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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/4021,4563-69,4764,4420-4430 & 4433-4438/2004 - EX[DB] Date 22/10/2008
E/173,2417,876-877,1314-1322,1329-1331,1578-1579,2806-2808&2827-28/2005-EX

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

To :
M/S AARTI STEELS LTD.
FOCAL POINT, LUDHIANA
(PUNJAB)

M/S AARTI STEELS LTD. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.**772-818/2008-**EX[DB]** dated 22.9.08 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. LUDHIANA & 2. CCE,CHANDIGARH
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
2. Adv. / Consult
MR. K.K. ANAND, ADV., A-5, BASEMENT, [illegible] NAGAR-III N. DELHI-24
2. SH. A.S. GILL, ADV., 3355, SECTOR-21, CHANDIGARH
3 S.D.R
4 ~~J.C.D.R.~~
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 - 3
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
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

P.T.O. 1+2=3

Assistant Registrar
(Excise Appeal Branch)

2. M/S. BALDEV RAJ RAM MURTHI,
* GILL ROAD, MILLER GANJ, LUDHIANA
3. M/S. PUNJAB BEARING INDS. LTD.,
G.T. ROAD, DHANDARI KALAN, LUDHIANA.
4. M/S. SURAJ UDYOG LTD.
C-106, PHASE-VI, FOCAL POINT, LUDHIANA.
5. M/S. NATIONAL INDUSTRIES,
E-128, FOCAL POINT, LUDHIANA.
6. M/S. NUCON SWITCHGEAR PVT. LTD.,
D-47, FOCAL POINT, LUDHIANA.
7. M/S. OSHA TOOLS PVT. LTD.,
E-444-A, FOCAL POINT, LUDHIANA.
8. M/S. NUCON POWER CONTROL PVT. LTD.,
D-46, FOCAL POINT, LUDHIANA.
9. M/S. VIKAS ENGINEERS,
E-51, E-128, FOCAL POINT, LUDHIANA.
10. M/S. CARSIL AUTO PRODUCTS PVT. LTD.,
D-48, FOCAL POINT, LUDHIANA.
11. M/S. MOONLIGHT AUTO LTD.,
C-102/105, FOCAL POINT, LUDHIANA.
12. M/S. SHEET COMPONENTS PVT. LTD.,
D-1, FOCAL POINT, LUDHIANA.
13. M/S. EMKAY INDUSTRIES,
E-40, FOCAL POINT, LUDHIANA.
14. M/S. STELCO STRIPS LTD.,
C-122, FOCAL POINT, LUDHIANA.

15. M/S. S.A. INDUSTRIES,
E-9, PHASE-VIII, INDL.AREA, MOHALI

* 16. M/S. NEW AGE METAL FORMING (P) LTD.,
MOHALI

17. M/S. MAXWELL CONTROLS,
H.NO. 380, SECTOR-30A, CHANDIGARH.

18. M/S. MAJESTIC INDS. LTD.,
IRON MARKET, SECTOR-29-D, CHANDIGARH.

19. M/S. AARTI STEELS LTD.,
FOCAL POINT, LUDHIANA

20. M/S. MAJESTIC INDS. LTD., SCO 216,
IRON MARKET, SECTOR. 29-D, CHANDIGARH

AR-EX

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

Excise Appeal No. 4024 of 2004

(Arising out of Order-in-Appeal No. 404-406/CE/APPL/LDH/2004 dated 28.5.2004 passed by the Commissioner of Central Excise (Appeals), Ludhiana)

M/s Aarti Steels Ltd. — Appellant

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 4563-69 of 2004

(Arising out of Order-in-Appeal No. 375-381/CE/Appl/Ldh/2004 dated 25.5.04 passed by the Commissioner of Central Excise (Appeals), Ludhiana)

M/s Baldev Raj Ram Murthi — Appellants

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 4764 of 2004

(Arising out of Order-in-Appeal No. 408-418/CE/APPL/LDH/2004 dated 27.5.04 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

M/s Punjab Bearing Inds. Ltd. — Appellant

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 4420-4430 of 2004

(Arising out of Order-in-Appeal No. 408-418/CE/Appl/Lud/04 dated 27.5.04 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

Appellants

M/s Suraj Udyog Ltd.
M/s National Industries
M/s Nucon Switchgear Pvt. Ltd.
M/s Osha Tools Pvt. Ltd.
M/s Nucon Power Controls Pvt. Ltd.
M/s Vikas Engineers
M/s Carsil Auto Products Pvt. Ltd.
M/s Moonlight Auto Ltd.
M/s Sheet Components Pvt. Ltd.
M/s Emkay Industries
M/s Stelco Strips Ltd.

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 4433-4435 & 4738 of 2004

(Arising out of common Order-in-Appeal No.430-434/CE/CHD/04 dated 14.6.04 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Chandigarh — Appellant

Vs.

