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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/788 - 798 /2005, E/ 799 – 814 / 2005, E/ 1042 – 1048 / 2006 –SM[BR] Date 19/08/2009
E/ 1264 – 1265 / 2006 –SM[BR]

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 160017
C.C.E. CHANDIGARH — Appellant

Vs

M/S B.D.GUPTA & SONS — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 964 – 999 / 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
   M/S B.D.GUPTA & SONS
   MANDIGOBINDGARH, PUNJAB
2. Adv. / Consult SHRI KAMALJEET SINGH ADV.
   J-144, PATEL NAGAR-I
   GHAZIABAD [U.P]

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. TATA IRON & STEEL COMPANY LTD.
MANDIGONINDGARH, PUNJAB

Assistant Registrar
(SM Appeal Branch)

3. Shri Rajesh Kumar Gupta Prop.
M/s B.D. Gupta & Sons :—

4. Shri Sushanta Banerjee
M/s Tata Iron & Steel Co. Ltd.
Mandi Gobindgarh (Pb)

5. M/s A.R. Alloys, Nasrali Road
Mandi Gobindgarh (Pb)

6. M/s Shri Vinod Kumar Gupta Prop.
M/s ASIM Enterprises Mandi Gobindgarh

7. M/s Adhunik Steels Ltd
Shivam Chambers, Mandi Gobindgarh

8. Shri Nirmal Kumar Aggarwal Director
M/s Adhunik Steels Ltd :—

9. Shri Vinod Kumar, Partner
M/s Makhan Lal Vinod Kumar.
Mandi Gobindgarh.

10. M/s Nav Rakesh Steels (P) Ltd
Mandi Gobindgarh

11. M/s ASIM Enterprises,
Mandi Gobindgarh

12. M/s Tata Iron & Steel Co. Ltd
AMloh Road Mandi Gobindgarh.

13. Shri Sushanta Banerjee
M/s Tata Iron & Steel Co. Ltd :—

14. M/s Tata Iron & Steel Co. Ltd :—

15. M/s Neepaz Steels (India)
Mandi Gobindgarh

16. Shri Sushanta Banerjee
M/s Tata Iron Steel Co. Ltd :—

17. M/s Adhunik Steels Ltd.
Mandi Gobindgarh

18. Shri Nirmal Kumar Aggarwal Director
M/s Adhunik Steels Ltd :—

19. M/s Adhunik Steels Ltd.
Mandi Gobindgarh

20. Shri Nirmal Kumar Aggarwal Director
M/s Neepaz Steels (India) :—

21. M/s Northern Industrial Corporation
Mandi Gobindgarh

22. M/s Adhunik Steels Ltd :—

23. Shri Sushanta Banerjee
M/s Tata Iron & Steel Co. Ltd :—

24. M/s Northern Industrial Corp.
Mandi Gobindgarh

25. M/s Tata Iron & Steel Co. Ltd
AMloh Road Mandi Gobindgarh

26. M/s Adhunik Ferro Alloys Ltd
Mandi Gobindgarh

27. Shri Nirmal Kumar Aggarwal Director
M/s Adhunik Steel Ltd
Mandi Gobindgarh

28. M/s Adhunik Steel Ltd
Shivam Chambers Old Post Office Road
Mandi Gobindgarh

29. Shri Sushanta Bannerjee
M/s Adhunik Steel Ltd Shivam Chambers
Old Post Office Road Mandi Gobindgarh.

30. M/s Tata Iron & Steel Company Ltd
AMloh Road, Mandi Gobindgarh.

31. M/s Northern Industrial Corp.
Shivam Chambers Old Post Office Road
Mandi Gobindgarh.

32. M/s Nirmal Kumar Aggarwal Director
M/s Adhunik Steel Ltd :—

33. Shri Krishan Lal Chopra
M/s Chopra Brothers Village Ajnali,
Distt: Fatehgarh

34. M/s Neeraj Steel (India)
Old Post Office Road Mandigobindgarh

35. M/s Neepaz Steel (I)
Shivam Chambers Old Post Office Road
Mandi Gobindgarh.

36. M/s Neepaz Steel (I) &
Tata Steel Ltd
(TISCO) AMloh Road
Mandi Gobindgarh (Pb)

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

Appeals Nos.788-798 of 2005, E/799-814 of 2005, E/1042 to 1048/2006-SM & E/1264 – 1265/06 –SM (Br.)

