

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

Dated: 03/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70544-70547/2016-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/917/2009	RAJ RATAN CASTINGS PVT. LTD. E-23 & 32, UPSIDC, INDUSTRIAL AREAS, ORAI-285001.
2	E/918/2009	SHRI SUNIL KHATRI, DIRECTOR OF M/S RAJ RATAN CASTINGS PVT. LTD., E-23 & 32, UPSIDC, INDUSTRIAL AREAS, ORAI- 285001.
3	E/919/2009	RAJ RATAN INDUSTRIES LTD. D-12, UPSIDC, INDUSTRIAL AREA, SITE-II, UNNAO.
4	E/920/2009	SHRI JAI KISHAN KHATRI, DIRECTOR OF M/S RAJ RATAN INDUSTRIES LTD. D-12, UPSIDC, INDUSTRIAL AREA, SITE-II, UNNAO. Name and Address of Respondent
5		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

6 Advocate(s) / Consultant(s):

Bipin Garg
B-1/1289, A - Vasant Kunj,
New Delhi

7 Bar Association, CESTAT, Allahabad

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

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

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

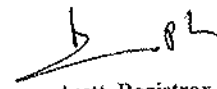
14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

16 The ICAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD
Ground, Near Karkardooma Court, Delhi-110032

18 C.D.R. 19 Office Copy 20 Guard File


Asstt. Registrar

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

Ex. Appeal Nos.917-920/09

Arising out of O/O No.11/Commr./MP/2008 dated 31.12.2008 passed by
Commr. of Central Excise, Kanpur.

For approval and signature:

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

-
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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- (i) M/s Raj Ratan Castings Pvt. Ltd.
- (ii) Shri Sunil Khatri, Director
- (iii) M/s Raj Ratan Industries Ltd.
- (iv) Shri Jai Kishan Khatri, Director

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

...RESPONDENT (S)

APPEARANCE

S/Shri Bipin Garg & Amit Awasthi, both Advocates for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (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 : 29.06.2010

Final ORDER NO. 70544/70547/2010



Per Mr. Anil G. Shakkarwar :

These are four appeals, where the investigations were carried out together and a combined Show Cause Notice, details of which shall be available in subsequent paras, was issued.

2. On the basis of investigation, Additional Director General DGCI, ^E ~~AN~~ New Delhi issued Show Cause Notice vide File No.DZU/26/INV/2004 dated 31.8.2007 to above stated four appellants. The appellants are engaged in the manufacture of M.S. Ingots ^{falling} ~~following~~ under Chapter Sub-heading No.7204.90 of ^{AN} schedule to Central Excise Tariff Act, 1985. On 25.5.2004, the appellants were visited by Central Excise Officers. Subsequently, the offices ^Y carried out investigations. Appellants had taken ^{AN} Cenvat Credit on channels, Joist, C.R. Strips, H.R. Coils, G.R. Strips, Angles etc. on the invoices issued by M/s Bansal Structurals Pvt. Ltd., M/s Bhawna Steels, M/s Bhagwati Traders and M/s V.K. Enterprises who were either first stage or second stage dealers registered with Central Excise Department. The department also conducted enquiries from traders, who had supplied inputs and transporters through whom, the inputs were received by the appellants and it appeared to Revenue that the appellant did not receive the inputs and it was alleged that Cenvat Credit in respect of inputs, was availed by the appellants without actually receiving the inputs into their factory. The basis for such allegation was various statements obtained by Revenue from dealers who supplied materials and owners of Transport
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Company. Additional Director General, DGCEI, New Delhi, on the basis of said investigation, issued the said Show Cause Notice dated 31.08.2007, calling upon M/s Raj Ratan Casting Pvt. Ltd. to show cause as to why Cenvat Credit amounting to Rs.76,16,327/- which was alleged to be wrongly taken on the inputs on the basis of invoices without receiving the inputs should not be recovered from them in addition to other proposals. Shri Sunil Khatri, Director of the said appellant, was required to show cause, as to why penalty under Rule 26 of Central Excise Rules 2002 should not be imposed on him. ^{Through} ~~Thereupon~~ the same Show Cause Notice, M/s Raj Ratan Industry Ltd. were called upon to show cause, as to why Cenvat Credit amounting to Rs.17,78,078/- should not be recovered from them with the similar allegations and their Director, Shri Jai Kisan Khatri was also called upon to show cause as to why penalty should not be imposed on him under said Rule 26.

