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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/5706,5836,5837,5838,5839,5840,5841,5842,5843,5844,5845,5846,5847,4849, 5850,5851,5862,5863,5864,5865,5866,5867,5871,5853,5854,5858,5860,5869, 5882,5963/2004 - EX[DB]   Date 28/10/2009

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

To :
KAMAL CASTINGS

ALMOH ROAD MANDI GOBINDGARH

KAMAL CASTINGS   Appellant

Vs

C.C.E. CHANDIGARH   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 799-828/ **2009 EX[DB]** dated 16-10-09 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult SH. K.K.ANAND,ADV.,
   A-5, BASEMENT,
   LAJPAT NAGAR-III,N.DELHI-24
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. SH. ATUL GUPTA,CS
    B-1/1289-A,VASANT KUNJ,
    N.DELHI-70

Assistant Registrar
(Excise Appeal Branch)

P.T.O. - 2,3,4,

19. M/S. GOYAL ALLOYS,
BEHIND PREET FOUNDRY,
G.T. ROAD, MANDI GOBINDGARH

20. M/S SATYA STEELS,
MOTIA KHAN, MANDI GOBINDGARH

21. M/S. LONGOWAL TRADERS,
G.T. ROAD, MANDI GOBINDGARH

22. M/S. IRON IMPEX,
G.T. ROAD, MANDI GOBINDGARH

23. M/S. GOODWILL TRADERS,
RAILWAY MALL GODOWN ROAD,
MANDI GOBINDGARH

24. M/S. PRABHAT INDUSTRIES,
MOTIA KHAN, MANDI GOBINDGARH

25. M/S. CITY METALS,
MOTIA KHAN, MANDI GOBINDGARH

26. M/S. YOGESH & CO.,
MOTIA KHAN, MANDI GOBINDGARH

27. M/S. JAGRAON STEEL INDUSTRIES,
MOTIA KHAN, MANDI GOBINDGARH

28. M/S. LALIT STEEL & AGRO INDS.,
F-21, FOCAL POINT, G.T. ROAD,
MANDI GOBINDGARH

29. M/S. SHREE AMBICA STEEL INDS,
AMLOH ROAD, MANDI GOBINDGARH

30. M/S. T.K. JINDAL & SONS,
MOTIA KHAN, MANDI GOBINDGARH

31. M/S. SUKHDEV STEEL ROLLING MILLS,
AMLOH ROAD, MANDI GOBINDGARH

32. M/S. SHREE BALAJI TRADERS,
KUKAR MAZRA, MANDI GOBINDGARH

33. M/S. MOHINDRA STEEL INDUSTRIES,
MOTIA KHAN, MANDI GOBINDGARH

34. M/S. SODHI STEEL (INDIA),
MANDI GOBINDGARH

35. M/S. ASHOKA STEEL CORPORATION,
PREET NAGAR, MANDI GOBINDGARH

36. M/S. NORTHERN INDUSTRIES CORPN.,
OLD POST OFFICE ROAD, SHIVAM CHAMBERS,
MANDI GOBINDGARH

37. M/S. THOUR STEEL INDUSTRIES,
MOTIA KHAN, MANDI GOBINDGARH

38. M/S. TATA IRON & STEEL CO. LTD.,
AMLOH ROAD, MANDI GOBINDGARH

39. M/S. RAJESH KUMAR GOYAL & CO.,
MOTIA KHAN, MANDI GOBINDGARH

40. M/S. KING ALLOYS,
MOTIA KHAN, MANDI GOBINDGARH

41. M/S. GOYAL STEELS,
MOTIA KHAN, MANDI GOBINDGARH

42. M/S. SONALI STEEL SALES,
MOTIA KHAN, MANDI GOBINDGARH

43. M/S. K.K. STEEL INDS,
MOTIA KHAN, MANDI GOBINDGARH

44. M/S. KAPIL IRON STORE,
MOTIA KHAN, MANDI GOBINDGARH

45. M/S. ASIM ENTERPRISES,
AMLOH ROAD, MANDI GOBINDGARH

46. M/S. KAMNIK STEEL TRADERS,
G.T. ROAD, (SHIRHIND SIDE),
MANDI GOBINDGARH

47. M/S. MAKHAN LAL VINOD KUMAR,
AMLOH ROAD, MANDI GOBINDGARH

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.E/5706, 5836, 5837, 5838, 5839, 5840, 5841, 5842, 5843, 5844, 5845, 5846, 5847, ,5849, 5850, 5851, 5862, 5863, 5864, 5865, 5866, 5867, , 5871, 5853, 5854, 5858, 5860, 5869, 5882 and 5963 of 2004-Excise

[Arising out of Order-in-Original No.55/CE/2004 dated 28.06.2004 passed by the Commissioner of Central Excise, Chandigarh]

Date of Hearing:16.09.2009

For approval and signature:

Hon'ble Dr. Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		yes
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 Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	yes.

