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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/ 3160 -3171 , 3291 , 3426 – 3428 , 3367 , 3387 – 3401 , 3429 – 3437 , 3535 – 3548 , E/ 3650 – 3651 , 3709 – 3711 , 3663 – 3666 , 3717 – 3720 , 3734 – 3735 / 2006 - SM(BR) Date 24/07/2009

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

To :
M/S TATA STEELS LTD
AMLOH ROAD,MANDI GOBINDGARH, PUNJAB

M/S TATA STEELS LTD — Appellant
Vs
C.C.E. CHANDIGARH — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 763 - 832 / 2009-SM[BR] dated 15.7.2009 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

Assistant Registrar
(SM Appeal Branch)

2. Sh. Sushanta Banerjee.
c/o M/s Tata Steels Ltd:——

3. M/s Adhunik Steel Ltd
shivam chambers old Post office Road
Mandi Gobindgarh.

4. shri Nirmal Kumar Agarwal, Director,
c/o M/s Adhunik Steel Ltd :——

5. M/s Tata Steels Ltd
Amloh Road Mandi Gobindgarh.

6. Sh. Sushanta Banerjee.
c/o M/s tata steels Ltd :——

7. M/s Adhunik Steel Ltd:——

8. shri Nirmal Kumar Agarwal Director.
c/o M/s Adhunik Steel Ltd :——

9. M/s Tata Steels Ltd. :——

10. Sh. Sushanta Banerjee
c/o M/s Tata Steels Ltd :——

11. M/s Adhunik Steel Ltd :——

12. Sh. Nirmal Kumar Agarwal Director
M/s Adhunik Steel Ltd :——

13. shri. Anil Kumar Agarwal Director
M/s Saket Steels Ltd. G.T. Road
(Khanna side) Mandi Gobindgarh.

14. M/s Northern Industrial Corporation
c/o Adhunik Steel Ltd :——

15. Shri Parveen Kumar Agarwal
c/o M/s Norther Indus:——

16. Shri Nirmal Kumar Agarwal Director
M/s Northern Indus:——

17. Shri Vinod Kumar Gupta Partner
M/s Makhan Lal Vinod Kumar
Mandi Gobindgarh.

18. M/s Northern Industrial Corporation
Shivam Chambers, old Post office Road
Mandi Gobindgarh

19. Sh. Parveen Kumar Agarwal
c/o M/s Northern Indus:——

20. Sh. Nirmal Kumar Agarwal Director
M/s Northern Indus:——

21. M/s Norther Industrial Corp :——

22. Shri Parveen Kumar Agarwal :——

23. shri Nirmal Kumar Agarwal :——

24. M/s Northern Industrial :——

25. Shri Parveen Kumar Agarwal :——

26. sh. Nirmal Kumar Agarwal Dire :——

27. M/s Northen Industries :——

28. shri. Parveen kumar Agarwal :——

29. shri. Nirmal Kumar Agarwal :——

30. M/s Northen Industrial :——

31. Shri, Parveen kumar Agarwal :——

32. Shri. Nirmal Kumar Agarwal :——

33. M/s Punjab Steel Forging & Agro
Industries, Mandi Gobindgarh.

34. M/s Saket Steels Ltd.
Mandi Gobindgarh.

35. M/s Nabha Steels Industries
Mandi Gobindgarh.

36. M/s Naveen Ispat Industries
Mandi Gobindgarh

37. shri Phul Kumar Proprietor
M/s Naveen Ispat Industries
Mandi Gobindgarh.

