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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 / 2681-2685, 2844-2845, 2852-2856, 2873 -2877 , 2879 – 2881, 2908 – 2909, E / 2970 , 2980 – 2982 , 3005 , 3092 – 3095 / 2006 –SM[BR] Date 24/07/2009

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

To :
M/S ADHUNIK STEEL LTD.
SHIVAM CHAMBERS, OLD POST OFFICE ROAD,
MANDI GOBINDGARH, PUNJAB

M/S ADHUNIK STEEL LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 732- 762 / 2009 – SM[BR] dated 14.7.2009 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.KAMALJEET SINGH
   J-144, PATEL NAGAR -I,GHAZIABAD.
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

2. M/S NIRMAL KUMAR AGARWAL (DIRECTOR)
SHIVAM CHAMBERS, OLD POST OFFICE ROAD, MANDI
GOBINDGARH, PUNJAB

Assistant Registrar
(SM Appeal Branch)

3. M/S NEERAJ STEEL [INDIA]
SHIVAM CHAMBERS, OLD POST OFFICE ROAD, MANDI
GOBINDGARH, PUNJAB

4. M/S TATA IRON & STEEL CO LTD.
AMLOH ROAD, MANDI GOBINDGARH, PUNJAB

5. SH. SUSHANTA BANERJEE
C/O M/S TATA IRON& STEEL CO.LTD. AMLOH ROAD MANDI GOBINDGARH

6. M/S ADHUNIK STEEL LTD.
SHIVAM CHAMBERS OLD POST OFFICE ROAD MANDI GOBINDGARH

7. M/S TATA IRON& STEEL CO. LTD. AMLOH ROAD MANDI GOBINDGARH

8. SHRI NIRMAL KUMAR AGARWAL, DIRCTOR
M/S ADHUNIK STEEL LTD. SHIVAM CHAMBERS
OLD POST OFFICE ROAD MANDI GOBINDGARH[P.B]

9. SHRI NIRMAL KUMAR AGARWAL, DIRECTOR
M/S ADHUNIK STEEL LTD. SHIVAM CHAMBERS,
OLD POST OFFICE ROAD MANDI GOBINDGARH

10. M/S ADHUNIK STEEL LTD.
CHIVAM CHAMBERS OLD POST OFFICE ROAD .MANDI GOBINDGARH

11. M/S ADHUNIK STEEL LTD.
SHIVAM CHAMBERS OLD POST OFFICE ROAD MANDI GOBINDGARH

12. M/S ADHUNIK FERRO ALLOYS LTD.
CHIVAM CHAMBERS OLD POST OFFICE ROAD MANDI GOBINDGARH

13. M/S TATA IRON & STEEL CO. LTD. AMLOH ROAD MANDI GOBINDGARH

14. M/S TATA IRON & STEEL CO. LTD. AMLOH ROAD MANDI GOBINDGARH

15. M/S TATA IRON ---DO---

16. SH. SUSHANTA BANERJEE M/S ;---

17. SH. SUSHANTA BANERJEE M/S ;---

18. SH. SUSHANTA BANERJEE M/S ;---

19. M/S ADHUNIK STEEL LTD. CHIVAM CHAMBERS
OLD POST OFFICE ROAD MANDI GOBINDGAR

20. SH. NIRMAL KUMAR AGARWAL, DIRECTOR
M/S ADHUNIK STEEL LTD. CHIVAM CHAMBERS OLD POST OFFICE ROAD
MANDI GOBINDGARH

21. SH. NIRMAL KUMAR AGARWAL, DIRECTOR M/S ADHUNIK STEELLTD;--------------

22. SH. SUSHANTA BANERJEE M/S TATA IRON& STEEL LTD;---------------------------------

23. M/S TATA IRON & STEEL CO. LTD.;--

24. SH. HUKAM CHAND BANSAL
M/S JYOTI CONCAST LTD. G.T. ROAD, SIRHIND SIDE
MANDI GOBINDGARH.

25. M/S TATA IRON & STEEL CO. LTD. AMLOH ROAD MANDI GOBINDGARH.

26. SH. NIRMAL KUMAR AGARWAL., DIRCTOR M/S ADHUNIK STEEL LTD;---------------------------

27. SH. NAVNEET GUPTA, DIRECTOR
M/S JAGAT METALS (P) LTD.
VILL. AMBEY MAJRI MANDI GOBINDGARH.

P. T. O. →

28. M/s Tata Iron & Steel Co. Ltd.
AMloh Road Mandi Gobindgarh. (P.b)

29. Sh. Sushanta Banerjee
c/o M/s Tata Iron & steel Co. Ltd.
AMloh Road, Mandi Gobindgarh. (P.b)

30. M/s Adhunik stee Ltd
shivam chambers
old Post office Road. Mandi Gobindgarh. (P.b)

31. Shri Nirmal Kumar Agarwal, Directer
M/s Adhunik steel Ltd,
Shivam Chambers old Post office Road
Mandi Gobindgarh. (P.b)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 2681 to 2685, 2844-45, 2852 to 2856, 2873 to 2877, 2879 to 2881, 2908-09, 2970, 2980 to 2982, 3005, 3092 to 3095 OF 2006-SM