M/s S.A. Industries — Respondent
M/s New Age Metal Forming (P) Ltd.
M/s Maxwell Controls
M/s Baldev Raj Ram Murthi

Excise Appeal No. 1757 of 2005

(Arising out of Order-in-Appeal No. 688-700/CE/Appeal/Ldh/04 dated 7.1.05 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

M/s Majestic Industries Ltd. — Appellant

Vs.

CCE. Ludhiana — Respondent

Excise Appeal No. 2417 of 2005

(Arising out of Order-in-Appeal No. 272-CE/Appl/Ldh/05 dt. 17.5.05 passed by the Commissioner of Central Excise (Appeals), Ludhiana)

M/s Aarti Steels Ltd. — Appellant

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 876-877 of 2005

(Arising out of Order-in-Appeal No. 632/CE/Appl/Ldh/2004 dated 30.11.04 passed by Commissioner (Appeals), Central Excise, Ludhiana)

Majestic Industries Ltd. — Appellant

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 1314-1322 & 1329-1331 of 2005

(Arising out of common Order-in-Appeal No. 688-700/CE/Appeal/Ldh/04 dated 31.12.2004 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

Majestic Industries Ltd. — Appellant

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 1578-1579 of 2005

(Arising out of Order-in-Appeal No.61-62 & 45-47/CE/Appeal/Jal/2004 & 05 dated 23.2.05 & 31.1.05 passed by the Commissioner (Appeals), Central Excise, Jalandhar)

Majestic Industries Ltd. — Appellant

Vs.

CCE, Jalandhar — Respondent

Excise Appeal No. 2806-2808 of 2005

(Arising out of Order-in-Appeal No. 273, 290, 253/CE/APPL/LDH/05 dated 17.5.05 dated 26.5.05, 16.5.05 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

M/s Suraj Udyog
M/s Stelco Strips Ltd.
M/s Emkay Industries — Appellant

Vs.

CCE, Ludhiana — Respondent

Excise Appeal No. 2827-2828 of 2005

(Arising out of Order-in-Appeal No. 248, 257/CE/APPL/LDH/05 dated 28.4.05, 16.5.05 passed by the Commissioner (Appeals), Central Excise, Ludhiana)

M/s Moonlight Auto Ltd.
M/s Sheet Components P. Ltd. — Appellant

Vs.

CCE, Ludhiana — Respondent

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

Appearance:
Shri K.K. Anand, & Sh. A.S. Gill, Advocates - For appellant
Shri M.M. Singh, DR - For respondent

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

Date of Hearing: 22.9.2008

FINAL Order No. 772-818/08-EX dated.........

Per S.S. Kang:

Common issue is involved in these appeals, therefore, are being taken up together.

2. The appeals are filed against the impugned order whereby credit was denied and penalties were imposed on the ground that the vehicle numbers mentioned in the invoices are not transport vehicles, the transporter of the vehicles denied the transportation of goods, dealers who issued the invoices are not having godown/registered premises.

3. The contention of the appellant is that in these cases the duty paid inputs were received in the factory and were used in the manufacture of final product which was cleared on payment of duty. In such cases the credit cannot be denied on the ground that vehicle numbers mentioned in the invoice is not of non-transport vehicle or the transporter has denied the transportation of goods or on other grounds. The other evidence has to be taken into consideration.

4. The Revenue relied upon the decision of the Tribunal in the case of **M/s Rajeev Alloys Ltd. Vs. CCE** vide Final Order dated 3.9.2008 in Appeal No. 2434/2006. The contention of the Revenue is that once it has been

established that the vehicle numbers mentioned in the invoices are not of trucks or the transporter has denied the transportation of goods or the dealer has no godown than the burden is on the assessee who availed the credit to show by producing evidence that the duty paid inputs were actually received in the factory of production and used in the manufacture of dutiable goods. In these cases, as the Revenue by producing evidence of transporter and enquiries from transport office established that the vehicle numbers mentioned in the invoices are not of trucks or the transportation of goods is denied, therefore, the credit was rightly denied. In other cases revenue during investigation found that the dealers who issued the invoices had not received the inputs.

4. We find that the Tribunal in the case of **M/s Rajeev Alloys** (supra) held that onus initially lies on the department to show that inputs are not received in the factory of production and credit has been wrongly taken but having established that the vehicle, in question, were incapable of transporting large quantity mentioned in the invoices, the onus shifts to the assessee to prove that goods were duly received by them and used in the

manufacture of excisable goods. In view of the above decision, we find that as the initial burden that goods had not been received by the appellant has been discharged by the Revenue, therefore, the onus is on the appellant to prove that the duty paid goods were actually received in the factory and used in the excisable goods. In these circumstances, the impugned orders are set aside and the matter is remanded to the adjudicating authority to decide afresh in view of the decision of the Tribunal in the case of **M/s Rajeev Alloys** (supra). The appeals are disposed of by way of remand.

(Operative part of the order pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM