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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/1680/2006-1682/2006 – SM[BR]   Date 02/01/2009

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA   Appellant

Vs

M/S SUNDESH SPRINGS PVT. LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1619 – 1621 /2008- **SM[BR]** dated 10.12.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
1. M/S SUNDESH SPRINGS PVT. LTD.
D-138, PHASE-V, FOCAL POINT LUDHIANA
2. M/S ANTARCTIC IND LTD.
C-44/47,BEHIND METRO TYRES PHASE-IV,FOCAL POINT LDHIANA
3. SAECO STEEL ROLLING MILLS
OPP. DHANDARI RAILWAY STATION, LUDHIANA

2. Adv. / Consult SHRI RUPENDER SINGH ADV.
N/V;---------------------------------

12-1-09
ISSUED ON

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), Thyagarava 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
15 Office Copy
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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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal Nos. 1680-1682 of 2006 (SM)

[Arising out of the Order-in-Appeal No. 144-147/CE/CHD/ 2006 dated 28/02/2006 passed by The Commissioner (Appeals), Central Excise Commissionerate, Ludhiana.]

For Approval and signature :
Hon'ble Shri 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?	:

CCE, Ludhiana — Appellant

Versus

1. M/s Sundesh Springs Pvt. Ltd.]
2. M/s Antarctic Industries Ltd.] Respondent
3. M/s Saeco Steel Rolling Mills]

Appearance

Shri A.K. Rastogi, Authorized Representative (DR) – for the appellant.

Shri Rupender Singh, Advocate – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 10/12/2008.

Final Order No. 1619-1621/08-SM(BR) Dated : 10.12.08

Per. Rakesh Kumar :-

These are the Department's appeals against the impugned order-in-appeal dated 28/02/06 passed by CCE, Ludhiana in respect of the cases against the Respondents of taking Cenvat credit on the basis of bogus invoices without actually receiving the goods. Out of the three Respondents, only one Respondent M/s Saeco Steel Rolling Mills, Ludhiana is represented by Shri Rupender Singh, Advocate. Nobody has appeared on behalf of the other two Respondents as M/s Sundesh Springs Pvt. Ltd. and M/s Antarctic Industries Ltd., though the notices of hearing had been issued to them. In view of this, the case of the other two Respondents are being decided on merits.

2. The Respondents are rolling mills engaged in the manufacture of Iron and Steel products falling under Chapter

72. They availed Cenvat credit on the basis of the invoices issued by a register dealer – M/s H.B.R. Steel Corporation, Ludhiana (hereinafter referred to as M/s HBR). On the basis of investigation conducted by the Department against HBR, which involved verification of the vehicle numbers mentioned on the invoices, surprise checking of the stock of M/s HBR etc., the Department alleged that no goods have been sold by M/s HBR to the Respondents and only invoices have been issued passing on the Cenvat credit as – (a) in all the cases, the vehicle numbers mentioned on the invoices are of two wheelers or three wheelers; (b) on the date of the officer's visit to M/s HBR's premises though their register was showing some stock of the goods on, physical verification, no stock was found in the approved godown and (c) M/s HBR have not been able to produce any GRs or ~~builty~~ bilty or tell the name of the transporters who had transported the goods to the Respondent premises. It has also been alleged that in some cases, the numbers were found to be trucks but on enquiry with the truck owners, denied having transported any goods for M/s HBR. The Deputy Commissioner vide orders-in-original No. 56/CE/DC/LDH-II/05 dated 31/08/05,

68/CE/DC/LDH-II/05 dated 30/09/05 and 69/CE/AC/LDH-I/05 dated 30/11/05 confirmed the Cenvat credit demands against the Respondents and also imposed penalty on them. The Commissioner (Appeals), however, vide a common order-in-appeal dated 28/02/06 has set aside the Assistant /Deputy Commissioner's orders. It is against this order of the CCE (Appeals) that the Department has filed the three appeals.

3. Heard both the sides.

3.1 The learned Departmental Representative has made the following submissions :-

(1) In all the cases either the vehicle numbers mentioned in the invoices were found to be of two wheelers or three wheelers etc. which could not transport the goods or in some cases, where the vehicle numbers were found to be trucks, the truck owners have denied top have transported the goods. Beside this, on the date of the officer's to M/s HBR's premises, though the RG-23D register was showing some stock, on physical verification, no stock was found to be on godown. The fictitious vehicle numbers on the invoices and the absence of any goods in the godown while the

RG-23 stock register was showing some stock clearly shows that M/s HBR were simply passing on the Cenvat credit without actually selling any goods.