1.Kamal Casting
2.Goyal Alloys
3.Satya Steels
4.Longowal Traders
5.Iron Impex
6.GoodWill Traders
7.Prabhat Industries
8.City Metal
9.Yoesh & Co.
10.Jagraon Steel Industries
11.Lalit Steel
12.Shree Ambica Steel Industries
13.J.K. Jindal & Sons
14.Sukhdev Steel Rolling Mills
15.Shree Balaji Traders
16.Mohinder Steel Industries

17.Sodhi Steel (India)
18.Ashoka Steel Corporation
19.Northern Industrial Corporation
20.Thour Steel Industries
21.Tata Iron & Steel Co.
22.Rajesh Kumar Goyal & Co.
23..K.K. Steel
24.King Alloys
25.Goyal Steel
26.Sonali Steel Sales
27.Kapil Iron
28.Asim Enterprises

29.Ramnik Steel Trader
30.Makhan Lal Vinod Kumar ...Appellants

(Rep. by Shri Atul Gupta, Co. Secretary & Shri K.K. Anand, Advocates)

Vs.

CCE, Chandigarh ....Respondent

(Rep. by Shri B.L. Sony, DR)

CORAM:**Hon'ble Dr.Chittaranjan Satapathy, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No..799-828./2009-EX../Dated:

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all are being taken-up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants are registered dealers and manufacturer of inputs. It was found during investigation that M/s. Asian Alloys Ltd., Mandi Gobindgarh, Punjab, fraudulently availed cenvat credit on the basis of the Cenvatable invoices issued by the registered dealers and washer manufacturing units, the

appellants herein. The Central Excise Officers searched the business premises of M/s. Asian Alloys Ltd. on 12.01.2001 and conducted thorough investigation. It was found that during the period from 1.4.2000 to 31.07.2001, M/s. Asian Alloys Ltd. availed credit on the basis of the invoices issued by the appellants without receiving the goods. The Commissioner confirmed the demand of duty of Rs.3,79,64,978/- and imposed penalty of equal amount on M/s. Asian Alloys Ltd. along with interest. He also imposed penalties on the appellants under Rule 173Q of the erstwhile Central Excise Rules, 1944 and Rule 25 of the Central Excise Rules, 2001.

3. Ld. Advocates on behalf of the appellants submit that the appellants supplied the goods accompanied with central excise invoice. The entire transaction was made by cheques. The transport documents viz. GRs are available to establish that the goods were supplied to M/s. Asian Alloys Ltd. They further submits that no inquiry was conducted on the part of the appellants. It is their contention that the entire case was made out on the basis of the statement of M/s. Asian Alloys Ltd. and one dealer viz. Shri Makhan Lal Vinod Kumar. They relied upon the several case laws on this issue. They particularly relied upon the decision of the Larger Bench of the Tribunal in the case of Steel Tubes of India Ltd. Vs. Commissioner of Central Excise, Indore – 2007 (217) ELT 506 (Tribunal-Larger Bench), wherein, it has been held that where there is no

movement of goods and assessee is only issuing the invoices, they cannot be visited with penalty under Rule 209A of erstwhile Rules. In any event, they also requested for lenient view.

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner. He submits that after thorough investigation, it was found that M/s. Asian Alloys Ltd. availed credit on the basis of the invoices issued by the appellants. He submits that the appellants facilitated the recipient of the inputs to avail credit on the basis of the invoices without supplying the goods. In this context, the ld. DR drew the attention of the Bench to the relevant portion of the impugned order in sofar as the statement of various persons.

5. After hearing both the sides and on perusal of the records, we find that the contention of the appellants is that they supplied the materials with duty paying documents to M/s. Asian Alloys Ltd. On the other hand, Shri Ravi Sachdeva, Director of M/s. Asian Alloys Ltd. on the statements recorded on 4.3.2002, 8.3.2003 and 9.3.2002 admitted that they used to procure Cenvatable invoices of duty paid scrap from registered dealers at a premium without any physical receipt of duty paid scrap and used to settle the accounts of these registered dealers through the accounts of various trading firms. Shri Vinod Kumar Gupta, Partner of Makhan Lal Vinod Kumar and Proprietor of M/s. Washing Enterprises in his statements admitted that he was engaged in procuring Cenvatable

invoices of duty paid on scrap without any physical movement of duty paid scrap from other registered dealers – washer manufacturing units for passing of the Cenvat credit fraudulently to the said company. It is noted that some of the representatives of the registered dealers in their statements admitted that they used to deal with Shri V.K. Gupta to issue cenvatable invoices and no goods have ever been sent against these invoices issued by their firms to the said company. On perusal of the various statements and the evidences, it is clearly established that M/s. Asian Alloys Ltd. availed Cenvat credit on the basis of the invoices issued by the appellants without receiving the goods.

6. The ld. Advocates contended that the appellants supplied the goods with duty paying documents to M/s. Asian Alloys Ltd. It is evident that M/s. Asian Alloys Ltd. utilised the Cenvat credit on the basis of Cenvatable invoices issued by the appellants without receiving the goods. It appears from the submission of the ld. Advocate that the goods supplied by the appellants were diverted and are liable to confiscation and the appellants shall be liable to a penalty under Rule 25 of Central Excise Rules, 2002. Hence, the imposition of penalty under Rule 25 of the Rules on the appellants is justified. The case laws cited by the ld. Advocates are not applicable in the facts and circumstances of the case. We find that the duty was demanded and penalty of equal amount was imposed on M/s. Asian Alloys Ltd., who is the beneficiary in this case. So, the imposition

of penalties on the appellants of equal amount of credit facilitated by them are excessive.

7. Taking into consideration of overall facts and circumstances of the case, we reduce the penalties to 10% of penalty imposed on each of the appellants. All the appeals are disposed of in the above terms.

Pronounced in open court on 16.09.2009.

(Dr. Chittaranjan Satapathy)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.