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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/3556/2005-3561/2005 – SM[BR] B/CC/145-146/2007-SM(BR) Date 22/06/2009

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 160017
C.C.E. CHANDIGARH Appellant
Vs
M/S B.D. GUPTA & SONS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 603 – 608 / 2009 –SM[BR] dated 10.6.2009

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 B.D. GUPTA & SONS
MANDI GOBINDGARH, PUNJAB

(2) M/S B.D.GUPTA & SONS
MANDI GOBINDGARH (P.B)

2. Adv. / Consult
MR.GURDEV SINGH SANDHE
163-D, MODEL TOWN, PATIALA

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)
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Assistant Registrar
(SM Appeal Branch)

3. M/S B.D. GUPTA & SONS
MANDI GOBINDGARH, PUNJAB

4. M/S B.D.GUPTA & WONW
MANDI GOBINDGARH PUNJAB

5. SHRI RAJESH KUMAR GUPTA
MANDI GOBINDGARH, PUNJAB

6. SHRI RAJESH KUMAR GUPTA, PROP. M/S B.D. GUPTA & SONS
MANDI GOBINDGARH, PUNJAB

● **CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
West Block No.2, R. K. Puram, New Delhi-66
COURT-III

Date of hearing/decision: 10.06.2009

Excise Appeal No. 3556-3561 of 2005-SM
E/CO/145-146/2007-SM

[Arising out of Order-in-Appeal No.309-310/CE/Chd/2005 dated 25.8.2005 & 307-308/CE/CHD/05 dated 25.8.2005 & 302-303/CE/CHD/05 dated 24.8.2005 all passed by the Commissioner (Appeals), Central Excise, 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.	No
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?	No.

Commissioner of Central Excise,
Chandigarh — Appellant

Vs.

1.M/s. B.D. Gupta & Sons.
2.Shri Rajesh Kumar Gupta,Prop. — Respondents

Appearance:

Shri R.K. Verma, DR for the Appellant
Shri Gurdev Singh Sandhe, Advocate for the Respondents

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Final Oral Order No. 603 to 608/09-SM(BR)

Per P.K. Das :

Common issue is involved in these appeals and are therefore, taken up together for disposal.

2. Learned Advocate on behalf of the respondents submits that M/s. B.D. Gupta and Sons, is the registered dealer and Shri Rajesh Kumar Gupta is proprietor of M/s. B.D. Gupta and Sons respondents. He submits that penalties were imposed on the respondents on the ground that registered dealer issued fake invoices, which were set aside by the Commissioner (Appeals). He relied upon the decision of the Tribunal in the case of M/s. Aarti Steel Pvt Ltd. and others vs. CCE, Ludhiana vide Final Order No. 772-818/08-Ex. dated 22.9.08.

3. Learned DR on behalf of the Revenue reiterates the grounds of appeal. He submits that substantial evidence is available on the aspect that the credit was taken on the basis of fake invoices. He further submits that on inquiry, it was found that the vehicle Nos. mentioned in the invoice are of two-wheelers vehicles like, scooters, mopades and jeeps etc.

4. After hearing both the sides and on perusal of the records, I find from the order of the Commissioner (Appeals) that the duty and penalty were set aside on the basis of newspaper report. It is observed by the Commissioner (Appeals) that "it was common practice for trucks to ply with fake or fake number plates as reported in 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 two are held for driving with fake numbers.'

5. I am unable to accept the finding of the Commissioner (Appeals). It appears that the findings were based on newspaper report without examining the evidence. Hence, the order of the Commissioner (Appeals) is not sustainable. I find that in the

identical situation, the Tribunal in the case of Aarti Steel Ltd. (supra) remanded the matter to the original authority, as under:-

> "2. The appeals are filed against the impugned order whereby credit was denied and penalties were imposed on the ground that the vehicle numbers mentioned in the invoices are not transport vehicles, the transporters of the vehicles denied the transportation of goods, dealers who issued the invoices are not having godown / registered premises.
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> xxx xxx xxx
>
> 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."

6. In view of the above discussion, the impugned orders of the Commissioner (Appeals) are set aside. All the matters are remanded to the original authority to decide afresh in the light of the above decision. In view of the above, the appeal filed by the Revenue are allowed by way of remand.

(P.K. Das)
Member (Judicial)

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