

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

Appeal No. E/3739/2005-SM[BR]

Date 07/01/2008

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

To :
M/S HBR STEEL CORPORATION
GALI NO. 2, SUNDER SINGH MARKET, GILL ROAD,
LUDHIANA

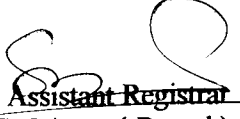
M/S HBR STEEL CORPORATION

Appellant

THE COMMISSIONER OF CENTRAL EXCISE
LUDHIANA

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.6/2008-SM[BR] dated 11.10.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal, Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CENTRAL EXCISE
LUDHIANA
F-BLOCK, RISHI NAGAR, LUDHIANA

2. Adv. / Consult

MR.SUDHIR MALHOTRA.
13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO. III**

Excise Appeal No. 3739 of 2005 -SM (BR)

[Arising out of Order-in-Appeal No. 382/CE/APPL/Ldh/05 dated
29.08.2005 passed by the Commissioner, Central Excise, Ludhiana].

Date of Hearing/decision: 11.10.2007

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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- | | | |
|--|---|-------|
| 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 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? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
-

HBR Steel Corporation

Appellant

Vs.

CCE, Ludhiana

Respondent

Appearance:

Mr. Sudhir Malhotra, Advocate for the appellant

Mr. S. Gautam, Authorized Representative (DR) for the respondent.

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER No. 6/08-SM (BR)

Per P.K. Das:

The relevant facts of the case in brief are that the appellants are registered dealer. It has been alleged that the appellant issued modvatable invoices to the buyers to pass on modvat credit without supplying the

material. The adjudicating authority imposed penalty under Rule 173Q(1)(bbb) of the erstwhile Central Excise Rules, 1944. The Commissioner (Appeals) upheld the adjudication order.

2. The learned Advocate on behalf of the appellant submits that the representative of the appellant in his statement before the Central Excise Officers categorically stated that they have supplied the material to the buyers accompanied with the invoices. He also submits that there is no statement or any material to show that the goods were not delivered to the buyers. He relied upon the decision of the Tribunal in the case of CCE, Chandigarh vs. Neepaz Steels (India) & Others reported in 2007 (79) RLT 676 (CESTAT-Del.) .

3. The learned authorized representative (DR) reiterates the finding of the Commissioner (Appeals). He submits that the department made thorough investigation to the transporter and it is established that the vehicle No. mentioned in the invoices were not used for the purpose of carrying of the materials. Therefore, the appellant fraudulently passed the modvat credit to the buyers without supplying the materials. He relied upon the decision of the Tribunal in the case of Baldev Raj Ram Murti vs. CCE, Ludhiana/Chandigarh by final Order No. 1083-1085/07-SM (Br) dated 18.7.2007.

4. After hearing both the sides and on perusal of the record, it is seen from the show cause notice that the statement of Shri Happy Gupta, authorized signatory of the appellant company was recorded on 11.12.2003. The relevant portion of the said statement is reproduced below:-

“He stated that duty paid goods in all these cases were duly received by them, accounted for in their records and were subsequently supplied to various buyers under invoices

issued by them; that they used to write the registration No. of the vehicle on their invoice as intimated by the respective drivers as the invoices were prepared in their office situated at #2, Sunder Singh Market, Gill Road, Ludhiana, whereas the goods were loaded from their godown at Link Road, Opp. Maharashtra Bank, Ludhiana; that sometimes the goods were sold as such without unloading in their godown and the vehicle Nos. in such cases were written as per the suppliers invoices; that the payments in these transactions were received through cheques in most of the cases; that the trucks used to transport these goods were hired from transporters or from regular suppliers/ buyers and payment of freight was made in cash and many cases the freight was not paid as the goods were delivered locally and the owners of the trucks being regular customers/ buyers did not charge any freight being nominal; that he had also seen details of invoices issued by them where the owners of the vehicles used for transportation of goods had denied having transported the same or having ever dealt with them; that most of the buyers were based at Ludhiana and for local transportation, no GR's / bilties were prepared and the payment of freight were made in cash as such drivers of the trucks transported the goods locally without making any records of the same and sometimes without the knowledge of the owners".

5. In the impugned order Commissioner (Appeals) observed that department has proved that the vehicles mentioned on the relevant invoices were either non transport vehicles or non-existent or the owner had denied transportation of goods. It is seen that the representative of the appellant in his statement categorically explained the reasons for wrong mentioning of the vehicle No. in the invoices. It is seen that in his statement he categorically stated that the most of the transactions were made by cheque. I find that there is no statement by the supplier of the input and/or the recipient of the input as well as the appellant that the goods were not supplied by the appellant. In the similar situation the Tribunal in the case of Neepaz Steels (India) & Ors. (supra), held that the respondent were registered dealers and supplied inputs to manufacturers under invoices showing two wheelers and private vehicles as transport

vehicles, payments are made by cheque or demand draft, penalty cannot be imposed on the dealer.

6. The learned authorized representative (DR) heavily relied upon the decision of the Tribunal in the case of Baldev Raj Ram Murti (Supra). It is seen that that in the said case, it was found as a result of the detailed investigation that the transport company was non-existent. That the invoices were used from a invalid invoice book, the dealer and the supplier of the material inputs in their statement accepted that they have issued the modvatable invoice without supplying the goods. In the present case, I do not find any statement by the appellant and the supplier and the recipient of the inputs that the appellant issued the modvatable invoice without supplying the material. It is noted that in this case, the appellant in his statement categorically stated the details of the transaction. Therefore, the case law of Baldev Raj Ram Murty (supra) is not applicable to the present case. I do not find any material that the appellant willfully entered incorrect particulars in the invoices issued for the excisable goods with intent to facilitate the buyer to avail of credit of duty of excise in respect of such goods. Therefore, the penalty imposed upon the appellant is set-aside. The appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]