3. The appellants submitted their replies to the said Show Cause Notice. In the said reply before the original authority, the appellants contended that they purchased the inputs from the said dealers who purchased the goods from the manufacturers and all the manufacturers and dealers were duly registered with Central Excise Department and regularly filed their returns. On the allegations of statements recorded from the transporters, the appellants submitted before original authority that the transport company does not have their own vehicles but arranged the

vehicles owned by others and they simply work on the commission and the Company, through whom the goods were transported, was not required to be registered with any Department. They further contested that in the statements recorded in respect of Shri Aatma Ram Khatri and Shri Sunil Khatri, it was nowhere admitted by them that they have not received the inputs. They further submitted that the department's case is based on statements. They had requested for cross-examination of 11 witnesses, out of 11 witnesses, Revenue could produce only four witnesses for cross-examination. The appellant had filed a Writ Petition before the Hon'ble High Court of Allahabad for permitting the appellant to cross-examine, rest of the witnesses which failed to appear on the given date and subsequently original authority disallowed the cross-examination of them. The Hon'ble High Court of Allahabad dismissed the said Writ Petition of the appellant with the observation that in the event of prejudice caused to appellant, on account of the statement of such witnesses whose cross-examination could not take place, it was open to the appellant to challenge the same with the concerned authority. The appellant submitted before the original authority that out of the cross-examination of 4 witnesses namely Shri Girija Shankar Tiwari, Shri Kailash Kumar Sharma, Shri Mahaveer Prasad Jain and Shri Anand Prakash, revealed that the appellant had received the inputs in their factory and was consumed by appellant in their factory for manufacture of M.S. ³⁰inputs. The learned Original 

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Authority decided the said Show Cause Notice through impugned order in Original No.11/Comm./MP/2008 dated 31.12.2008. The Learned Original Authority confirmed the demand of Cenvat Credit of amounting to Rs.76,16,327/- and also Cenvat Credit of Rs.17,78,078/-, ordered both the manufacturer assesses to pay interest. It imposed equal penalty ^{of} on both manufacturer assesses. It also appropriated Rs.5 lakh from M/s Raj Ratan Casting Ltd., & Rs.10 lakh from M/s Raj Ratan ^{Ind-} Ltd. and imposed personal ^{pen} penalty of Rs.4 lakh on Shri Sunil Khatri and that of Rs.1 lakh on Shri Jai Kisan Khatri. Against the impugned order, the appellants filed present appeals.

4. The grounds of appeal, *inter-alia*, include the grounds as follows:

- (i) It is well settled principle of law as held in following cases:
2005(188) E.L.T. 107 (TRIB) SANKET FOOD PRODUCTS
PVT. LTD. VS. C.OF.C.EX.

2006(193) E.L.T. 48 (TRIB) CHANDAN TUBES & METALS
PVT. LTD. VS. C.OF.CUS ;

that the testimony of witnesses who could not be produced for cross-examination should not be relied upon as evidence. Contrary to the said principle of law, the original authority had relied on the statements of Shri Ahok Chaudhary, Shri Mahesh Kumar, Shri Sri Nivas, Shri Mahbood Husain, Shri S.R.P. Kamal, Shri G.K. Bansal, Shri Lalit Kumar and Shri Vijay Sahani.

