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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/3943 – 3944 / 2009 –SM[BR] Date 26/03/2009

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

To :
(1) M/S AMAN ALLOYS LTD.
G.T. ROAD, SIRHIND SIDE, MANDI GOBINDGARH.

[2] SHRI. YATIN BANSAL DIRECTOR
M/S AMAN ALLOYS LTD.
G.T.ROOD SIRHIND SIDE
MANDIGOBINDGARH

M/S AMAN ALLOYS LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 264 – 265 / 2009 –SM[BR] dated 23.3.2009

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
   CENTRAL REVENUE BUILDING, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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
15. Office Copy
16. Guard file
17. Chairman, CBEC, North Block, New Delhi

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 3943-3944 of 2006-SM

(Arising out of Order-in-Appeal No. 836 and 838/CE/CHD/06 dated 15.9.06 and 13.9.06 passed by the Commissioner of Central Excise, Chandigarh)

M/s Aman Alloys Ltd. & Others — Appellant

Vs.

CCE, Chandigarh — Respondent

Appeared for Appellant : Ms. Ashmita Nayak, Advocate
Appeared for Respondent : Shri R.K. Verma, DR

Date of Hearing: 18.3.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 264-265/09-SM(DR) dated 23.3.09

Per D.N. Panda :

Ld. Counsel Ms. Ashmita Nayak submits that the appellant has not committed any breach of law. Whatever the transport that was available to carry the goods those were used to transport the input to appellant's factory and those goods have enjoyed Cenvat credit. If there is no proof to the effect that the goods have been sold by manufacturer merely as a paper transaction, mode of transport shall not be decisive to deny Cenvat credit. The law dealing with Cenvat credit is necessarily to be looked into when that is denied heavily leaning merely on the mode of transport. Further, the extended period of limitation shall not be of any help to Revenue, once purchase of the input is not questionable.

2. Ld. DR submits that from the origin of the goods till its destination there was total lack of chain of evidence to establish that there was hardly any purchase of the input made and a genuinely purchased inputs were transported while transport was itself not in existence. Therefore the paper transactions made for enjoyment of Cenvat credit is rightly deniable apart from the observations made in the appellate order. He relies on the decision of the Tribunal in the case of **M/s Rajeev Alloys Ltd. Vs. CCE** passed vide Final Order No. 684/2008-Ex. dated 3.9.2008. Relying on this order of the Tribunal, he submits that when transaction is ab initio void and never been in existence, denial of Cenvat credit to the appellant is justified.

3. Heard both the sides and perused the record.

4. I had so many occasions in the recent past to see orders of Shri Mewa Singh, Commissioner (Appeals). In many cases he had allowed relief to the litigants without having any record to prove veracity of the transport, mode of transportation, genuineness of transportation and chain of evidence. Suddenly in the present case, I find that there is a total departure where the litigant has been denied relief. It is curious to notice that the self same authority has opted to adopt different means to reform himself when he heard this matter. This is patent from the

following paragraph appearing in his order dated 13.9.2006 and that has appeared at page- 26 of the appeal folder.

> *"I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that this is a case of use of fictitious numbers of vehicles, which have been alleged to be used in the transportation of raw material (inputs) and this practice is quite prevalent and persons availing the services of vehicles have no means of knowing whether the number plate denotes the correct registration number or fictitious numbers. I have already decided in the case of M/s Gian Castings Pvt. Ltd. & Others vide Order-in-Appeal No. 718-719/2004 dated 17.11.2004 wherein it has been observed that "I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that the main contention of the Appellant is that the Modvat credit has been denied and penalty imposed by the Department only on the grounds that the vehicles used for transporting the inputs, as mentioned in the invoices, issued from stock yard of Tisco either directly to them or through two dealers from whom they have purchased the goods, are not registered as Trucks but were registered as Scooters, Motor Cycles, or Tractors etc. which are not capable of transporting the goods in question and as such it has been presumed that the Modvat credit has been taken without actual receipt of the inputs. They have further contended that it was a common practice for trucks to ply with fake or fake number plates and that same is supported by the copy of the "Tribune" dated 31st March 2004 wherein it has been reported that 500 vehicles are running in the Punjab State on fake registration. Similar report was published in the "Times of India" on 13.8.2002 stating that 2 held for "Driving with fake numbers".*
>
> *The above view was being taken by me on the basis of the Newspaper reports published during March, 2004, which could have been relied upon at the relevant time as a result of which the benefit of doubt had to be given. But now I find that the same practice is still prevailing as the Appellants have not taken any remedial action to amend the*

said mistake. It could be considered as bonafide mistake at that time but the same could have been rectified by now as there is no such report in any newspaper in the recent past about the use of fake Registration No. by the trucks. Under the circumstances the Appellants are no more entitled for any leniency or benefit of any doubt, rather it seems to be clear cut case of evasion of duty by way of misusing the modvat facility. Moreover the issue is squarely covered by the decision of CEGAT in the case of Viraj Alloys Ltd. Vs. CCE, Thane-II reported as 2004 (65) RLT 196 wherever it has been held that". (emphasis supplied)

5. When the order in appeal is looked into judiciously, it is very strange to note how superficial orders were passed by the authorities endangering Revenue. Therefore, it has become necessary to send a copy of this order to the Chairman of Central Board of Excise and Customs and Secretary to Revenue for appropriate measure to safeguard interest of Revenue.

6. This Tribunal having passed an order in M/s Rajeev Alloys case as relied upon by learned DR, this case also calls for retesting by an independent authority. Accordingly this matter is remitted to ld. Commissioner (Appeals) who may decide the issue afresh granting fair opportunity of hearing to the Appellant examining entire chain of evidence.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM