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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/749 /2007-751 /2007,753 /2007-754 /2007 – SM[BR] Date 07/07/2009

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

C.C.E, CHANDIGARH Appellant
Vs
TRIVENI CASTINGS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No 645 – 649 / 2009 –SM[BR]**. dated 17.4.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
TRIVENI CASTINGS PVT. LTD.
MANDI GOBINDGARH

2. Adv. / Consult SHRI VIKRANT KAKARIA & GAGAN KOHLI ADV.
394, SECTOR-30-A, CHANDIGARG

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)

2. CHANDIGARH STEEL CORPORATION
MANDI GOBINDGARH

3. JYOTI CONCAST STEEL LTD.
MANDI GOBINDGARH

4. RACHNA STEEL CORPORATION
MANDI GOBINDGARH

5. RAJINDER PAL VINOD KUMAR
MANDI GOBINDGARH

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

COURT – III

CENTRAL EXCISE APPEAL NO. 749-751 & 753-754 OF 2007-SM

[All arising out of common Order-in-Appeal No. 997/CE/CHD/06 dated 24.10.2006 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?	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, Chandigarh — Appellant

Vs.

1. M/s. Triveni Casting Pvt. Ltd.,
2. M/s. Rachna Steel Corporation,
3. M/s. Rajinder Pal Vinod Kumar,
4. M/s. Chandigarh Steel Corporation,
5. M/s. Jyoti Concast Steel Ltd., — Respondents

Appearance:

Shri S. Gautam, D.R. for the Revenue;
Shri Vikrant Kakaria & Shri Gagan Kohli, Advocates

Coram:

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

Date of hearing/decision: 17th April, 2009

FINAL ORDER NO. 645 TO 649/2009 SM (BR) **dated** ______

Per P.K. Das:

These appeals are arising out of a common order and, therefore, all are being taken up together for disposal.

2. Appeal filed against M/s. Rajinder Pal Vinod Kumar, M/s. Chandigarh Steel Corporation and M/s. Rachna Steel Corporation are registered dealers. Appeal filed against M/s. Triveni Castings Pvt. Ltd. and Jyoti Concast Steel Ltd. are manufacturers of final product who had availed Cenvat Credit on the basis of documents issued by the registered dealers.

3. Shri Vikram Kakaria, learned Advocate appeared on behalf of Chandigarh Steel Corporation and M/s. Rachna Steel Corporation. Shri Gagan Kohli, learned Advocate appeared on behalf of M/s. Jyoti Concast Steel Ltd. None appeared on behalf of other respondents.

4. The relevant facts of the case, in brief, are that M/s. Eastern Steel & Agro Industries, Mandi Gobindgarh are registered with Central Excise authorities as manufacturer of Washer and Tikki, etc. They cleared scrap of iron & steel on payment of duty under Central Excise invoices to various dealers and manufacturers. Registered dealers issued invoices to

the manufacturer of final product on the basis of invoices issued by M/s. Eastern Steel & Agro Industries. The Central Excise officers during investigation found that during the period October, 2000 to December, 2000, M/s. Eastern Steel & Agro Industries had no machinery to manufacture the goods, therefore, the invoice issued by them to the registered dealer and the credit availed by the manufacturer of final product are ineligible. Show cause notice dated 27.4.2005 was issued to M/s. Eastern Steel & Agro Industries and the above respondents. The original authority disallowed the Cenvat credit of Rs. 4,83,850/- and confirmed demand the same from M/s. Eastern Steel & Agro Industries and imposed penalty on the manufacturer and their partner. He also disallowed the credit of Rs. 23,313/- and confirmed the demand from M/s. Jyoti Concast Steel Ltd., manufacturer of final product. He also imposed penalty on all the registered dealers, the respondents herein. All the respondents herein filed appeals before the Commissioner (Appeals). By the impugned Order-in-Appeal dated 24.10.2006 Commissioner (Appeals) set aside the penalty imposed on the respondents. Hence, the Revenue filed these appeals against the order of the Commissioner (Appeals).

