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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1314/2004,1278/2004-1279 ,1424/2004-1426/2004 Date 03/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
1. STEEL TUBES OF INDIA LTD.
STEEL TUBE ROAD,
DEWAS
STEEL TUBES OF INDIA LTD.

2. SH. K.N. GARG, M.D.
3. SH. RAJENDRA PRASAD,
4. M/S. SIDDHARTH TUBES LTD.
5. SH. RAJENDRA PRASAD GUPTA,
6. SH. NAINESH SANAGHVI,
A.B. ROAD, TARAGANJ, SARANGPUR,
DISTT. SHAJAPUR (MP)

Appellant
Vs
Respondent

C.C.E. INDORE

I am directed to transmit herewith a certified copy of **Final order** No.303-308/08 Excise dated 2-4-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE. POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
1. SH. RAVI RAGHVAN, ADV.
B-6/10, S.J. ENCLAVE,
N. DELHI-29
2. SH. ATUL GUPTA,
B-1/1289-A, VASANT
KUNJ, N. DELHI-70
3. C.D.R.
~~4. JCDR.~~
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications. M-93, Marg. 46. Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1. NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications. I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. SH. RAMESH NAIR, ADV.,
"LAKSHMI VIHAR"
AG-192, SCHEME NO. 54,
VIJAY NAGAR, INDORE

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 1278-79, 1314, 1424 to 1426 of 2004

(Arising out of common Order-in-Original No. 92/Commr/Cex/Ind/2003 dated 29.9.2003 passed by the Commissioner of Central Excise & Customs, Indore)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Yes
4.	Whether order is to be circulated to the Departmental authorities.	No

M/s Steel Tubes of India Ltd. — Appellants
Shri K.N. Garg, Managing Director
Shri Rajendra Prasad
Siddharth Tubes Ltd.
Shri Rajendra Prasad Gupta, Joint M.D.
Shri Nainesh Sanghvi, Managing Director

Vs.

CCE, Indore — Respondent

Appearance:
S/Shri Ravi Raghvan, Ramesh Nair, Advocates & Atul Gupta, C.S. -For appellant
Shri V.K. Agrawal, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 2.4.2008

FINAL Order No. 303-308/08-Ex dated............

Per S.S. Kang:

Heard both sides.

2. These appeals are against the common impugned order whereby demand of Rs.38,62,754/- was confirmed against M/s Steel Tubes of India Ltd. and penalties were imposed. The demand was confirmed after denying the credit on the ground that M/s Steel Tubes of India Ltd. received only duty paying documents and not the inputs.

3. The brief facts of the case are that M/s Steel Tubes of India Ltd. (herein after referred to appellant) are engaged in the manufacture of MS pipes and Tubes.

4. The appellant manufactured the final product on their own account or on behalf of the others who supplied the raw material for the manufacture of the final product and in addition to this the appellants are also undertaking the job work for M/s Siddharth Tubes Ltd. During May to October 1994, investigation was conducted in respect of the inputs received by the appellant as well as the goods received for job work. During investigation, it was found that M/s Siddharth Tubes Ltd. were

importing H.R. coils and were sending the same to the appellant for the purpose of slitting on job work basis. During investigation, it was found that the HR coils which were received for slitting were not returned to M/s Siddharth Tubes however, documents were generated to show the goods were returned to M/s Siddharth Tubes. M/s Siddharth Tubes ~~shows~~ showed the final product manufactured out of the ~~raw~~ material received from ~~for~~ appellant and issued invoices showing clearance of side slits to appellant. The appellant availed Modvat credit of the amount in dispute on the basis of duty paying documents received from M/s Siddharth Tubes. ~~In~~ The present appeal is against the order whereby credit was denied to appellant in respect of ~~HR~~ HR side slits. The case of the Revenue is that in both cases goods were not moved only documents were moved. In some of the invoices the vehicle numbers mentioned are not of trucks and during investigation statements of various transporters were recorded wherein they stated ~~to the fact~~ that they had not transported the good in question.

5. In respect of allegation that the material which were received by the appellant for slitting, on job work basis, the same were not returned, A separate show-cause notice was issued to M/s Siddharth Tubes ~~and~~ for the denial of credit to the appellant in respect of invoices issued by M/s Siddharath Tubes, ~~in respect of~~ for the HR side slitting, the present show-cause notice was issued.

6. In respect of the show-cause notice issued to M/s Siddharth Tubes, the adjudicating authority confirmed the demand. On appeal filed by the appellant the demand was set aside by the Tribunal vide Final Order No. 1967-71/05 dated 17.10.05.