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- (ii) The allegations in the show cause notice are that the invoices were issued but the inputs were not procured however, those who have issued such invoices have not been made co-noticee in the show cause notice, which establishes that non-supply of inputs is a fiction.
- (iii) The affidavits and letters issued by the witnesses who did not present themselves for cross-examination cannot be treated as evidence since it cannot be establish that such letters are not obtained under threat.
- (iv) The first and second stage dealer from whom the appellants have purchased inputs are registered with Central Excise and are regularly filing their statutory returns and at no point of time any question was raised about the correctness of the information submitted in those returns.
- (v) The appellants have purchased material at the prices lower than price at which dealers had purchased the goods because what was purchased by the appellant as inputs was waste and scrap of the material purchased by the dealers.
- (vi) The transportation of goods was arranged by Shri Dharmendra Sharma, an employee of the Company. It appears that the vehicle number was correctly communicated by him to the supplier but due to human error, the transporter has incorrectly menion^{ed} the vehicle ^{for} number in some of the invoices.

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(vii) The appellant had used 19 trucks and only in few cases, the vehicle numbers were wrongly mentioned which was a human mistake.

(viii) During examination Shri Mahaveer Prasad Jain admitted that they were clearing M.S. Bars, Shapes, Sections to M/s. Bansal Structures Pvt. Ltd, M/s V.K. Enterprises and M/s Bhagwati Traders, after payment of Central Excise Duty. Further Shri Anand Prakash Gupta during his examination, has stated that fresh material can be used for manufacture^{of} M.S. Ingots. *pu*

(ix) The appellants were filing their statutory returns regularly and audit party visiting also knew that appellants were taking Cenvat credit on inputs received from the said dealers. Therefore, the entire demand is time barred.

5.1 Learned counsel for the appellant argued and stated that the following facts are undisputed :

- (i) Input received from registered dealer, who were regularly filing their returns and no objection was ever raised by the department.
- (ii) The manufacturer from whom the dealers purchased the goods were in existence and genuine and clearances were made on payment of duty.
- (iii) Goods supplied by the dealers were duly covered with the proper GRs.
- (iv) Payment to the dealer were made through banking channels. However inputs of value of Rs.1,35,79,412/- was *6*

received from the dealer M/s Bansal Stuctural Pvt. Ltd., Ghaziabad and ingots valued of Rs.78,32,106/- was sold to them. The remaining payment of Rs.57,47,307/- was made through cheque. There is no evidence of money flow back.

- (v) The goods cleared by the dealers under cover of form 49 issued by the Vat department and their assessment were also made by the Vat department.
- (vi) Payments to the transporters were made in cash.
- (vii) There is no case of the department that the appellant had procured inputs from somewhere else and the inputs of the dealers have been diverted to some other person.
- (viii) Production of ingot and clearance on payment of duty from the factory of the appellant, not in dispute.
- (ix) No dispute that statutory records were maintained properly, monthly returns were filed and assessed by the department.

5.2 The learned counsel for the appellant further submitted that out of the 11 persons whose cross-examination was sought, the respondents could produce only three of them. He has relied on ruling of High Court of Delhi in the case of **Basudev Garg Vs. Commissioner of Customs reported at 2013(294) E.L.T. 353 (Del.)**, wherein it is held that when any statement is used against the assessee, an opportunity of cross-examining the person who made those statement, ought to be given to the assessee. Further, it is held in para 14 as follows:

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"14. The Division Bench also observed that though it cannot be denied that the right of cross-examination in any quasi judicial proceeding is a valuable right given to the accused/Noticee, as these proceedings may have adverse consequences to the accused, at the same time, under certain circumstances, this right of cross-examination can be taken away. The court also observed that such circumstances have to be exceptional and that those circumstances have been stipulated in Section 9D of the Central Excise Act, 1944. The circumstances referred to in Section 9D, as also in Section 138B, included circumstances where the person who had given a statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay and expense which, under the circumstances of the case, the Court considers unreasonable. It is clear that unless such circumstances exist, the Noticee would have a right to cross-examine the persons whose statements are being relied upon even in quasi judicial proceedings. The Division Bench also observed as under :-

