

**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/230 /2006-SM[BR]

Date 01/02/2008

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

To :  
M/S K.K. & CO  
212-PHASE-1,HMT ANCILLARY INDL  
ESTATE,PANCHKULA HARYANA

M/S K.K. & CO

Appellant

CCE,ROHTAK

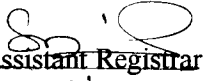
Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No.231/2008-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  
CCE,ROHTAK  
DO
2. Adv. / Consult  
MR.RAJESH CHHIBBER  
FA/9, NEW KAVI NAGAR, GHAZIABAD
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. 230 of 2006 -SM (BR)**

[Arising out of order in appeal No. 381/GMR/RTK/2005 dated 28.10.2005  
passed by the Commissioner (Appeals) Central Excise, Gurgaon]

**Date of Hearing/ Decision: 28.12.2007**

**For approval and signature:**

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

- 
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?
  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 K. K. & Company Appellant  
[Rep. by Mr. Rajesh Chhibber, Advocate for the appellant]

Vs.

CCE, Delhi-IV Respondent  
[Rep. by Mr. A. Rastogi, Authorised Representative (DR) for the respondent]

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

*Final* ORDER 231/08-sm(BR)

**Per P.K. Das:**

It has been alleged that the appellants availed modvat credit wrongly on the basis of central excise invoice without receiving the inputs.

The adjudicating authority dropped the proceedings. Revenue filed the

appeal before the Commissioner (Appeals) whereby the adjudication order was set-aside.

2. Learned Advocate on behalf of the appellant submits that the adjudicating authority examined the records and documents as well as the statements of the appellant and the supplier of inputs i.e. M/s Majestic Industries Limited, and dropped the proceedings. He submits that the Commissioner (Appeals) proceeded on the basis of the statement of the owner of the vehicle in one case and in other case it was found the vehicle number as mentioned in the invoice was found to be fictitious. He reiterates the findings of the adjudicating authority. He relied upon the decision of the Tribunal in the case of CCE, Chandigarh vs. Neepaz Steels (India) reported in 2007 (213) ELT 100 (Tri. Del.).

3. Learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that the appellant failed to produce any evidence in support of their contention that the goods were received at their factory.

4. After hearing both the sides and on perusal of the records, I find that the Tribunal on the similar issue in the case of CCE, Chandigarh vs. Neepaz Steels (India) (supra) held as under:-

*"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.*
5. In the present case, it is seen from the adjudication order that the Assistant Commissioner dropped the proceedings after examining the various factors as under:-

*"However from the records available and from the statement of Shri N.K. Gupta Director of the party and the statement of the owner of the said premises, it is clear that it was only with effect from 1.10.99 that facility to store goods was withdrawn. Hence there was no dispute regarding storage of inputs at godown prior to 1.10.99. All the invoices issued and involved in the instant case relate to the period prior to 1.10.99. It has also been alleged in the show cause notice that vehicles shown as used for the transportation of material from M/s Majestic Industries Ltd., Ludhiana and manufacturer premises is either non-existent or vehicle owner has denied transportation of the goods or was not available at the address. However, no evidence has been produced to the effect that the goods from the factory premises of Majestic Industries Ltd., Ludhiana has moved/ not moved to their depot at Ludhiana. Further, the evidence of payment of duty in all these cases invoice wise by M/s MTL Ltd., has been given by the party. The end user of the inputs has made payments through cheques/ demand drafts. The party has further manufactured the final products and supplied these to Public sector undertakings like M/s HMT, Pinjore/ M/s PTL Mohali in all the cases. There is no allegation to the effect that inputs were not duty paid. No evidence/ records are available here to show that duty paid goods received at Ludhiana Depot have been sold clandestinely to other buyers. The deptt's investigation and verifications do not suggest any such thing.*

*Further, Mr. N.K. Gupta, Director of M/s Majestic Industries Ltd., has confirmed actual transportation of goods along*

*with modvatable documents as well as receipt of payment in respect of these transactions through normal banking channels. There are proper entries of receipt/ sale of material in the records kept at their registered godown & no such short or deficiency has been found in respect of this party. Further, the party has not admitted anywhere non-receipt or only invoices to avail modvat credit".*

6. In view of the above, I find that Commissioner (Appeals) had not disputed the finding as discussed by the adjudicating authority and he proceeded only on the basis of the statement of the owner of the vehicle. Respectfully following the decision of the Tribunal in the case of CCE, Chandigarh vs. Neepaz Steels (India) (supra), the adjudication order is restored and the order of the Commissioner (Appeals) is set-aside. The appeal is allowed.

(Order dictated and pronounced in the open Court)

(P.K. Das)  
Member (Judicial)

[Pant]