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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/1475 -1477 ./ 2006 –SM[BR]
E/ 1643 – 1645 / 2006 –SM[BR]

Date 23/06/2009

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA — Appellant

Vs

M/S PUNJAB CONCAST STEELS, — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 612 – 617 / 2009 –SM[BR] dated 11.6.2009 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 PUNJAB CONCAST STEELS,
   FOCAL POINT LUDHIANA
   [2]M/S TATA STEELS LTD.
   AMLOH ROAD, MANDI GOBINDGARH
   [3]M/S FUTURISTIC STEEL [P] LTD.
   SHIVAM CHAMBERS, OLDPOSTOFFICEROAD MANDI GOBINDGARH
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

4. M/S NORTHERN INDUSTRIAL CORPORATIN SHIVAM CHAMBER
OLD POST OFFICE ROAD MANDI GOBINDGARH
5. SHRI NARINDER PAL PARTNER M/S H.L.CHOPRA STEEL ROLLING MILLS BHADLA ROAD, KHANNA
6. M/S H.L.CHOPRA STEEL ROLLING MILLS BHADLA ROAD KHANNA

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

EXCISE APPEAL NO. 1475-77 OF 2006-SM

[Arising out of Order-in-Appeal No. 78-80/CE/Appl/Chd/06 dated 31.01.2006 passed by the Commissioner (Appeals), Central Excise, Ludhiana]

EXCISE APPEAL NO. 1643-45 OF 2006-SM

[Arising out of Order-in-Appeal No. 90-92/CE/DC/Ldh-I/2005 dated 13.02.2006 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?	
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

CCE, Ludhiana Appellant

Vs.

M/s. Punjab Concast Steels,
M/s. Tata Steels Ltd.,
M/s. Futuristic Steels Pvt. Ltd.,
M/s. Northern Industrial Corpn.,
Shri Narinder Pal Chopra,
M/s. H.L. Chopra Steel Rolling Mills Respondents

Appearance:

Shri S.K. Bhaskar, D.R. for the Revenue;
None for the respondents

Coram:

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

Date of hearing/decision: 11th June, 2009

FINAL ORDER NO. 612- 617/09-SM(BR) **dated** 11.6.09

Per P.K. Das:

Since common issue is involved in these appeals, therefore, all are being taken up together for disposal.

2. Heard learned D.R. on behalf of the Revenue. None appeared on behalf of the respondents.

3. The finding of the original authority is that the respondents Punjab Concast Steel, M/s. H.L. Chopra Rolling Mills, and Shri Narinder Pal Chpora, partner of M/s. H.L. Chopra Rolling Mills availed credit on the basis of invoices without receiving the goods. Duty was demanded and penalty was imposed on the respondents. Further, penalty was imposed on the registered dealers namely, M/s. Futuristic Steel and Northern Industrial Corpn. for issuing fake invoices. Penalty was also imposed on M/s. Tata Steel Ltd., Stock Yard Agent. On appeal the Commissioner (Appeals) set aside the impugned order.

4. Learned D.R. submits that the registered dealers and stock yard agent issued invoices without supplying the material. He submits that on

investigation it is revealed that invoices are indicating vehicle numbers of two wheeler, namely, moped, scooter, etc. which are not capable of transporting huge quantity of material. He also submits that the respondents failed to discharge their onus to establish that the goods were received by them.

5. 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."

6. In view of the above decision, impugned orders are set aside. All the matters are remanded back to the original authority to decide afresh in

the light of the above decision in the case of Aarti Steels Ltd. (supra).

All the appeals are allowed by way of remand.

(P.K. DAS)
MEMBER (JUDICIAL)

RK