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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/ 2254 - 2261 / 2006 -SM[BR] Date 07/07/2009

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

To :
B.D. GUPTA & SONS

MOTIA KHAN, MANDI GOBINDGARH, PUNJAB

B.D. GUPTA & SONS Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 652- 659 / 2009 – SM[BR] dated 4.5.2009

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)

2. Adv. / Consult SHRI G.S. SANDHE ADV.
163-D, MODEL TOWAN PATIALA[P.B.]

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. SHRI RAJESH KUMAR GUPTA, PROP.
MOTIA KHAN, MANDI GOBINDGARH, PUNJAB

3. M/S B.D.GUPTA& SONS
MOTIA KHAN, MANDI GOBINDGARH[P.B]

4. SHRI RAJESH KUMAR, PROP.
M/S B.D. GUPTA& SONS MOTIA KHAN,
MANDIGOBINDGARH[P.B]

5. M/S B.D. GUPTA&SONS
MOTIA KHAN, MANDI GOBINDGARH[P.B.]

6. M/S B.D. GUPTA & SONS
MOTIA KHAN, MANDI GOBINDGARH [P.B]

7. SHRI RAJESH KUMAR GUPTA, PROP.
M/S B.D. GUPTA& SONS MOTIA KHAN MANDI
GOBINDGARH[P.B]

8. SHRI RAJESH KUMAR GUPTA, PROP.
M/S B.D. GUPTA& SONS MOTI KHAN MANDI
GOBINDGARH[P.B.]

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeals Nos. 2254-2261 of 2006-SM (BR)

(Arising out of Order-in-Appeal No.333 to 372/CE/CHD/06 dated 28.04.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh (Punjab)]

Date of Hearing/ Decision:04.05.2009

For approval and signature:

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

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
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? :

(1)M/s. B.D. Gupta & Sons ....Appellants
(2)Shri Rajesh Kumar, Proprietor
(3)Shri B.D. Gupta & Sons
(4)Shri Shri Rajesh Kumar Gupta, Proprietor
(5)Shri B.D. Gupta & Sons
(6)Shri B.D. Gupta & Sons
(7)Shri Rajesh Kumar Gupta, Proprietor
(8)Shri Rajesh Kumar Gupta, Proprietor [Rep. by Shri G.S. Sandhe,Advocate]

Vs.

CCE, Ludhiana ....Respondent
[Rep. by Shri S. Gautam, DR]

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

Final. Order No. 652-659/2009 SM (BR)/Dated:04.05.2009

Per P.K. Das:

Heard both sides and perused the records.

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

3. After hearing both the sides and on perusal of the records, it has been alleged that the registered dealers issued central excise invoices without delivering the inputs. Penalties were imposed on the registered dealers/appellants herein upheld by the Commissioner (Appeals). In the impugned order, the Commissioner (Appeals) observed that on the earlier occasion he allowed the appeals on the identical situation on the basis of the Newspaper reports published during March, 2004. But, the same practice is still prevailing and the appellants have not taken any remedial action to remove the mistake. He further observed that in view of the decision of the Tribunal in the case of Viraj Alloys Ltd. Vs. CCE reported in 2004 (65) RLT 196, appeals were rejected.

4. Ld. Advocate on behalf of the appellants submits that the appellants submitted before the Commissioner (Appeals) as under:-

(a) The payments for the purchase of the goods were made in advance through cheques/demand drafts to TISCO and which were not denied by the department.

(b) The inputs in question were used in the manufacture of final products which have been cleared on payment of duty and no evidence to prove that any other alternative material was received and used in the manufacture of final products by the subsequent buyer 'the actual user'.

(c) The RT-12 Returns of 'the actual user', and the returns submitted by the appellants and 'the suppliers' were finally assessed by the Range Officers.

(d) Neither any discrepancy in the stocks of 'the supplier' had been brought on record nor there was any evidence to show the diversion of the goods covered under those invoices.

(e) The vehicles carrying the goods were actually subjected to weighment on public weighbridges (Dharmkantas) and were issued weightment slips.

(f) No discrepancy in physical stocks as compared to the recorded balances of the goods of the appellant was noticed or there was any evidence to show the diversion of the goods."

Ld. Advocate also relied upon the decision in the case of Arti Steels Ltd. & Ors. Vs. CCE, Ludhiana & Ors. vide Final Order NO.772-818/2008-Excise dated 22.09.2008. On the other hand, ld. DR relied upon the decision the Tribunal in the case of Ranjeev Alloys Ltd. Vs. CCE, Chandigarh reported in 2009 (236) ELT 124 (Tribunal-Delhi).

5. I find that in earlier occasion, the Commissioner (Appeals) passed the orders on the basis of newspaper report and in the present case, he followed Tribunal decision. He has not examined the evidences of the present case and, therefore, the impugned order is not sustainable. The

Tribunal in the case of Arti Steels Ltd. & Ors. (supra), after considering the decision of Ranjeev Alloys Ltd. (supra) remanded the matter to the Original Authority. The relevant portion of the decision in the case of Arti Steel Ltd. & Ors. (supra) is reproduced below:-

> "4. We find that the Tribunal in the case of M/s. Ranjeev 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 mention 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 discussions, I set aside the impugned orders and remand the matter to the Original Authority for verification of the

records and the evidences and to decide the matter in the light of the above decision. All the appeals are allowed by way of remand.

Order dictated & pronounced in open court on 04.05.2009.

(P.K. Das)
Member (Technical)

Ckp.