7. The contention of the appellant is that the credit is being denied only on the ground that in some of the invoices the vehicle number mentioned were not of trucks. The contention is that there are total 132 consignments which were received from M/s Siddharath Tubes. The side slitting were cleared by M/s Siddharath Tubes on payment of appropriate duty which is not

in dispute. It is only in respect of 43 consignments the vehicle number in the invoices are not of trucks, only on this basis, the Revenue wants to deny the credit in respect of all the 132 consignments. The contention is that the duty has been paid by M/s Siddharath Tubes and the inputs were received in the factory and were entered in the statutory record and the same were also issued for the manufacture of final product which was cleared on payment of appropriate duty. The contention is that there is no evidence on record to show that M/s Siddharath Tubes Ltd. diverted the inputs to some other manufacturer and appellant had procured the inputs from some other source and used in the manufacture of final product. The contention is that the statement of transporter is relied upon by the Revenue to show that the goods, in question, were not transported to the appellant premises and out of 132 consignments only 43 consignments are where the vehicle number is not of trucks. The appellant produced evidence to the fact that one Shri R.C. Soni was paying in cash to the transporter for transporting the goods and sufficient amount has been advanced for this purpose and the same has been duly reflected in the account books which is noticed in the adjudication order. A total of 2008.800 MT of side slit were received by the appellant by way of 132 consignments. In case these inputs were not received by the appellant, there is no evidence on record to show that such huge quantity of the goods were procured by the appellant from other source and used in the manufacture of final product which is cleared on payment of duty. In absence of such evidence, it cannot be said that appellant had not received the inputs covered under the invoices only on the ground that in some of the invoices vehicle number are not of trucks. The appellant paid the consideration for these consignments to M/s Siddharath Tubes through banking channel which were duly reflected in the account books of M/s Siddharath Tubes. The amount paid for these consignments is about 3.08 crores and there is no evidence to show that the appellant had received this amount or part of this amount in cash or through other source from M/s

Siddharth Tubes. The appellant also relied upon the Tribunal's decision in the case of M/s Siddharath Tubes whereby the appellants were also party to the show-cause notice and demand was raised on M/s Siddharth Tubes on the ground that they had not received the HR coils after slitting ~~for~~ from the appellant as the vehicle number in some of the documents were not of trucks and the demand was set aside by the Tribunal after taking into consideration the other evidence produced by M/s Siddharth Tubes.

8. The appellant also submitted that the demand is for the period May to October, 1994 and show-cause notice was issued on 23.6.98 alleging suppression with intent to evade payment of duty. The contention is that the appellants were regularly filing the mandatory returns along with copies of invoices which were duly defaced by the Revenue, therefore, no suppression can be alleged against the appellant with intent to evade payment of duty.

9. The contention of the Revenue is that as some of the invoices under which the consignments were received by the appellant were having vehicle numbers which were not of the trucks, therefore, it is not possible that heavy material was transported by the vehicles other than the trucks. The Revenue has ~~is~~ also submitted that the transporter of the transport company denied the transportation of the goods. The Revenue also relied upon the statement of Accounts Manager to show that no payment was made to the transporter. In these circumstances, the contention of the Revenue is that demand is rightly made.

10. We find that two show-cause notices were issued one to M/s Siddharth Tubes, which is party to the present proceedings also, on the ground that M/s Siddharth Tubes is sending HR coils for slitting to the present appellant on job work basis and the same were not returned to M/s Siddharath Tubes and only documents were fabricated to show the movement of the goods. The demand was made on the ground that some of the

documents contained the vehicle number which are not of trucks.

11. A separate show-cause notice was issued to the present appellant where M/s Siddharath Tubes is also party for denial of credit in respect of the invoices issued by M/s Siddharath Tubes under which side slitting were received by the appellant. The side slittings were cleared on payment of duty by M/s Siddharath Tubes. This fact is not in dispute. The only contention of the Revenue is that in some of the invoices the vehicle number is not of trucks and that the owner of the transport company denied the transportation of the goods. We find that total 2008.800 MTs of side slittings were received by the appellant under the cover of invoices. There are total 132 consignments and only in respect of 43 consignments vehicle number mentioned are not of trucks. The appellant entered these quantities of inputs in their statutory record and were duly issued for manufacturer of goods which were cleared on payment of duty. There is no evidence on record that side

slitting cleared on payment of duty by M/s Siddharath Tubes were diverted and appellant procured the inputs from some other source and the same were used in the manufacture of goods which were cleared on payment of duty. The appellant in support of their claim regarding payments to transporter produced on record that Shri R.C. Soni was paying to the transport in cash and sufficient advance were made to Mr. Soni towards payment of transportation charges and the same amounts were shown in the books of accounts.

12. Further, we find that in the case M/s Siddharath Tubes where demand was confirmed on the same ground was set aside by the Tribunal after taking into consideration other evidence produced by M/s Siddharth Tubes vide order dated 17.10.05.

13. Further, we find that the evidence produced by the appellant regarding payment in respect of side slitting to M/s Siddharth Tubes through banking channels and there is no evidence that the same has been received back by the appellant.

In view of the fact that appellant duly entered the quantity in question in the statutory record and the same was used for manufacture of final product which was cleared on payment of duty, without going the issue of time bar, the demand is set aside and consequential penalties are also set aside. Appeals are allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM