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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/840 &886 / 2007 –SM[BR] Date 02/03/2009

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
C.C.E, CHANDIGARH Appellant
Vs
NABHA STEELS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No 201 -202 / 2009-.** SM[BR] dated 20.2.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
NABHA STEELS LTD.
MANDI GOBINDGARH.
[2]M/S NATRAJ INDL. CORPORATION
VILL- ALOUR , KHANNA , PUNJAB

2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
H.NO. 5, SECTOR 10-A
CHANDIGARH
[2] SHRI BIPIN GARG ADV.
B-1/1289-A , VASANT KUNJ NEW DELHI -70

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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal Nos. 840 & 886 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 02/CE/CHD/2007 dated 04/01/2007 and 29/CE/CHD/2007 dated 09/02/2007 both passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

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, Chandigarh — Appellant

Versus

M/s Nabha Steels Limited — Respondent

and

M/s Natraj Industrial Corporation — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

Shri S.K. Bhaskar, Authorized Representative (DR) – for the appellant.

Shri Vikrant Kakaria, Advocate – for the appellant.

and

S/Shri Bipin Garg, Advocate and Atul Gupta, C.S. – for the appellant

Shri Sansar Chand, Authorized Representative (DR) – for the Respondent.

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

DATE OF HEARING : 23/01/2009.
DATE OF DECISION: 20-02-09.

Final Order No. 201-202/09-SM(BR) Dated : 20.2.09

Per. Rakesh Kumar :-

Both these appeals – Appeal No. E/886/07 – SM filed by M/s Natraj Industrial Corporation, Khanna City [hereinafter referred to as M/s Natraj] and appeal No. E/840/07 – SM filed by CCE, Chandigarh where M/s Nabha Steels Ltd., Mandi Gobindgarh [hereinafter referred to as M/s Nabha], is the Respondent were heard together and are being disposed of by a common order, as the facts of these two appeals are inter-linked and both the appeals, though against different orders-in-appeal passed by CCE (Appeals), originate from the same order-in-original No. 172-177/CE/DC/MGG/2005 dated 31/03/2006 passed by the Deputy Commissioner of Central Excise, Mandi Gobindgarh. M/s Nabha are an industrial furnace unit in Mandi Gobindgarh engaged in manufacture of M.S. Ingots from scrap and M/s Natraj is a re-rolling mill located in Khanna City, engaged in manufacture of CTD bars, rounds, flats etc. M/s J.K. Jindal & Sons, Mandi Gobindgarh is a registered dealer dealing in iron and steel scrap. In appeal No. E/840/07 – SM, the allegation against M/s Nabha is that they took Cenvat credit of Rs. 84,065/- on the basis of certain invoices regarding ship breaking scrap issued by M/s J.K. Jindal & Sons without actually receiving any material and the material covered by those invoices was actually dispatched by M/s J.K. Jindal & Sons to some re-rolling mill in Khanna City, as is evident from the octroi slips issued by the Khanna City Municipality. M/s Natraj, the Appellant in appeal No. E/886/07 – SM is alleged to be one of such recipient of ship breaking scrap without any invoice, the invoice in respect of which had been issued by M/s J.K. Jindal & Sons and alleged to have been given to some induction furnace unit, without actually sending any material.

