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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/3445/2006 -SM[BR] Date 19/06/2009

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

To :
SARDAR ASSOCIATES LTD.
V&POST RAMGARH, CHANDIGARH ROAD,
LUDHIANA.

SARDAR ASSOCIATES LTD. Appellant
Vs
C.C.E. LUDHIANA (HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 596 / 2009 -SM[BR] dated 22.5.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. LUDHIANA(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   NONE;--------------

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. 3445 OF 2006-SM

[Arising out of Order-in-Appeal No. 17-18/CE/LDH/2006 dated 28.7.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar (Hqr. At Chandigarh)]

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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No.
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

M/s. Sardar Associates Ltd., Appellants

Vs.

CCE, Ludhiana Respondent

Appearance:

None for the appellants;
Shri S. Gautam, D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 22nd May, 2009

FINAL ORDER NO. 596/09-SM(BR) **dated** 22.5.09

Per P.K. Das:

None appears on behalf of the appellants. By written submissions dated 16.5.2009, the appellant requested to decide the matter on merit in their absence.

2. Learned D.R. submits that the appellants availed credit on the basis of fake invoices. He submits that the invoices indicate vehicles were like car, two wheeler/moped, etc. which are not capable of carrying large quantity of goods. He also submits that the appellants failed to establish that inputs were actually received by them.

3. After hearing learned D.R. and on perusal of the records, it is seen that the main contention of the appellant is that in this case, the penalty imposed on the Registered dealer was set aside by the Tribunal by Order dated 11.10.2007 as reported in 2008 (225) ELT 102 (Tri.-Del.). In the present case, the appellant is the manufacturer of final product availed credit on the basis of documents issued by the Registered dealer. Hence, the demand of duty of Rs. 18,148/-.00 and penalty of equal amount are liable to be set aside.

4. I find that on the identical situation, the Division Bench of the Tribunal in the case of Aarti Steel Ltd. & Ors. vs. CCE, Ludhiana & Other, reported in 2008 (89) RLT 235 (CESTAT-Del.), held as under:-

"5. 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 the 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."

5. In view of the decision of the Division Bench of the Tribunal in the case of Aarti Steel Ltd. (supra), I set aside the impugned order in so far as demand of duty and penalty against the appellant and remand the matter to the original authority to decide afresh in the light of the above decision. Appeal filed by the appellant is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK