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: 08/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70454/2017-SM[BR] dated 16/02/2017

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/3436/2010	**Shri Rathi Steel Ltd.,** Plot E, Upsidc, Idustrial Area, Phase-iii, Masoori, Gulaothi Road, Ghaziabad (U.P.)
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND. MEERUT, UTTAR PRADESH-

Copy To
3Advocate(s) / Consultant(s):

**BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-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 AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No.E/3436/2010-EX[SM]

Arising out of Order-in-Appeal No.264-CE/MRT-II/2010 dated 27.08.2010 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II.

M/s Shri Rathi Steel Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.T., Meerut-II

...RESPONDENT (S)

APPEARANCE

Shri Bipin Garg, Advocate for the Appellant (s)
Shri S.K. Singh, Deputy Commr. (AR) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 16.02.2017

FINAL ORDER NO.- 70454/2017

Per Mr. Anil Choudhary :

The appellant, M/s Shri Rathi Steel Ltd., is manufacturer of Bars and Rods of Iron and Steel, is in appeal against denial of Cenvat Credit on inputs purchased from first/second stage dealers on the ground that such dealers on enquiry, was found had not purchased any duty paid goods for trading and then in their statement to the Revenue, have admitted the fact.

2. The brief facts are that during the period, under dispute April 2004 to February, 2006 as per SCN dated 13.04.2009, for the extended period, the jurisdictional Commissioner received alert circulars dated 22.06.2006, stating that M.K. Steel, proprietor S.K. Gupta, 77, N.S. Road, Kolkata had issued fake invoices to the manufacturers in various parts of India. Further stating that some invoices have been issued by them, in favour of this appellant-Rathi steel limited. Based

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on such circulars, the jurisdictional Superintendent vide letter dated 15.12.2008 requested the appellant to deposit Cenvat Credit along with interest taken by them on the strength of alleged fake invoices issued by said M.K. Steel. The appellant by their reply dated 16.12.2008 informed the Revenue that they had received the goods along with duty paying documents and the same have been used in manufacture of final products, cleared on payment of duty. It was further stated that they made the payment for the said purchases by account payee cheques and if any mischief has been done by the said M.K. Steel, they are not liable to reverse Cenvat Credit, as the appellant have already made payment of duty to the said M.K. Steel. For any misgiving on the part of M.K. Steel, the Revenue may proceed against them.

2.1 The appellant also in reply to the show-cause-notice, as noticed by the Additional Commissioner in the Order-in-Original, produced further evidence that the raw materials or inputs were received at their factory and proper entry made in the raw material register and RG-23A part-1 register, form 31 (road permit) issued by U.P. Sales Tax Department, which is the pre-authenticated document, have been used for transport of the goods to their factory. Similarly, form 48 under the West Bengal Sales Tax Act and Rules was also issued by the supplier, which is a pre-authenticated document and Road permit for transport. Further, the consignments in the course of transport have been checked by the Sales Tax Authority on the border check post, as is evident from the endorsements on the road permits, etc. Further, the appellants have submitted monthly returns as required under Sub-Rule 5 of Rule 7 of CCR, 2002 in the prescribed form, informing regularly to the Revenue regarding receipt of the inputs and credit taken thereon. The assessee-appellant also filed copy of the ledger account and also statement of bank in support of the genuineness of the transaction. They further reiterated that the appellant manufactured excisable goods from such inputs and removed the same on payment of appropriate duty. Similar objection was made by Revenue in response to another alert circular issued by the Commissionerate, Kolkata in respect of Shri Hanuman Trading Company and the appellant had taken similar line of defence.

2.2 The learned Additional Commissioner relying on the alert circulars have held that the appellant have taken Cenvat credit on fake invoices without actually receiving the goods in violation of Rule 4 of the Cenvat Credit Rules. Further referring to the statement of V.K. Tyagi, Authorised Signatory of M/s Rathi Steel Ltd. dated 30.03.2009, wherein he intimated the Investigating Officer that they will pay back Rs.39,22,715/-, the Cenvat Credit taken on invoices of M.K. Steel and Shree Hanuman Trading Company, along with interest. Further, the amount in dispute with interest was deposited in the account of exchequer vide TR-7 challan, prior to issue of show cause notice. Accordingly, the proposed demand of Rs.39,22,715/- was confirmed being denial of Cenvat Credit on the inputs alleged to have been not received and the said amount was further appropriated from the deposit already made with interest, and further equal amount of penalty was imposed under Section 11 AC of the Act read with Rule 15 of CCR, 2004. Further penalty of Rs.10

lakhs was imposed on Sunil Kumar Gupta, proprietor of M.K. Steel and Shree Hanuman Trading Company.

3. Being aggrieved, the appellant preferred appeal before Learned Commissioner (Appeals) who vide the impugned order have been pleased to reject the appeal confirming the demand as well as the invocation of extended period, as well as also confirmed the penalty imposed.