38. M/s Darshan Kumar Gulshan
Kumar Modi
Mandi Gobindgarh.

39. Sh. Darshan kumar Modi Partner
M/s Darshan Kumar Gulshan Kumar
Mandi Gobindgarh.

40. M/s MTC Steel Industries
MUGHAL MAJRA ROAD.
Mandi Gobindgarh.

41. Sh. SAT PAUL. Partner
M/s MTC Steel Indus :—

42. M/s Gee Enn Industries Pvt. Ltd
Guru ki Nagri. Mandi Gobindgarh

43. Mr. Ramesh Goyal Partner
M/s Gee Enn Industries P. Ltd :—

44. M/s Royal Industries.
G.T. Road Mandi Gobindgarh

45. Mr Rajiv Sood Proprietor
M/s Royal Industries :—

46. M/s L.R. Alloys P. Ltd

47. Shri SOM DUTT Sharma Auth. Sign.
G.T. Road. Sirhind side
Mandi Gobindgarh

48. M/s Northern Industrial Corporation
Shivam Chambers old Post office
Road Mandi Gobindgarh.

49. Shri Parveen Kumar Agarwal
M/s Norther Indus :—

50. Sh. Nirmal Kumar Agarwal Director
M/s Norther Indus :—

51. M/s Norther Industrial Corpn :—

52. Shri Parveen Kumar Agarwal :—

53. ~~Shri~~ Nirmal Kumar Agarwal :—

54. M/s Northern Industrial :—

55. Shri Parveen Kumar Agarwal :—

56. Shri Nirmal Kumar Agarwal :—

57. M/s Saggar Steel.
G.T. Road. Sirhind Side
Mandi Gobindgarh.

58. M/s Saggar Steel :—

59. M/s Bachan Lal Ispat P. Ltd
Motia Khan
Mandi Gobindgarh

60. M/s Bachan Lal Ispat P. Ltd :—

61. M/s Bachan Lal Ispat P. Ltd :—

62. M/s Bachan Lal Ispat P. Ltd :—

63. M/s Twenty First Century
steels Ltd Mandi Gobindgarh

64. M/s Twenty First Century :—

65. M/s Ruby Strips P. Ltd
Talwara Road Mandi Gobindgarh.

66. M/s Ruby Strips P. Ltd :—

67. M/s Saggar Steel
G.T. Road, Sirhind Side
Mandi Gobindgarh

68. M/s Saggar Steel. :—

69. M/s Bachan Lal Ispat P. Ltd
Motia Khan.
Mandi Gobindgarh.

70. M/s Bachan Lal Ispat P. Ltd :—
Motia Khan
Mandi Gobindgarh

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

<u>COURT – III</u>

<u>CENTRAL EXCISE APPEAL NO. 3160 to 3171, 3291, 3426-28, 3367, 3387 to 3401, 3429 to 3437, 3535 to 3548, ~~3650,~~ 3709-11, 3663 to 3666,, 3650-51, 3717 to 3720, 3734-35 OF 2006-SM</u>

[Arising out of Order-in-Appeal No. 581 to 603/CE/CHD/06 dated 30.6.2006, 710 to 760/CE/CHD/06 dated 18.8.2006 & 849-53/CE/CHD/06 dated 14.9.2006 all 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?	NA
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. Tata Steels Ltd.,
Shri Sushanta Banerjee,
M/s. Adhunik Steels Ltd.,
Shri Nirmal Kumar Agarwal,
Shri Anil Kumar Agarwal,
Shri Vinod Kumar, Partner,
M/s. Northern Industrial Corpn.,
Shri Praveen Kumar Agarwal,
Shri Rajan Bhandari, Director,
M/s. Bachan Lal Ispat P. Ltd.,

Shri Rajesh Kumar, Director,
M/s. Twenty First Century Steels Ltd.,
Shri Harish Kumar, Director,
Shri Ruby Strips P. Ltd.,
Shri Ajay Gupta, Director,
M/s. Saggar Steels,
M/s. Darshan Kumar Gulshan Kumar Modi,
M/s. MTC Steels Industries,
Shri Sat Paul, Partner,
M/s. Gee Enn Industries P. Ltd.,
Shri Ramesh Goyal,
M/s. Royal Industries,
Shri Rajiv Sood,
M/s. L.R. Alloys P. Ltd.,
Shri Som Dutt Sharma, Auth. Signatory — Appellants

Vs.

CCE, Chandigarh, — Respondent

And

CCE, Chandigarh — Appellant

Vs.

M/s. Punjab Steels Forgings & Agro Inds.,
M/s. Saket Steels Ltd.,
Shri Phul Kumar, Proprietor — Respondents

Appearance:

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

Coram:

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

Date of hearing/decision: 15th July, 2009

FINAL ORDER NO. 763-832/2009-SM(BR) **dated** 15.7.2009

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/assessees are registered dealers/manufacturer of final product and the Partner/Director/Manager/Authorized signatory thereof. He submits that penalties were imposed on the registered dealers and partners/Director/Manger/Authorized signatory thereof on the ground that they have issued invoices without supplying the material to pass Cenvat credit to the manufacturers of final product. So, there was denial of credit and penalty was imposed on manufacturer of final product. He submits that the appellants/assessee produced the relevant records in order to establish that the goods were supplied accompanied by invoices and used by manufacturer of final product, 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. which are not capable to carry huge quantity of material. They also submits that the appellants/assessee 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, it is revealed from impugned orders that the Commissioner (Appeals) on identical issue in earlier orders, set aside the penalties and duty 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/assessee have not taken any remedial action to amend the said mistake. In my view, demand of duty/penalty cannot be set aside/upheld on the basis of News-papers reports. 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