(2) M/s HBR have neither been able to tell as to who had transported the goods nor have they been able to produce any GRs or b ilties.

(3) He relied upon the Tribunal's judgment in the case of **M/s Ranjeev Alloys Limited vs. CCE, Chandigarh** [Final order No. 654 of 2008-EX dated 03/09/2008], wherein it was held that when the vehicle numbers mentioned on the invoices under which the goods had been sold are found to be fictitious, the burden of proving that the goods covered under those invoices had actually been received by the consignee is on the consignee (manufacture) taking Cenvat credit on the basis of such invoices. In view of this, it is the Respondents who have to prove that they had actually received the goods covered under the invoices issued by M/s HBR. But no concrete evidence in this regard had been produced by the Respondents.

3.2 Shri Rupender Singh, Advocate, the learned Counsel for M/s Saeco Steel Rolling Mills, made the following submissions :-

(1) The Department's case is based only on the basis of enquiry ~~ground~~ with the dealers. No enquiry has been made at all with the Respondents who had received the goods ;

(2) The Department had initiated proceedings against the registered dealer M/s HBR. But the Tribunal vide order reported in **2008 (225) E.L.T. 102** in the case of M/s H.B.R. Steel Corporation vs. CCE, Ludhiana, has set aside the penalty on M/s H.B.R. Steel Corporation. When the penalty on the main person – the dealer issuing the invoices alleged to be fictitious have been dropped, there is no justification for denying Cenvat credit to the Respondents and imposing penalty on them. In this regard, he also placed reliance on the judgment of the Tribunal in the case of **Hitesh Silicate Industries vs. CCE, Jaipur** reported in **2002 (150) E.L.T. 89**, wherein the Tribunal held that penal proceedings against a manufacturer taking Cenvat credit on the basis of invoices issued by a registered dealer cannot be initiated without initiating action against the dealer.

(3) The Respondent have made payment to M/s HBR by cheques/drafts. Beside this, no shortage of inputs was in the Respondents' premises.

4. I have carefully considered the submissions from both the sides. The facts of the three appeals of the Revenue are

identical. In all the three cases, the Respondents claim to have received Iron and Steel products from M/s HBR for use in the manufacture of rolling Iron and Steel products. The Revenue's contention is that no goods were received by the Respondents from the M/s HBR and only on the invoices passing on the Cenvat credit were received as (a) the vehicle numbers mentioned on the invoices were either found to be two wheelers or three wheelers etc. i.e. of the vehicles not capable of transporting such quantity of steel products or of trucks, whose owners denied to have transported any goods for M/s HBR and (b) at the time of the officer's visit to M/s HBR's premises while the RG-23 Register was showing some stock, on physical verification, no stock was found in their approved godown. The above facts are not in dispute. Beside this, I also find that the M/s HBL have neither been able to produce any GRs or [illegible] ~~builty's~~ nor have they been able to name the transporters through whom the goods covered under the invoices, in question, are claimed to have been despatched to the Respondents. All these circumstances indicate that these were only the paper transactions not involving any actual sale of the goods. This Tribunal in the case of M/s Ranjeev Alloys

Ltd. vs. CCE, Chandigarh (Supra) has held that when a manufacturer takes Cenvat credit on the basis of an invoice mentioning the vehicle number which is found to be fictitious, the burden of proving that the goods covered under that invoice were actually received would be on the manufacturer. In this case, the Respondents other than claiming that the payment for the goods purchased from M/s HBR had been made by cheque, no evidence regarding actual receipt of the goods had been produced. Neither the Respondents nor the registered dealer M/s HBR have named the transporters who had transported the goods covered under the invoices, in question, nor any GRs regarding the dispatch of the goods to the consignees have been produced. In view of these circumstances, I am of the view that the impugned order setting aside the Deputy Commissioner's orders is not correct. It has been pleaded that when penalty imposed on M/s HBR under separate proceedings has been set aside, by the Tribunal's order in the case of M/s H.B.R. Steel Corporation (Supra) no proceedings against the Respondents for recovery of the Cenvat credit and imposition of penalty can be initiated. On going through the Tribunal's order in case of

M/s H.B.R. Steel Corporation, I find that, that order had been passed by a single member bench prior to the Division Benche's judgment in case of M/s Ranjeev Alloys Limited vs. CCE, Chandigarh (Supra) and, therefore, that judgment is not binding. In view of the above, the impugned order is not sustainable and the same is set aside. The Revenue's appeals are allowed.

(Dictated and pronounced in open court.)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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