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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/2252/2006-2253/2006,2297/2006-2300/2006 – SM[BR] Date 26/06/2009

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

To :
M/S B.D.GUPTA & SONS
MOTIA KHAN, MANDI GOBINDGARH (PUNJAB)

M/S B.D.GUPTA & SONS Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 627 – 632 / 2009 –SM[BR] dated 20.5.2009 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
   CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR, LUDHIANA 141001 (PUNJAB)
   141001
2. Adv. / Consult
   MR.G.S SANDHE
   163/D, MODEL TOWN, PATIYALA
   [2] SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI
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)

2. SH VINOD GUPTA PROPRIETOR
   M/S ASIM ENTERPRISES, MANDI GOBINDGARH

3. M/S ASIM ENTERPRISES
   AMLOH ROAD, MANDI GOBINDGARH

4. M/S D.K.GROUP OF INDUSTRIES
   MOTIA KHAN, MANDI GOBINDGARH, PUNJAB

5. SH DINESH GOYAL PROPRIETOR
   MOTIA KHAN, MANDI GOBINDGARH

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

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

<u>COURT – III</u>

<u>EXCISE APPEAL NO. 2252-53, 2297-2300 OF 2006-SM</u>

[Arising out of Order-in-Appeal No. 199/CE/CHD/06, 200/CE/CHD/06 & 196 to 201/CE/CHD/2006 all dated 21.03.2006 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.

1) M/s. B.D. Gupta & Sons,
2) Shri Rajesh Gupta, Proprietor,
3) M/s. D.K. Group of Industries,
4) Shri Dinesh Goyal,
5) M/s. Asim Enterprises,
6) Shri Vinod Kumar — Appellants

Vs.

CCE, Ludhiana — Respondent

Appearance:

Shri G.S. Sandhu, Advocate for the appellant No. 1 & 2 &
Shri Mayank Garg, Advocate for the appellant No. 2 to 6,

Shri Sansar Chand, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 20th May, 2009

FINAL ORDER NO. 627-632/2009 SM(BR) **dated** ________

Per P.K. Das:

All these appeals are arising out of common order and, therefore, all are being taken together for disposal.

2. All the appellants are registered dealers under Central Excise Rules. The finding of the Commissioner (Appeals) vi that the appellants issued Central Excise invoices without supplying the goods to the manufacturers to avail benefit of Cenvat credit. It is based on the fact that the vehicle nos. shown on the invoices are of two wheelers like scooter & moped, etc. which are not capable to transport huge quantity of iron & steel items. Commissioner (Appeals) observed that on earlier occasion on identical issue, he has allowed the credit on the basis of a report of the News-paper namely, 'Tribune' that vehicles are running in Punjab state on fake registration. He also observed that the same practice is still prevailing as the appellants have not taken remedy of measures and, therefore, he upheld the denial of credit and ~~imposed~~ penalty following the Division Bench decision of the Tribunal in the case of Viraj Alloys Ltd. vs. CCE, Thane, reported in 2004 (65) RLT 196.

Commissioner (Appeals) upheld the imposition of penalty on the registered dealers.

3. After hearing both sides, I find that Commissioner (Appeals) passed the order on earlier occasion on the basis of News-paper report. Presently, he has changed his mind following the decision of this Tribunal. In my view, order passed on the basis of News-paper report without examining the evidences cannot be sustained. It appears from the impugned order that the appellants took stand that they have supplied the goods to the manufacturers. I find that on the identical issue the Division Bench of the Tribunal in the case of Arti Steel Ltd. & Ors. vs. CCE, Ludhiana, vide Final Order No. 772-818/08-Ex dated 22.9.08 held as under:-

> "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 go-down 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 manufacturer 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, the question, were incapable of transporting large quantity mentioned in the invoice, 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 orders are set aside and the matter is remanded back to the Adjudicating authority to decide afresh in the light of above decision. All the appeals are allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK