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: 16/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70491/2017-EX[DB] dated 27/04/2017

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/MISC/70499/2016	E/1649/2011	**P.K. SINGHAL, MANAGER FINANCE, EXCISE & TAXATION, C/O** 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

3Advocate(s) / Consultant(s):

Udit Chandra
9, Dramond Road, Civil Lines,
Near Sai Nath Mandir-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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

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

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

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

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

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1649/2011-EX[DB] With
MISC Application No. E/MISC/70499/2016

(Arising out of Order-in-Original No. 44-45/Commissioner/GZB/2010-11 dated 28/03/2011 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

M/s P. K. Singhal, Manager Finance, Excise & Taxation **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Udit Chandra, Advocate, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 27/04/2017

FINAL ORDER NO....70491/2017.......

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s P. K. Singhal, Manager Finance, Excise & Taxation against Order-in-Original No. 44-45/Commissioner/GZB/2010-11 dated 28/03/2011 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad.

2. The appellant has prayed for early hearing of their appeal vide Miscellaneous Application, stated herein that the main appeal of M/s Rathi Industries Ltd. bearing appeal No. E/1648/2011-EX[DB] against the same common

Order-in-Original have been disposed of vide Final Order No. 70739/2016 being order dated 29/06/2016.

3. Heard the submissions of both the parties.

4. We find that in the appeal of M/s Rathi Industries Ltd., this Tribunal have recorded the findings as follows:-

> "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."

5. Considering the contentions and our findings in the appeal of M/s Rathi Industries Ltd., we find that the penalty imposed on this appellant under Rule 209A of the Central Excise Rules, 1944, is not sustainable and accordingly the same is set aside. Thus, the appeal is allowed. The appellant will be entitled for consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy
22/05/2017
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