4. Being aggrieved, the appellant is before this Tribunal. The learned counsel, Mr. Bipin Garg, appearing for the appellant states that there is no dispute by the Revenue that the appellant have received goods with proper documents of transport being of copy which have been filed in paper book, road permit of the state of West Bengal and the state of Uttar Pradesh, which are pre-authenticated documents, issued by the said VAT departments and have to be essentially used for transport of goods from the place of the seller to the place of the buyer. Further such documents are also endorsed enroute at the check posts, set up by the Sales Tax Department at the borders and/or other places on route. It is further urged that it is not the case of Revenue that the appellant have received inputs for manufacture from other sources and have manipulated the taking of credit in their records. It is further stated that they have made payment by account payee cheque, which prima facie establishes the correctness/genuineness of the transaction. The learned counsel further relies on the ruling of Hon'ble Allahabad High Court in the case of Commissioner of Central Excise, Customs and Service Tax Vs. Juhi Alloys Ltd. reported at 2014(302) ELT

487(All.) wherein under similar facts and circumstances, there were purchases made of raw material by the said Juhi Alloys Ltd. from the said M.K. Steels and it had been argued by the Revenue that the assessee have been negligent in complying with their obligations under Rule 9(3) of CCR 2004, as the explanation under Rule 9(3) of the said Rules provides a 'deeming fiction' where a manufacturer or producer of excisable goods who takes Cenvat Credit on inputs, would be deemed to have taken reasonable steps, if they satisfy themselves about the identity and address of the manufacturer or supplier or provider of input or services, as the case may be, issuing the documents specified in sub-rule (1) on the basis of his knowledge or on the basis of a certificate given by a person with whom he is familiar or on the basis of a certificate issued to the manufacturer or the supplier by the Superintendent of Central Excise concerned. In other words, the explanation to Rule 9(3) provides a deeming definition as to when manufacturer or a purchaser of excisable goods would be deemed to have taken reasonable steps. However, even in a situation where explanation to Rule 9(3) is not attracted, it would be open to an assessee to establish independently within the meaning of the substantive part of Rule 9(3) that he had in fact taken reasonable steps. Whether assessee has in fact taken reasonable steps, is a question of fact.

4.1 The Hon'ble High Court further held that both the Commissioner(Appeals) and the Tribunal have given cogent reasons to indicate that the assessee had taken reasonable steps to ensure that the inputs in respect of which he had taken the Cenvat Credit are goods on which the appropriate duty of excise, as indicated in

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the documents accompanying the goods, has been paid. Admittedly, as in the said case, the assessee was a *bona fide* purchaser of the goods for a price which included the duty element and payment was made by cheque. The assessee had received the inputs, which were entered in the statutory records maintained by the assessee. The goods were demonstrated to have travelled to the premises of the assessee under the cover of Form 31-road permit issued by the Trade Tax Department, and the Ledger account as well as statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the assessee to go behind the records maintained by the first stage dealer. The assessee, in the facts, was found to have duly acted with all reasonable diligence in its dealings with the first stage dealers. The learned counsel also relies on a coordinate bench ruling of this Tribunal in the case of Commissioner of Customs Central Excise, Kanpur Vs. R.H.L. Profiles Private Ltd. reported at 2013(292) E.L.T. 313 wherein, under similar facts and circumstances where the assessee had purchased inputs from Shree Hanuman Trading Company, this tribunal had held that the assessee have taken all reasonable steps as required of him or them under Rule 9(3) of CCR, 2004 and such credit was rightly taken. Accordingly, the learned counsel prays for allowing the appeal with consequential benefits.

5. The learned AR for Revenue relies on the impugned order. He further relies on the statement of Shri S.K. Gupta, common proprietor of M.K. steels and Shree Hanuman Trading Company, wherein, S.K. Gupta had admitted that he had passed on fake Cenvat Credit. Accordingly, he prays for dismissing the appeal.

6. Having considered rival contentions, I find that it is not the case of the Revenue that the appellant have not complied with the provisions of Rule 9(3) of Cenvat Credit Rules or have been negligent on their part. It is further admitted fact that the alert circulars were issued much after the transaction had taken place. Further, I find that Revenue have not made out a case that the appellant received raw material from other sources which have been used for manufacture of excisable goods and cleared on payment of duty. Accordingly, relying on the findings of Hon'ble Allahabad High Court in the case of Juhi Alloys Limited (*supra*) and in view of my finding of fact, I hold that the appellant have discharged their onus under the scheme of the Act and the Rules and have taken credit on receipt of inputs along with duty paying documents. Once, it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the rules to cast an impossible or impractical burden on the assessee. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant will be entitled to consequential benefits in accordance with law.

(Dictated and Pronounced in the open Court)

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

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