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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/3318/2006-3319/2006 – SM[BR] Date 10/10/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
1. M/S SIMPLEX STEEL INDUSTRIES.
2. MR. ASHOK SINGLA PARTNERS
AMLOH ROAD,MANDI GOBINDGARH.
-147301

M/S SIMPLEX STEEL INDUSTRIES. Appellant
Vs
C.C.E CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1363 – 1364 /2008- SM[BR] dated 30.9.2008 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 CHANDIGARH
PLOT NO 19,SECTOR 17-C,CHADIGARH.
2. Adv. / Consult
MR.DSK LEGAL, ADVOCATES
46, ARADHANA, CHANAKYA PURI, NEW DELHI-110 066.
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 - 3
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
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-1
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/3318-19/06-SM

[Arising out of Order-in-Appeal No.581-603/CE/CHD/06 dt.30.6.06 passed by the Commissioner(Appeals), Chandigarh)

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

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 Department Authorities:	:

M/s. Simplex Steel Industries — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

Sh. Rupinder Singh ,Adv. For appellant
Shri Sansar Chand, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 30.9.08
Final Order No. 1363-1364/08 SM-(BR)

Per Rakesh Kumar:

This is an appeal against Commissioner(Appeals) order dt.30.6.06 upholding the order-in-original dt.7.3.06 passed by the Dy. Commissioner against the appellant confirming the demand of wrongly taken Cenvat credit amounting to Rs.53,974/- and imposing penalty of equal amount on him under Rule 57AH of Central Excise Rules,1944 read with Section 11AC and also imposing penalty of Rs.25,000/-on Shri Ashok Singla, Partner of the Appellant company. The Cenvat credit amounting to Rs.53,974/- had been denied to the appellant on the ground that the same had been taken on the basis of the invoices issued by M/s. Northern Industrial Corpn., Mandigobindgarh and on enquiry about vehicle mentioned in the invoices, the same were found to be fictitious which indicated that only invoices had modified and no goods had been received.

2. Heard both the sides.

2.1 Shri Rupinder Singh, Ld. Counsel appearing on behalf of the Appellant pleaded that in this case the payment had been made by the Appellant to the supplier by cheque which indicates that the goods had been received by them. He also pleaded that no shortage of the inputs was found in the Appellant's factory. He also brought to my notice the case of the Hon'ble Punjab & Haryana High Court judgment in the case of CCE, Chandigarh vs Shakti Roll Cold Strips Pvt. Ltd. reported in 2008(229)ELT.661 wherein the Hon'ble High Court in a similar case upheld the Tribunal's order observing that when the Tribunbal has recorded a finding that the inputs supplied by the respondent were duly received by the manufacturer and were used in the goods manufactured which were cleared on payment of duty and when the Tribunal has given a finding that the Department has not been able to prove that any other alternative raw-material was received and used in the manufacture of final product and that the findings of the Commissioner(Appeals) in favour of the respondent were not challenged by the Departmental Representative before the Tribunal, The cenvat credit on the basis of invoice even though the vehicle registration numbers mentioned in the invoices which were found to be fictitious, cannot be denied. He also brought to my notice the observation of this Tribunal in the case of Rajeev Alloys Ltd. vs CCE, Chandigarh(Order No.684/08-Ex.) dt 5/7/08) wherein the Tribunal has observed that it goes without saying that in any series of transactions some may be genuine for which benefits available in law may be allowed to the party, for other transaction in the same series. Similar benefit may not be allowed – depending on the attending facts in particular cases and that in other words, cenvat credit can be allowed where there is actual transportation and receipt of the goods by the manufacturer entitling them to take cenvat credit but where there is no such proof of such proof of actual transportation and receipt, credit cannot be allowed. In view of this, Ld. Counsel pleaded that the matter may be remanded to the original adjudicating authority for giving finding on the point as to whether the goods had indeed been received by the Appellant under invoice, in question. It was also submitted that the Appellant ~~has a~~ is a partnership firm. Since penalty has

has been imposed on the Appellant under Section 11AC, there is no justification for separate penalty on the partner and in this regard reliance was placed on Tribunal's order reported in 2003(154)ELT.417.

2.2 Shri Sansar Chand, Ld. Departmental Representative pleaded that in this case the goods said to have been received from the registered dealer who was known to have issued fake invoice without despatch of any goods that there is no explanation at all as to why registration numbers mentioned in the invoices, have been found to be fake on enquiry and why no GRs had been produced and that the appellant have not produced any evidence in support of their claim that the goods had actually been received by them under these invoices. He also relied upon the Tribunal order in the case of Rajeev Alloys Ltd.(supra) wherein on indentical facts, the Tribunal upheld the Commissioner(Appeals)'s order denying the Cenvat credit and in that order has cited with approval ~~on~~ an earlier judgment of the Tribunal in the case of Veeraj Alloys Ltd. wherein the Tribunal had held that once it is established that the inputs have not been transported in the vehicle mentioned in the invoice, it is but reasonable to say that the inputs were not received in the factory as required under Rule 57G.

3. I have carefully considered the submissions from both the sides. The undisputed facts are that the invoice on the basis of which the cenvat credit has been taken mention vehicle numbers, which on enquiry were found to be fictitious. I also take note of the fact that in the course of enquiry, the consignor M/s. Northern Inds. Corpn. who issued the invoices, in question,

has not produced any GR on lorry receipt in support of his claim of having dispatched the goods. I also find that the Commissioner(Appeals) in his order-in-appeal has observed that it had been contended on behalf of the Appellant in the course of hearing that it was a common practice at that time for the trucks to use fake number plates. If this is so, the consignor should have been more careful in this regard. Moreover, I also find that at the time of enquiry, a follow up check was carried out in respect of two invoices issued by M/s. Northern Industrial Corpn. to M/s. Avtar Foundary & Workshop and on physical verification in the factory of Avtar Foundary & Workshop, it was found that no goods have been received which shows that M/s. Northern Indus. Corpn. were, indeed, issuing invoices without sending any goods. In view of these circumstances, I am of the view that the cenvat credit has been rightly denied. The impugned order so far as it denies cenvat credit and imposes equal penalty on the appellant company under Section 11AC of the Act is upheld. As regards the penalty on Shri Ashoka Singla, partner of the Appellant, the same is set aside, as penalty has been imposed on the Appellant firm.

Order dictated in the open Court.

(Rakesh Kumar)
Member Technical

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