissioner have not given any cogent reason for denying the same, except observing in para 6.4 of his order that cross-examination was permitted, but inspite of repeated letters non of witnesses appeared for the same. It is further observed that the demand of cross-examination of some of the persons, without giving any names, whose statements have been relied, has not been found to be proper, in view of the fact that apart from the statement of Pramod Sachdeva, all others were employees of either the appellant(company) or the supplier Company, namely Rathi Ispat Ltd. (co-noticee). Thus, it is evident that the Ld. Commissioner failed to exercise the jurisdiction and power vested in him in producing the witness of Revenue for cross-examination without any cogent reason and as such, the impugned order is vitiated.

7.10. So far the allegation of Revenue that the appellant does not have facility to manufacture SS Rods/Bars (8.0mm and 10 mm) is also vague and unsubstantiated, as the Revenue itself on the application of the appellant during the period prior to inspection on 28.11.2000, have inspected the factory premises and have pursuant to such inspection amended the registration certificate to the effect that the appellant can manufacture SS Rods/Bars. Further, the returns and production records of the appellant, have not been found to be untrue nor have been disputed, wherein production of SS Rods/Bars have been declared and cleared on payment of appropriate duty.

7.11 The show cause notice is also bad and vague as it nowhere discloses the source of the 495+125 or 620 invoices purportedly issued by the Rathi Ispat on the appellant for sale of materials being inputs of the appellant which were allegedly shown to the transporter Pramod Sachdeva. That the calculation of demand of Rs.2,45,49,032/- against the appellant is vague and unsubstantiated and not based on the relied upon documents. The Revenue have failed to verify the records of the appellant and have raised unsubstantiated demand which is fit to set aside. The Revenue have also not identified any alternative source of raw material, which have been utilised for manufacturing their finished products which have been cleared on payment of duty.

7.12 The learned counsel for the appellant have placed reliance on the Ruling of the apex Court in the case of Andman Timber Industries Vs. Commissioner, Central Excise, Kolkata reported at 2015 (62) Taxman.com 3(SC), wherein it has been held by the Court that denying an opportunity to cross-examine, amounts to violation of principle of natural justice and thus have quashed the entire assessment order.

8. The Learned A.R. for the Revenue relies on the impugned order.

8.1 He further states that the findings of the Ld. Commissioner are based on the statements and incriminating documents recovered. Further, referring to the statements of P.K. Singhal, Manager(Finance), he states that the senior Officer was not aware of the actual receipt of the said inputs purchased from Rathi Ispat. Thus, justifies the adverse interference drawn by the Revenue. He further relies on the statements of the authorised persons of M/s Gauri Components (P) Ltd. and M/s Asvad Steel & Alloys (P) Ltd., who have admitted receipt of ineligible Cenvat Credit from the said Rathi Ispat Ltd. Thus, Revenue is justified in concluding, this appellant have also received ineligible Cenvat Credit. He further states that during the relevant time, although appellant have disclosed clearance of finished goods in their records and in the RT-12 returns, such returns were not being assessed by the Revenue and were subject to calculation checking only. During the said period, the self assessment system was invoke.

9. Having carefully considered the rival contentions, we find that the show cause notice is vague and unsubstantiated. The show cause notice have nowhere disclosed the source of several invoices (about 620 in number) purported to have been issued by Rathi Ispat Ltd. for sale of materials to the appellant on the basis of which the transporter-Pramod Sachdeva was confronted. Further, the said invoices are not part of the relied upon documents in the show cause notice. As such, the appellant also did not have any opportunity to comment on those invoices, as admittedly the copy of such invoices was never made available to the appellants. We further find that the Ld. Commissioner have failed to exercise the jurisdiction vested on him by not ensuring the presence of the witnesses of the Revenue, whose statements have been relied upon, in raising the demand against the appellant. The Ld. Commissioner have also failed to examine the witnesses of the Revenue in the course of adjudication proceedings and to further offer the witnesses for cross-examination, which is in clear violation of provisions of Section 9D of the Central Excise Act, thus, vitiating the impugned order. All the powers of a Court under the Civil Procedure Code are vested in the Commissioner for making enquiry and ensuring the presence of witnesses and discovery of any information, etc. We further find that the statements of the employees of Rathi Ispat

Ltd., are vague and unsubstantiated, having no legs to stand. Similarly, the statement of the Transporter-Pramod Sachdeva, is also vague and made out of memory which appears to be under undue influence exercised upon him. Further, we find that the statement of all these persons, are self-contradictory as the employees of Rathi Ispat Ltd., having stated that M.S. Billets/Ingots were found lying in the stock of Scrap, which were cleared on payment of duty. Similarly, the transporter, Pramod Sachdeva have also not denied the raising of bills for the transport charges on the appellant, nor have denied the receipt of money for such charges, and also deduction of income tax at source from the Bills. We, further, hold that there being no manner of concern, no adverse interference can be drawn from the statement of the authorized persons of M/s Asvad Steel & Alloys (P) Ltd. & M/s Gauri Components (P) Ltd. against the appellant. We also find that the impugned order is in the teeth of the Ruling of Hon'ble Supreme Court in the case of Andman Timber Industries (supra). We also find that the allegations of family concern on the appellant (company) viz-a-viz Rathi Ispat Ltd., is vague and no averment supporting the same have been made either in the SCN nor any findings recorded in the Order-in-Original. So far, the adverse interference drawn, based on the statement of P.K. Singhal, Manager (Finance) of the appellant, we find that the appellant have soon thereafter, raised protest before the jurisdictional Commissioner and have also succeeded in Writ application before the Hon'ble High Court of Allahabad, wherein they have been permitted to take back the Cenvat Credit, debited at the time of inspection. We, further, find that the demand under challenge is based on some unsubstantiated invoices, the source of which is not known and as such the demand cannot be sustained. We also hold that under the facts and circumstances, there being no suppression of facts and/or contumacy conduct on the part of the appellant, the extended of limitation is not invokable, on this score also, the tax and penalty are fit to be set aside.

10. Accordingly, we set aside the impugned order. The appellant shall be entitled to consequential benefits in accordance with law. The appellant is entitled to take back the Cenvat Credit debited in their register by way of pre deposit during the pendency of this appeal with interest, as per Rules. Thus, the appeal stands allowed. Order be given dasti. Ac

(Dictated & pronounced in the open Court)

-Sd- -Sd-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
31.8.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001