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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/1519/2006-1521/2006 – SM[BR]   Date 04/06/2009

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

To :
CCE,JALANDHAR
(HQ AT CHANDIGARH) PLOT NO 19, SEC 17-C,
CHANDIGARH
CCE,JALANDHAR   Appellant

Vs

M/S SUDARSHAN STEELS   Respondent

I am directed to transmit herewith a certified copy of **Final order No 536 – 538 / 2009 –SM[BR]**. dated 4.5.2009

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

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S SUDARSHAN STEELS
TANDA ROAD,JALANDHAR

[2]M/S N.V. ENTERPRISES
INDUSYRIAL AREA JALANDHAR

[3]M/S INDO ASIAN FUSEGEAR
LTD. NAKODAR ROAD JALANDHA

2. Adv. / Consult SHRI K.K.ANAND ADV.
A-5, BASMENT LAJPAT
NAGAR-III,NEW DELHI

[2]SHRIVIKRANT KACKRIA ADV.H.NO.509,SECTO-7,
PANCHKULA [H.R.]

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Appeals Nos.1519 -21 of 2006-SM (BR)

Arising out of common Order-in-Appeal No.54-56/CE/JAL/2006 dated 31.01.2006 passed by the Commissioner of Central Excise (Appeals), Jalandhar]

Date of Hearing/ Decision:04.05.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

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? :
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

No

CCE, Jalandhar ...Appellants

[Rep. by Shri Sansar Chand, DR]

Vs.

(1)M/s. Sudarshan Steels ....Appellants
(2)M/s. N.V. Enterprises
(3)M/s.Indo Asian Fusegear Ltd.

[Rep. by Ms. Asmita Nayak, Advocate and Shri Vikrant Kakria, Advocate]

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

Final Order No. 536-538/09-SM(BR) /Dated:04.05.2009

Per P.K. Das:

Heard both sides and perused the records.

2. Common issue involved in these appeals and, therefore, all the appeals are being taken up together for disposal.

3. After hearing both the sides and on perusal of the records, it is seen that the Original Authority denied credit and imposed penalty on the manufacturer as well as registered dealers on the ground that the credit was availed on the basis of invoices without receiving the goods. It has been alleged that the invoices indicate the vehicle numbers of viz. scooter, cars, etc, which are incapable to carry the huge quantity of goods.

4. Ld. DR on behalf of the Revenue relied upon the decision of the Tribunal in the case of Ranjeev Alloys Ltd. Vs. CCE, Chandigarh reported in 2009 (236) ELT 124 (Tribunal-Delhi). On the other hand, the respondents relied upon the decision of the Tribunal in the case of M/s. Moonlight Auto Ltd. Vs. CCE, Chandigarh vide Final Order No.772-818 of 2008 dated 22.09.2008.

5. In the case of Ranjeev Alloys Ltd. (supra), the Tribunal held as under:-

> " We are of the view that onus initially lies on the Department but having established that the vehicles in question were incapable of transporting large quantities of iron and steel items – as admitted by all concerned, the movement of goods from Mandigobindgarh stock yard of TISCO being fake and fictitious, - an allegation duly made known to appellant by the show cause notice read with

Annexure-I thereto, the onus shifted onto the appellant to prove that the goods were duly received by them and used in the manufacture of iron and steel items. We are satisfied that the appellant utterly failed to discharge the onus."

6. The Tribunal in the case of Aarti Steels Ltd. vide Final Order No.772-818 of 2008-Excise dated 22.09.2008 remanded the matter to the Original Authority following ~~fowling~~ the decision of the Tribunal in the case of Ranjeev Alloys Ltd. (supra). In the present case, I find from the impugned order that the respondent took a stand before the Commissioner (Appeals) that they have received the materials along with invoices. They are in possession of GRs, octrio receipts and freight receipts, which clearly mentioned the vehicle numbers and the weight of the materials.

7. In view of the above discussion, the matter is required to be sent to the Original Authority. Accordingly, the impugned orders are set aside and the matter is remanded back to the Original Authority to decide afresh after considering the evidences placed by the respondents. All the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 04.05.2009.

(P.K. Das)
Member (Technical)

Ckp.