[Arising out of Order-in-Appeal No. 333 to 372/CE/CHD/06 dated 28.04.2006 and 581 to 603/CE/CHD/06 dated 30.6.2006 both 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

M/s. Adhunik Steels Ltd.,
Shri Nirmal Kumar Agarwal, Director
M/s. Tata Iron & Steels Co. Ltd.,
M/s. Adhunik Ferro Alloys Ltd.,
M/s. Neepaj Steel (India)
Shri Sushana Banerjee,
Shri Navneet Gupta, Director,
Shri Hukum Chand Bansal — Appellants

Vs.

CCE, Chandigarh — Respondent

Appearance:

Shri Kamajjeet Singh Singh, Advocate for the appellants;
Shri S.N. Srivastava, SDR &
Shri Iskit Khar Baig, SDR for the respondent

Coram:

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

Date of hearing/decision: 14th July, 2009

FINAL ORDER NO. 732-762/2009-SM(BR) **dated** 14.7.2009

Per P.K. Das:

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

2. Learned Advocate submits that the appellants are registered dealers and the Director/Manager of registered dealers. He also submits that penalties were imposed on the appellants on the ground that they have issued invoices without supplying the material. He submits that the appellants produced the relevant records in order to establish that the goods were supplied accompanied by invoices which are not considered by the lower authorities. He also relied upon the decision of the Division Bench of the Tribunal in the case of Aarti Steels Ltd. & Ors. vs. CCE, Ludhiana & Ors, reported in 2008 (89) RLT 235 (CESTAT-Del.).

3. Learned DRs on behalf of the Revenue submit that on investigation it was found that the vehicle numbers mentioned in the invoices are of two wheelers, like scooter and moped, etc. They also submit that the appellants failed to establish that they supplied the material with invoices

with any evidence. Learned DRs relied upon the decision of the Tribunal in the case of Rajeev Alloys Ltd. vs. CCE, reported in 2008 (89) RLT 227 (CESTAT-Del.).

4. After hearing both sides and on perusal of the records, I find that the Commissioner (Appeals) on identical issue in earlier orders set aside the penalties on the basis of Newspaper reports of 'Tribune' and 'The Times of India' wherein it has been reported that 500 vehicles are running in Punjab State on fake registration. In the present cases, the Commissioner (Appeals) changed his mind on the ground that the same practice is still prevailing as the appellants have not taken any remedial action to amend the said mistake. In my view, penalty cannot be set aside/upheld on the basis of News-paper report. It is seen that the Commissioner (Appeals) have not examined the evidences placed by the appellants. The Division Bench of the Tribunal in the case of Aarti Steels Ltd. & Ors. (supra), after considering the decision in the case of Rajeev Alloys Ltd. (supra), 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 [reported in 2008 (89) RLT 227 (CESTAT-Del.)]. 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.

5. 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."

5. In view of the above decision and, after considering the facts and circumstances of the case, impugned orders are set aside. All the matters are remanded back to the adjudicating authority to decide afresh in the light of the above decision of the Tribunal. All the appeals are allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK