

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/2656/2006 &2678 -2679 /2006 -SM[BR]

Date 26/03/2008

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

To :
M/S ADHUNIK FERRO ALLOYS LTD.
SHIVAM CHAMBERS OLD POST OFFICE ROAD
MANDI GOBINDGARH

[2]M/S VIMAL ALLOYS PVT.LTD.
[3]MANU BANSAL DIRCTOR M/S VIMAL ALLOYS
PVT.LTD. VILLAGE-SOUMTI. AMLOH ROD
MANDI GOBINDGARH[PB]

M/S ADHUNIK FERRO ALLOYS LTD.

Appellant

CCE,CHANDIGARH

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 467- 469 /2008 -SM[BR] dated 24.1.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

CCE,CHANDIGARH

2. Adv. / Consult SHRI. V.K.AGARWAL ADV

B-82 LAJPAT NAGER-II NEW DELHI-24 ,

3. SHRI.KAMALJEET SINGH ADV.

J-144 PATEL NAGAR-I

GHAZIABAD[U.P]

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 & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

**Excise Appeal No. 2656 of 2006-SM(BR) & 2678-2679 of
2006-SM(BR)**

(Arising out of Order-in-Appeal No. 333 to 372/CE/CHD/06 dated 28.4.2006 & 453 to 492/CE/CHD/06 dated 30.5.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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.	

M/s Adhunik Ferro Alloys Ltd.
M/s Vimal Alloys (P) Ltd.
Manu Bansal

Appellant

Vs.

CCE, Chandigarh

Respondent

Appearance:

Shri V.K. Agrawal, Advocate with Shri Kamaljeet Singh, Advocate - For appellant

Shri B.S. Suhag, DR

-For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 24.1.2008

Final Order No. 467-469/2008 SM(BR) dated 24.1.2008

Per S.S. Kang:

Heard both sides.

2. The appellant filed these appeals against the common impugned order. The Modvat credit was denied to M/s Vimal

● Alloys and penalties were imposed on Director of M/s Vimal Alloys and consignment agent M/s "Adhunik Ferro Alloys.

3. The case of the Revenue is that in the invoices under which M/s Vimal Alloys received the inputs is having a vehicle number which was found not of a goods transport vehicle.

4. On the basis of this, the Revenue issued show-cause notice for denial of credit on the ground that only duty paying documents were received by M/s Vimal Alloys and no inputs were received by them. The adjudicating authority confirmed the demand and imposed the penalties. The contention of the appellant is that the goods were manufactured by TISCO (M/s Tata and Iron Steel Co.) and the same were supplied to their consignment agent M/s Adhunik Ferro Alloys. The contention is that payment in advance is made to TISCO through banking channels and thereafter the goods were ordered to be released by consignment agent. There is no allegation that TISCO has not received any payment from the appellant. The contention is that the goods received from the consignment agent were entered into statutory record and the same were

● used in the manufacture of goods which were cleared on payment of duty. There is no allegation that the appellant procured the inputs from other source and used in the manufacture of finished goods, therefore, the demand is not sustainable.

5. The contention of the Revenue is that the vehicle number mentioned in the invoice issued by the consignment agent are not of a goods carrier, therefore, the goods were never transported to the customers. The Revenue relied upon the decision of the Tribunal in the case of **Viraj Alloys Ltd. & Ors. Vs. CCE** reported in 2004 (65) RLT 196 where the demand on similar ground was upheld.

6. I find that in the present case the goods were manufactured by TISCO and the same was supplied to consignment agent M/s Adhunik Ferro Alloys the appellant has to place orders with advance payment to TISCO and thereafter TISCO issued release order to their consignment agent and the goods were released to the appellant. There is no evidence on record to show that the payments were not received by TISCO regarding sale of goods in question. In the case of **Viraj Alloys (Ltd.) (supra)** relied upon by the

- Revenue, the manufacturer failed to establish that inputs mentioned in the invoices were received in the factory. The facts of the present case are different. In the present case, the appellant made payment regarding the goods directly to the TISCO and thereafter inputs were released by their consignment agent. There is no evidence on record to show that TISCO is also connived with the appellant by issuing duty paying documents only. The Tribunal in the case of **A.K. Pvt. Ltd. Vs. CCE** – Final Order No. A/1458-1459/05 dated 12.7.05 set aside the demand and penalties which was imposed on the same grounds. In view of the facts of the present case as the payments were directly made to TISCO regarding the goods in question and in view of earlier decision of the Tribunal in the case of **A.K. Alloys** (supra), the impugned order is set aside and appeals are allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM