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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/2496/2006-2503/2006 - SM[BR] Date 17/09/2008

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant
Vs
SWASTICK STEEL WORKS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1315A-1322 / 2008 -**SM[BR]** dated 3.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
SWASTICK STEEL WORKS
G.T. ROAD, MANDI GOBINDGARH, PUNJAB
2. Adv. / Consult SHRI BIPIN GARG ADV.
B -1 1289-A, VASANT KUNJ NEW DELHI -110070.

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

2. KARAM STEEL CORPORATION
NASRALI ROAD, MANDI GOBINDGARH, PUNJAB
3. MODI OIL & GENERAL MILLS
MANDI GOBINDGARH, PUNJAB
4 MODI WIRE PRODUCTS
MANDI GOBINDGARH, PUNJAB
5 ARIHANT STEEL ROLLING
G.T. ROAD, MANDIGOBINDGARH, PUNJAB
6. PREM STEEL & ALLIED IND
G.T. ROAD, MANDI GOBINDGARH, PUNJAB
7. SURBHI GAS SERVICE
MOTIA KHAN, MANDI GOBINDGARH, PUNJAB
8. SH.YAGYA DUTT PARTNER [redacted]

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeals No.2496-2499/06 & 2500-2503 of 2006 -SM (BR)

[Arising out of common Order-in-Appeal No.375-382/CE/CHD/06 dated 28.04.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:3.6.2008

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 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? : no.
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : yes

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CCE, Chandigarh ...Appellants

[Rep. by Shri S. Gautam, Authorised Departmental Representative]

Vs.

1. M/s. Swastick Steel Works
2. M/s. Karam Steel Corporation
3. M/s. Modi Oil & General Mills
4. M/s. Modi Wire Products
5. M/s. Arihant Steel Rolling Mills
6. M/s. Prem Steel & Allied Industries
7. M/s. Surbhi Gas Service
8. Shri Yagya Dutt, Partner of M/s. Surbhi Gas Service ...Respondents

[Rep. by Shri Bipin Garg, Advocate]

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

Final Order No. 1315A-1322/08 - SM (DR) /Dated:3.6.2008

Per P.K. Das:

All the appeals are arising out of common order and, therefore, all the appeals are taken up together for disposal.

2. Revenue filed these appeals against the order of the Commissioner (Appeals), whereby Adjudication Orders were set aside. The relevant facts of the case, as per records, in brief, are that M/s. Surbhi Gas Service, Respondent No.7, a registered dealer supplied the duty paid Furnace Oil and Bitumen to the manufacturer, Respondent No.1 to 6 under the cover of Central Excise Invoices. It has been alleged that the manufacturer had not actually received the inputs and availed the credit on the basis of invoices. The charges were framed on the basis of octroi slips. The Adjudicating Authority denied credits and imposed penalties on all the Respondents 1 to 6 and imposed penalty on the registered dealer and its partners, Respondent No.7 and 8. The Commissioner (Appeals) set aside the Adjudication Orders. Hence the Revenue filed these appeals before the Tribunal.

3. Ld. DR on behalf of the Revenue submits that the description of the goods and vehicle nos. as mentioned in the octroi slips are similar to the invoices on the basis of which manufacturers availed credit. He further submits that the octroi slips indicated that the goods were supplied to M/s. J. P. Iron Steel, Ludhiana and not the manufacturer herein. He further submits that the entire transaction has been done on the paper basis and the manufacturer/ Respondents had not received the goods.

4. Ld. Advocate on behalf of the Respondents reiterates the findings of the Commissioner (Appeals). He drew the attention of the Bench to the show cause notice, which indicates invoice numbers and truck nos. by which they received the raw materials. He further submits that they produced all the documents, no enquiry was made. He also submits that the Revenue has not disputed the evidences relied upon by the Commissioner (Appeals).

5. After hearing both the sides and on perusal of the records, the relevant portion of the Order of the Commissioner (Appeals) is reproduced below:-

> " I find force in the appellants' contentions, which have been supported by the documentary evidences such as invoices, receipt of these materials in their statutory records, use of Bitumen/Furnace oil by the appellants in their factories for the manufacture of their finished products, clearance of the finished products from their factories on payment of duty and availment of modvat/cenvat credit on these materials used, receipt of payment through Account Payee Cheques by the Consignor of goods i.e. M/s. Surbhi Gas Service, Mandi Gobindgarh and realization/encasing of these cheques in his account and entry of these materials in the statutory records of the consignor, M/s. Surbhi Gas Service, Mandi Gobindgarh. The appellants further contended that no reliance deserved to be placed on the octroi receipts as these octroi receipts do not contain any iota of evidence that the materials mentioned therein had been cleared/sold by M/s. Surbhi Gas Service, Mandi Gobindgarh. These

octroi receipts only show the description of goods and vehicle number but do not establish by any evidence that these octroi receipts related to M/s. Surbhi Gas Service, Mandi Gobindgarh as these octroi receipts do not contain any reference to their name or their bill number. Further, no enquiry had been made by the department from Octroi Post authorities as to how and on what basis/documentary evidence, they had been issuing these octroi receipts and in absence of any such enquiry, the charges against the appellants totally fail. In support of their contentions, the appellants placed reliance upon the judgments of the Appellate Tribunal in the cases of M/s. Raj & Sandeeps Ltd. Vs. CCE, Chandigarh V/s. Dasmesh Castings Pvt. Ltd. reported as 2001 (130) ELT 658 (T). On going through the photocopy of one such Octroi Receipt No.165 dated 22.4.2000 produced by Appellant No.1. I find great force in the appellants' contentions and observe that the octroi receipt mentions only the description of material, quantity and truck number but it does not contain any reference to the consignor's name and address and his bill number."

6. According to Revenue, as revealed from show cause notice, the actual consignees as per octroi receipt are J.P. Iron Steel, Ludhiana for 5 consignments and R.K. Petro, Doraha for 2 consignments. It is significant to note that the representative of J.P. Iron Steel in his statement dated 4.12.2001 stated that after 1.4.2000, they have not purchased any materials from M/s. Surbhi Gas Service. So, the contention of the ld. DR that M/s. Surbhi Gas Service sold the material to M/s. J.P. Iron Steel after

4.12.2000.
~~1.4.2000~~ is not sustainable. I agree with the findings of the Commissioner (Appeals) that no inquiry had been made by the Department from Octroi Post Authorities in respect of octroi slips. So, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, all the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 3.6.2008.

(P.K. Das)
Member (Judicial)

Ckp.