2. Heard both the sides.

2.1 Shri Vikrant Kakaria, Advocate, the learned Counsel representing M/s Nabha pleaded that other than the octroi receipts issued by Khanna City Municipality mentioning the truck number, quantity and description of the goods, there is no other evidence showing that the goods covered by the invoices issued by M/s J.K. Jindal & Sons to M/s Nabha, on the basis of which Cenvat credit had been taken by them, had been sent to a re-rolling unit in Khanna City, that no enquiry has been made with the transporters or the truck drivers in this regard, that even the consignee in Khanna city have not admitted the receipt of the goods, that M/s Nabha have made payments for the ship breaking scrap purchased by them from M/s J.K. Jindal & Sons by cheque, which shows that the goods had, indeed, been received by them and that the Tribunal in identical cases of **CCE, Chandigarh vs. Param Steel Industries & ors.** [order No. 1636 – 1639/08 – SM (BR) dated 28/11/08] relying upon an earlier order involving same issue [order No. 1315A-1322/08 SM dated 03/06/08] in case of M/s Swastic Steel Works has held that the fact that the quantity of inputs and the truck number shown in the octroi slips issued by Khanna City Municipality tallied with the truck number and quantity shown in the invoices issued by M/s J.K. Jindal & Sons to M/s Param Steel Industries, is not sufficient to hold that no goods were received by the Respondent and only invoices were received by them for the purpose of availing inadmissible credit. He, therefore, pleaded that the Commissioner (appeals)'s order dated 04/1/07 allowing the appeal of M/s Nabha is correct and there is no merit in the Revenue's appeal. He also emphasized that the scrap received from M/s J.K. Jindal & Sons was ship breaking scrap which can be used in the induction furnace and had actually been received in the unit and used.

2.2 Shri Bipin Garg, Advocate, and Shri Atul Gupta, C.S. representing M/s Natraj, the Appellant in appeal No. E/886 of 2007 (SM) pleaded that merely on the basis of the octroi slips, without any inquiry with the transporters, it cannot be concluded that the ship breaking scrap in respect of which the invoices had been issued by M/s J.K. Jindal & Sons to some induction furnace units in Mandi Gobindgarh, had actually been received by M/s Natraj in Khanna City, that M/s Natraj have also denied having received any such scrap, that penalty has been imposed on M/s Natraj under Rule 209 of Central Excise Rules, 1944 which is not applicable as collusion/abetment is not covered by Rule 209, that in the same order-in-original penalty had been imposed on five other similarly placed parties in Khanna City but the penalty was set aside by the Commissioner (Appeal) vide order-in-appeal dated 24/10/06, that other than the octroi slips, there is no other evidence of receipt of the goods by M/s Natraj and the Tribunal in the case of CCE, Chandigarh vs. M/s Param Steel Industries (supra) has held that the mere fact that the quantity of inputs and the truck number shown in the octroi slips tallied with the truck number and quantity mentioned in the invoices issued by M/s J.K. Jindal & Sons to induction furnace units in Mandi Gobindgarh, is not sufficient to hold that no goods were received by the induction furnace units and the goods were received in Khanna City, when no enquiry in this regard with the transporters had been conducted and that Clause (b) of Rule 209 of Central Excise Rules under which penalty has been imposed on M/s Natraj, pertains to non-accountal of goods manufactured by manufacturer and not the non-accountal of goods received and therefore the same was not applicable.

2.3 Shri Sansar Chand and Shri S.K. Bhaskar, the learned Departmental Representatives made the following submissions :-

(1) M/s J.K. Jindal & Sons, a registered dealer in Mandi Gobindgarh, in-connivance with some induction furnace units in Mandi Gobindgarh and re-rolling mills in Khanna City were passing on Cenvat credit by issuing only invoices to the induction furnace unit in Mandi Gobindgarh while the

scrap covered under those invoices being rerollable ship breaking scrap, was being sold to the re-rolling unit in Khanna City, that this modus operandi adopted by M/s J.K. Jindal & Sons is clear from the fact that not in one case but in as many as 33 ~~35~~ cases, the truck number, quantity and description of the goods in the invoices issued by M/s J.K. Jindal & Sons to induction furnace unit in Mandi Gobindgarh exactly tallies with the truck number, quantity and description of the goods mentioned in the octroi slips of the same date issued by Khanna City Municipality, that this cannot be a co-incidence and no satisfactory expansion in this regard has been given by the registered dealer M/s J.K. Jindal & Sons, that ship breaking scrap consisting of plates is of more use to re-rolling units who mostly being under exemption do not require any invoice, that furnace units are not capable of utilizing such ship breaking scrap, that the Tribunal in the case of CCE, Chandigarh vs. Ranjeev Alloys Ltd. in its order No. 1599/08 – SM (BR) dated 08/12/08 involving identical issue has taken a contrary view holding that when as per the records of the Municipality of Khanna City, the goods covered under the invoices on the basis of which M/s Ranjeev Alloys Limited, Mandi Gobindgarh has taken Cenvat credit, had entered the Municipality limits of Khanna City and had been received by M/s Shiva Steels Rolling Mills, Khanna City, M/s Ranjeev Alloys Limited could not have received those goods and, therefore, would not be eligible for Cenvat credit.