"29. Thus, when we examine the provision as to whether the provision confers unguided powers or not, the conclusion is irresistible, namely, the provision is not uncanalised or uncontrolled and does not confer arbitrary powers upon the quasi judicial authority. The very fact that the statement of such a person can be treated as relevant only when the specified ground is established, it is obvious that there has to be objective formation of opinion based on sufficient material on record to come to the conclusion that such a ground exists. Before forming such an opinion, the quasi judicial authority would confront the assessee as well, during the proceedings, which shall give the assessee a chance to make his submissions in this behalf. It goes without saying that the authority would record reasons, based upon the said material, for such a decision effectively. Therefore, the elements of giving opportunity and recording of reasons are inherent in the exercise of powers. The



aggrieved party is not remediless. This order/opinion formed by the quasi judicial authority is subject to judicial review by the appellate authority. The aggrieved party can always challenge that in a particular case invocation of such a provision was not warranted."

- 5.3 The learned counsel for the appellant further contended that Commissioner erred in accepting the statements of witnesses, whom, he could not produce for cross-examination and, therefore, findings of Commissioner for confirming the demand based on acceptance of such statements of such witnesses who were not produced for cross-examination, is not tenable in law.
- 5.4 He has further relied on the ruling by the High Court of Gujarat at Ahmedabad in the case of Commissioner Vs. Motabhai Iron and Steel Industries reported at 2015 (316) E.L.T. 374 (Guj.), wherein at para 13, it is held as reported below:

"13.From the evidence on record, it appears that the above demands were based upon the statements of transporters or drivers of the trucks which were not corroborated by any evidence. Under the circumstances, the Tribunal was justified in holding that only on the basis of third party statements, such demand cannot be made. Moreover, as rightly pointed out by the Tribunal, no investigation has been conducted at consignors place or at the place where the said goods are alleged to have been supplied. Under the circumstances, it cannot be said the Tribunal has committed any error in deleting the aforesaid demands."

- 5.5 He has further argued that the inputs were issued through statutorily required invoices and payments were made through banking channels. Therefore, on the basis of statements of
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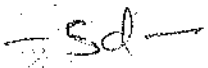
transporters or drivers, the demand cannot be confirmed. He has therefore, prayed to set aside the impugned order.

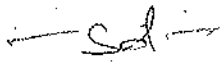
6. Learned A.R. for the Revenue, has reiterated finding in the impugned order. He has stated that the original authority has accepted the statements of those witnesses, who did not appear for cross-examination, since the statements were recorded under Section 14 of the Act. On the basis of various statements, the Ld. Original authority has confirmed the demand. He has further pleaded that the impugned order is legal and proper and may not be interfered with.
7. We have carefully gone through the rival contentions. We have also gone through the order of the Hon'ble High Court at Allahabad, dated 18.12.2008 in Writ Petition No.2304 of 2008, wherein it was directed that if prejudice is caused to the petitioners (appellants) on the basis of point which has been agitated, it is open to the petitioners to take the plea before the appropriate authority for adjudication. As submitted by the petitioners in the brief facts of the case, the plea before the Hon'ble High Court was that the appellants wish to cross-examination the remaining witnesses. We have taken into consideration the fact that the original authority has relied upon the findings only on the basis of statements of such witnesses whose cross-examination could not be conducted, since the respondent could not produce them. The contention of Revenue is that the inputs were not received by the appellants but it is a fact that appellants manufactured their final product and paid

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duty on the final product and filed statutory returns for the same and such returns are not questioned by Revenue then, obviously Revenue should have investigated as to from which raw materials, the assessee i.e. appellant manufactured the goods. The failure of the Revenue to establish the source of Raw material in the absence of non-receipt of inputs on which Cenvat Credit was taken, brings us to the conclusion that the entire case of Revenue is on the basis of presumption. We have also found that there is ~~sufficient~~ sufficient force in the arguments put forth by the ^{learned} learned Counsel for the appellant, and the case laws cited by him, ^{are} are squarely applicable in the present case. We, therefore, hold that the impugned Order-in-Original is not tenable in law. We therefore, set aside the Order-in-Original and allow all the appeals.

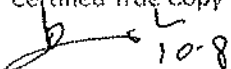
(Operative part of the order was pronounced in the open Court)


(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy


सहायक पंजीकार / Asott. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
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