

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/3871/2005-SM[BR]

Date 30/01/2008

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

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

M/S HBR STEEL CORPORATION

C.C.E. LUDHIANA

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 194/2008-SM[BR] Dated 28.12.2007.
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

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. 3871 of 2005 -SM (BR)

[Arising out of order in Appeal No. 323-325/CE/Apl./Ldh/05 dated 24.6.2005 passed by the Commissioner of Central Excise (Appeals) Ludhiana].

Date of Hearing/Decision: 28.11.2007

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? : y-c2
 3. Whether Their Lordships wish to see the fair copy of the Order? :
 4. Whether Order is to be circulated to the Departmental authorities? :
-

M/s HBR Steel Corporation

...Appellant
 [Rep. by Mr. Sudhir Malhotra, Advocate]

Vs.

CCE, Ludhiana

Respondent
 [Rep. by Mr. Atul Rastogi, DR for the Respondent]

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

Final ORDER No. 194/08 SM (BR)

Per P.K. Das:

Appellant is registered dealer filed this appeal against imposition of penalty under Rule 173Q(1)(bbb) of the erstwhile Central Excise Rules, 1944.

2. Heard both sides and perused the records.
3. It has been alleged that the appellant issued cenvatable invoices to the manufacturer to facilitate the cenvat cenvat credit without supplying the goods. The Commissioner (Appeals) observed that the vehicle Nos. shown in the two invoices were fake. In one case, it transpires from the investigation that vehicle No. as mentioned in the invoice was not registered with the authority and in the other case the owner of the truck denied having transported goods from the dealer's premises to the manufacturers place. On the basis of the said evidences, it has been held that the appellant passed the cenvatable invoices to the manufacturer without supplying the goods. It is seen from the show cause notice that the appellant in their statement stated that duty paid goods in all these cases were duly received by them, accounted for in their records and were subsequently supplied to the various suppliers under invoices issued by them and they used to write registration Nos. of the vehicle on their invoices as intimated by the drivers. They also stated that the payments in these transactions were received through cheques in most of the cases. The recipient of the goods (i.e. manufacturer) in their statement stated that duty paid goods in all these cases were received by them, accounted for in their records and used for manufacture of auto parts and they have not verified the vehicle number as shown in the invoices.
4. Learned DR submits that during the investigation in the month of September, 2000, the Central Excise Officers found that the record maintained by the appellant was irregular manner. In this connection, the learned Advocate points out that the case relates to February 1999 and August 1999 and therefore such allegation is irrelevant at this stage.

It is seen that the Tribunal in the case of CCE, Chandigarh vs. Neepaz Steels (India) reported in 2007 (213) ELT 100 (Tri. Del.) on the similar situation rejected the appeal filed by the Revenue. The relevant portion of the said decision is reproduced below:-

"4. I find that the Commissioner (Appeals) after going through the evidence on record, held as under:

"The further contention of the appellant is that the department has not disputed the following facts:

- 1. Payments for the purchase of the inputs have been made through cheque and demand draft;*
- 2. The inputs in question have been used in the manufacture of final products, which have been cleared on payment of duty;*
- 3. The department has not been able to prove that any other alternative raw material was received and used in the final products;*
- 4. The RT-12 return have been assessed finally by the Range officer, which contains all the documents including (the invoices under dispute) on the basis of which the modvat credit has been availed and utilized".*

5. The above findings, which are based on evidence, are not under challenge in the present appeals. These findings show that the inputs supplied were duly received by the manufacturers and the same were used in the goods manufactured which were cleared on payment of duty. There is no evidence on record in the present appeal to controvert the above findings. In these circumstances, I find no merit in the appeals and the same are dismissed.

§. In the present case, it is seen that the appellant and the manufacturer both in their statement before the investigating officer categorically stated that the payments for the inputs have been made through cheques and duly recorded in their records which has not been disputed by the department. The only evidence of the department is that the vehicle nos. as mentioned in the invoices are incorrect. In view of the decision of the

Tribunal in the case of Neepaz Steels (India) (supra), I find that the department did not refute the evidences placed by the appellants and, therefore, imposition of penalty is unwarranted. Accordingly, penalty imposed on the appellant is set-aside and the appeal is allowed.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]