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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

Date 17/06/2009

Appeal No. E/1398/2006-1399/2006 – SM[BR]

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

Tó :
CCE,LUDHIANA
CE.HOUSE,RISHI NAGAR,LUDHIANA — Appellant

CCE,LUDHIANA — Vs

M/S THAPAR ISPAT LTD, — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 582 – 583 / 2009-SM[BR] dated 8.6.2009 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 THAPAR ISPAT LTD,
   B-47,PHASE-VII,FOCAL POINT,LUDHIANA

   [2]M/S AMRIT INDUSTRIES
   C-41, PHASE-IV, FOCAL POINT LUDHIANA
2. Adv. / Consult SHRI R.SANTHANAM ADV.
   N/V;-------------------------------
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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 1398-99 OF 2006-SM

[Arising out of Order-in-Appeal No. 9-10/CE/Appl/Chd/06 dated 18.1.2006 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
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 Departmental authorities?	Yes

CCE, Ludhiana — Appellant

Vs.

M/s. Thapar Ispat Ltd.,
M/s. Amrit Industries — Respondents

Appearance:

Shri R.K. Verma, D.R. for the Revenue;
Shri R. Santhanam, Advocate for the respondents

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 8th June, 2009

FINAL ORDER NO. 582-583/09-SM(BR) **dated** 8.6.09

Per P.K. Das:

Since these appeals are arising out of the common order, therefore, ~~and~~ both are being taken up together for disposal.

2. After hearing both sides and on perusal of the records, it is seen that the original authority denied credit to the respondents on the ground that they have availed credit on the strength of invoices indicating vehicle nos. which are in the nature of two wheelers, Moped, Scooter etc. The Commissioner (Appeals) set aside the adjudication order. Hence, the Revenue filed these appeals.

3. I find that on identical issue the Division Bench of the Tribunal in the case of Aarti Steels Ltd. vs. CCE, Ludhiana, vide Final Order No. 772-818/2008-EX(DB) dated 22.9.2008 remanded the matter to the adjudicating authority to verify the documents. Relevant portion of the said decision is reproduced below:-

> "4. The Revenue relied upon the decision of the Tribunal in the case of M/s. Rajeev Alloys Ltd. Vs. CCE vide Final Order dated 3.9.2008 in Appeal No. 2434/2006. The contention of the Revenue is that once it has been established that the vehicle numbers mentioned in the invoices are not of trucks or the transporter has denied the transportation of goods or the dealer

has no godown than the burden is on the assessee who availed the credit to show by producing evidence that the duty paid inputs were actually received in the factory of production and used in the manufacture of dutiable goods. In these cases, as the Revenue by producing evidence of transporter and enquiries from transport office established that the vehicle numbers mentioned in the invoices are not of trucks or the transportation of goods is denied, therefore, the credit was rightly denied. In other cases revenue during investigation found that the dealers who issued the invoices had not received the inputs.

4. We find that the Tribunal in the case of M/s. Rajeev Alloys (supra) held that onus initially lies on the department to show that inputs are not received in the factory of production and credit has been wrongly taken but having established that the vehicle, in question, were incapable of transporting large quantity mentioned in the invoices, the onus shifts to the assessee to prove that goods were duly received by them and used in the manufacture of excisable goods. In view of the above decision, we find that as the initial burden that goods had not been received by the appellant has been discharged by the Revenue, therefore, the onus is on the appellant to prove that the duty paid goods were actually received in the factory and used in the excisable goods. In these circumstances, the impugned orders are set aside

and the matter is remanded to the adjudicating authority to decide afresh in view of the decision of the Tribunal in the case of M/s. Rajeev Alloys (supra). The appeals are disposed of by way of remand."

4. In view of the above decision, impugned order is set aside and the matter is remanded to the adjudicating authority to decide afresh in the light of the above decision. Both the appeals filed by the Revenue are allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK