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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/3652/2006,3683/2006,3705/2006-3706/2006 – SM[[BR] Date 07/08/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH Appellant

Vs

M/S SAGGAR ALLOYS LIMITED Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 891 – 894 / 2009 –SM[BR] dated 30.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S SAGGAR ALLOYS LIMITED
MANDI GOBINDGARH.

(2) M/S SUBHKARMAN STEEL ROLLING MILLS
KHANNA.

(3) M/S R.K.STEEL ROLLING MILLS
KHANNA.

2. Adv. / Consult
NONE;----------------

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

4. M/S CHANNI STEEL & AGRO INDUSTRIES
KHANNA.

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.3652 and 3683 of 2006-SM (BR) and
Excise Appeal No.3705-3706 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.808-811/CE/CHD/06 dated 5.9.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:30.6.2009

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?	:	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

CCE, Chandigarh ...Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

(1)M/s. Saggar Alloys
(2)M/s. Subhkarman Steel Rolling Mills
(3)M/s. R.K.Steel Rolling Mills
(4)M/s.Channi Steel & Agro Industries

[Rep. by None.]

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

Final Order No. 891 - 894/2009 SM (Br) /Dated:30.06.2009

Per P.K. Das:

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

2. The relevant facts of the case, in brief, are that it has been alleged that the respondents fraudulently and wrongly availed Cenvat Credit without receipt of the inputs from M/s. J.K. Jindal & Sons, Mandi Gbindgarh. The Original Authority disallowed the credit of Rs. 54,793.00 and imposed penalty of equal amount on M/s. Saggar Alloys Ltd. and also imposed of Rs. 21,000.00, Rs. 33,00.00 and Rs. 44,000.00 on Respondent No. 3,4 and 5 respectively. The Commissioner (Appeals) allowed the appeals filed by the respondents.

3. Ld. DR on behalf of the Revenue submits that the octroi was paid at the time of entry of goods in the city and octroi receipt indicates the goods were supplied to other then the respondents. He submits that the description of the goods, vehicle number mentioned in the octroi slips are tallied with invoices. It is his submission that the goods have not been sold locally and have passed on to the parties situated outside Mandi Gobindgarh and the respondents availed credit on the basis of invoices without receipt of material.

4. After hearing ld. DR and on perusal of the records, I find that the credit was denied and penalties were imposed on the basis of octroi slips. The Commissioner (Appeals) allowed the appeal following his earlier Order-in-Appeal No.375-82/CE/CHD/06 dated 28.4.2006 and Order-in-Appeal no.444 to 446/CE/CHD/06 dated 31.5.2006.

5. The Commissioner (Appeals) observed that the credit cannot be denied merely on octroi slips without any other cogent/authentic

evidence. It is further observed that octroi receipts mention only the description of material, quantity, and truck number. But it does not contain any reference to the consignor's name and address and his bill number. It is also observed that there is no corroborative evidence in the form ~~and~~ statement of any transporter regarding the delivery of the materials.

6. It is seen that the Revenue filed appeal against the Order-in-Appeal No.375-382/CE/CHD/06 dated 28.04.2006 before the Tribunal. By Final Order No.1315 A-1322/2008-SM (BR) dated 3.6.2008, Tribunal rejected the appeal filed by the Revenue. It is noted that on the identical issue, the Tribunal, vide Final Order No.1573-1574/2008-SM (BR) dated 27.11.2008 in the case of CCE, Chandigarh Vs. M/s. Raghav Alloys Ltd. and Another and vide Final Order No.1636-1639/08-SM (BR) dated 28.11.2008 in the case of CCE, Chandigarh Vs. M/s. Param Steel Industries and Another rejected the appeals filed by the Revenue. In the present case, the respondents received the goods from M/s. J.K. Jindal & Sons, Mandi Gobindgarh. In the case of M/s. Param Steel Industries & Others (supra), the respondents also received the goods from M/s.Jindal & Sons. The relevant portion of the order of the Tribunal in the case of M/s Puram steel Ind. (supra) is reproduced below:-

> "3. I have heard both sides. I find that the case of the Department is made out on the basis of octroi slips showing that inputs were supplied through M/s. J.K. Jindal & Sons to small scale units in

Khanna. However, the officers of small scale units have denied having ever dealt with the inputs supplier. The statement of the consignor has also been recorded in which he categorically stated that inputs were supplied to the respondents herein and produced evidence of receipt and utilisation of inputs in the manufacture of final products cleared on payment of duty. In this view of the matter, the fact that the quantity of inputs and the truck numbers shown in the octroi slips tallied is not sufficient to hold that no goods were ever received by the respondents and that only invoices were received by them for the purpose of availing inadmissible credit. Further, the Commissioner (Appeals) has also relied upon his earlier order-in-appeal no.375-82/06 dated 28.04.2006. I note that this order-in-appeal was challenged by the Revenue by way of filing appeal nos. E/2496-2499/06 and 2500-2503/06 in the case of M/s. Swastic Steel Works and the Tribunal vide its Final Order No.1315A-1322/08-SM dated 3.6.2008 upheld the impugned order of the Commissioner (Appeals) who had set aside the proceedings initiated against those respondents and rejected the appeals of the Revenue. Following the ratio of the Tribunal's order cited (supra) and on the basis of the evidence on record showing that inputs were received by the respondents for utilisation in the manufacture of finished products cleared on payment of duty, I hold that no case is made out by the Revenue, uphold the impugned order and reject the appeals."

7. It is noted that on the identical issue the Division Bench of the Tribunal in the case of M/s Raj Sandeep Co. Vs. Commissioner of Central Excise of Customs, Chandigarh vide Final Order No. A/1033-34/98-NB(D) dated 20.11.98 held as under:-

> "On a perusal of the impugned order and after considering the submissions made on behalf of the appellants, we are of the view that though the material relied upon by the Department do give rise to suspicion about the appellants' conduct, we are of the view that the material relied on by the Collector like the entries in the Note Book of the driver and the octroi receipts do not establish sufficient nexus to establish the charge of clandestine removal against the appellants. In the above view of the matter, we are inclined to give the appellants the benefit of doubt. As had been stated by the Apex Court in State of Punjab Vs. Bhajan Singh (AIR.1975 SC.258) suspicion however strong, cannot be a substitute for proof."

8. In view of the above discussions, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, all the appeals filed by the Revenue are rejected. Ordered accordingly.

Order dictated & pronounced in open court on 30.06.2009.

(P.K. Das)
Member (Judicial)

Ckp.