(2) The learned Departmental Representatives emphasized that not only the truck number but also the

quantity tallies right upto the decimal places and not in one case but in the large number of cases – as many as ~~35~~ 33 cases listed in the Assistant Commissioner's order-in-original dated 31/03/06 which shows that M/s J.K. Jindal & Sons were involved in a large scale fraud on passing on Cenvat credit by just issuing the invoices to the induction furnace units in Mandi Gobindgarh while the goods covered by those invoices were being sold by those invoices were being sold to other persons – re-rolling units in Khanna City.

3. I have carefully considered the submissions from both the sides and have perused the records.

3.1 The basis of the case against M/s Natraj in appeal No. E/840/07 (SM) and against M/s Nabha in the Department's appeal No. E/840/07 (SM) is the same – M/s J.K. Jindal & Sons, a registered dealer issued invoices to some induction furnace units including M/s Nabha, in Mandi Gobindgarh during April 2000 – July 2000 period but on enquiry it was found that as per the records of the Municipality of Khanna City, the goods which are shown to have been sold to induction furnace units including M/s Nabha in Mandi Gobindgarh, had actually been dispatched to re-rolling units including M/s Natraj in Khanna City. Not only, the truck numbers and description of goods, as given in the invoices issued by M/s J.K. Jindal & Sons to induction furnace units tallies with the truck number and description of goods mentioned in the octroi slips issued by the Khanna City Municipality but the quantity also tallies right upto the decimal places and this is so in as many as in 33 ~~35~~ cases. Such things cannot ~~be~~ happen by co-incidence and such incidents cannot be looked at in isolation. Shri Jatinder Kumar, Proprietor of M/s J.K. Jindal & Sons, Mandi Gobindgarh in his statement dated 22/12/08 has explained that the tallying of the truck number and quantity, as mentioned in the invoices issued by them, on some date with the truck number and quantity as mentioned in the octroi slips issued on the same date by the Khanna City Municipality may be due to co-incidence and that he does not know how this has happened. This is an absurd explanation which does not appeal to common sense. This could have been co-incidence had it happened once or twice but not when this has happened in as many as 33 ~~35~~ cases. I, therefore, hold that while M/s Nabha an induction furnace unit in Mandi Gobindgarh were receiving only the invoices of ship breaking scrap without actually receiving any material and were taking Cenvat credit on the basis of such invoices, the material covered by such invoices was being received by the re-rolling unit in Khanna City. Similarly, M/s Natraj – a rerolling unit in Khanna City have received ship breaking scrap without any invoice and the invoice in respect of which have obviously been received by some induction furnace unit in Mandi Gobindgarh.

3.2 In view of the above discussion, I hold that there is no infirmity in the order-in-appeal No. 29/CE/CHD/2007 dated 09/02/07 upholding the penalty on M/s Natraj. Accordingly, the appeal No. E/886/07 – SM filed by M/s Natraj is dismissed. I also hold that the Commissioner (Appeals)'s order No. 02/CE/CHD/ 2007 dated 04/01/07 setting aside the Assistant Commissioner's order No. 172-177/CE dated 31/03/06 confirming demand of Rs. 84,065/- against M/s Nabha and imposing penalty of equal amount under Section 11AC, is not sustainable and the same is set aside and the Asst. ~~Deputy~~ Commissioner's order-in-original dated 31/03/06 in respect of M/s Nabha is restored. The appeal No. E/840/07 – SM filed by Revenue is allowed.

(Pronounced in open court on 26/2/09)

(Rakesh Kumar)
Member (Technical)

PK