5. Learned D.R. on behalf of the Revenue reiterates the grounds of appeals. He submits that the respondents issued invoices and no scrap was supplied with the central excise invoice. He also submits that the original authority disallowed the credit availed by the manufacturer of

input i.e. M/s. Eastern Steel & Agro Industries as well as imposed penalty for wrong availment of credit by the dealers and manufacturers of final product. He further submits that the registered dealers only issued the invoice without any material and, therefore, penalties imposed upon them are justified. He also submits that the manufacturer of final product availed credit without receiving the goods on the basis of bogus invoices.

6. Learned Advocate on behalf of the respondents, submit that on the same set of facts another manufacturer of final product i.e. M/s. DCM Engg. Products availed credit on the basis of invoices issued by the same registered dealer who issued invoice on the strength of the manufacturer's invoice i.e. M/s. Eastern Steel & Agro Industries, who is also the co-noticee herein. They submit that two show cause notices were issued to M/s. DCM Engg. Products proposing to disallow the credit on the similar allegation. They further submit that in both the cases penalties were set aside by the Commissioner (Appeals) vide Order-in-Appeal No. 93/CE/CHD/2003 dated 30.1.2004 and 240/CE/CHD/2005 dated 30th June, 2005. They further submit that the Revenue filed the appeal against the said order. They submit that this Tribunal vide Final Order No. 43/05-B dated 30.11.2004 and 1226/07 dated 6.8.2007 rejected the appeals filed by the Revenue. They submit that after passing of the Order-in-Appeal dated 30.1.2004 the present show cause notice dated 27.4.2005 was issued. It is his contention that the Tribunal on the same set of facts already held that credit availed by

the manufacturer of final product is valid. So, in the present case, the Commissioner (Appeals) rightly set aside the penalties.

7. After hearing both sides and on perusal of the records, I find that the manufacturers of final product availed credit on the basis of invoices issued by the registered dealers who in turn issued the invoice on the basis of invoices issued by the manufacturer of input. In the present adjudication order, the original authority disallowed the credit utilized by the manufacturer of inputs. No material is available to show that invoices issued by the manufacturer of inputs are invalid. The original authority observed that the manufacturer of input might have received the scrap along with invoices but not the scrap which was generated in their factory premises. Thus, the allegation against the respondents that scrap along with invoices was not received by the manufacturer of the final product is not sustainable. The main contention of the learned D.R. that the registered dealer issued the invoice without receiving the goods, is without any basis. I have also noticed that other show cause notices were issued on the same facts to the manufacturer of final product M/s. DCM Engg. Products. The Division Bench of the Tribunal vide Final Order No. 43/05-B dated 30.11.2004 dismissed the appeal filed by the Revenue. Finding of the Tribunal in the said case is reproduced below:-

"2. We have heard both sides. The facts are not much in dispute. The appellants have purchased the melting scrap, which is their input for the manufacture of various excisable products from registered dealers, who in turn procured from the manufacturers, M/s. Eastern Steel & Agro Indus. And M/s. Mahalaxmi Steel & Agro Indus. The modvat credit has been sought to be denied to the respondents by the Department on the ground that the registered dealers in fact, did not receive the goods from the manufacturer and that they only issued only modvatable invoices to the respondents for claiming the modvat credit. But this ground in our view, has been right not accepted by the Commissioner (Appeals). There is no evidence on the record that if any proceedings were initiated against M/s. Mahalaxmi Steel Agro Indus. and M/s. Eastern Steel & Agro Indus. for having cleared the goods without payment of duty. Even no proceedings has been taken against the registered dealers from whom the respondents had produced the material under the duty paid invoices for valuable consideration by making a payment through cheques. Having paid the duty on the purchased material, the respondents are entitled to avail the credit on the strength of the documents issued by the registered dealers. Similar view has been earlier expressed by the Tribunal in an identical case of Commissioner of Central Excise, Chandigarh vs. Malerkotla Steels & Alloys (P) Ltd., 2003 (156) ELT 932.

3.Therefore, we do not find any illegality in the impugned order of the Commissioner (Appeals) and the same is upheld. The appeal of he Revenue is dismissed."

8. In the present case I do not find any material to show that duty paid by the manufacturer of inputs were declared improper. In any event, following the decision of the Tribunal in the case of M/s. DCM Engg. Products (supra), I find that the Commissioner (Appeals) rightly set aside the penalty on the registered dealers and the manufacturer of final product. Accordingly, I do not find any reason to interfere with the order of the Commissioner (Appeals). All the appeals filed by the Revenue are rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

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