Appeals Nos.E/788-798 of 2005 (SM)

(Arising out of common Order-in-Appeal No.773-783/CE/CHD/04 dated 30.11.2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Appeals Nos.E/799-814 of 2005-SM (Br.)

[Arising out of Order-in-Appeal No. 784-799/CE/CHD/04 dated 30.11.2004 passed by the Commissioner of Central Excise, Chandigarh]

Appeals Nos.E/1042 to 1048/2006-SM (Br.)

[Arising out of Order-in-Appeal No. 457-463/CE/Appl/Ldh/05 dated 29.12.2005 passed by the Commissioner of Central Excise (Appeals), Ludhiana].

Appeals Nos.E/1264 – 1265/06 –SM (Br.)

[Arising out of order-in-appeal No. 475-476/CE/Appl/Ldh./2005 dated 29.12.2005 passed by the Commissioner of Central Excise (Appeals), Ludhiana]

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? : 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

Appeals Nos.788-798 of 2005-SM (BR)

(Arising out of common Order-in-Appeal No.773-783/CE/CHD/04 dated 30.11.2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

....Appellants

CCE, Chandigarh

[Rep. by Shri R.K. Verma, DR]

Vs.

(1)M/s.Tata Iron & Steel Co.Ltd in Appeals No.E/788 & 789/06
(2)Shri Rajesh Kumar Gupta, Proprietor in Appeal No.E/790/05
M/s.B.D. Gupta & Sons
(3)Shri Sushanta Banerjee,Stock Yard Incharge in Appeal No.E/791/05
M/s.Tata Iron & Steel Co.Ltd.
(4)M/s.A.R. Alloys in Appeal No.E/792/05
(5)Shri Vinod Kumar Gupta, Proprietor in Appeal No.E/793/05
of M/s. Asian Enterprises
(6)M/s.Adhunik Steels Ltd. in Appeal No.E/794/05
(7)Shri Nirmal Agarwal, Director of
M/s.Adhunik Steels Ltd. in Appeal No.E/795/05
(8)Shri Vinod Kumar, Partner in Appeal No.E/796/05
M/s. Makhan Lal Vinod Kumar Mandi Gobindgarh
(9)M/s. Nav Rakesh Steels Pvt. Ltd. in Appeal No.E/797/05
(10)M/s.Asim Enterprises in Appeal No.E/798/05

....Respondents

[Rep. by Shri Kamaljeet Singh, Advocate]

Appeals Nos.E/799-814 of 2005-SM (Br.)

[Arising out of Order-in-Appeal No. 784-799/CE/CHD/04 dated 30.11.2004 passed by the Commissioner of Central Excise, Chandigarh]

Appellant

CCE, Chandigarh

[Rep. by Shri R.K. Verma, DR]

Vs.

(1)Sh. Sushanta Banerjee, Stockyard Incharge
Respondents
C/o M/s Tata Iron & Steel Co. Ltd. [Rep. by Shri Kamaljeet Singh,Advocate]
Appeal Nos. 799, 800, 803 & 810 of 2006-SM (Br.)

(2)M/s Tata Iron & Steels Co. Limited
In Appeal Nos. 801 & 812-SM (Br.)

(3)M/s Neepaz Steels (India)
Appeal No. 802/2006-SM (Br.)

(4)M/s Adhunik Steels Limited
In Appeal Nos. 804, 805, 806, 809 & 814 /2006-SM (Br.)

(5)Sh. Nirmal Kumar Agarwal, Director of
M/s Adhunik Steels Limited
In Appeal No.807 & 814/2006-SM (Br.)

(6)M/s Northern Industrial Corporation
In Appeal No. 808 & 811/2006-SM (Br.)

(7)M/s Adhunik Ferro Alloys Ltd.
In Appeal No. 813/2006-SM (Br.)

E/1042 to 1048/2006-SM (Br.)

[Arising out of Order-in-Appeal No. 457-463/CE/Appl/Ldh/05 dated 29.12.2005 passed by the Commissioner of Central Excise (Appeals), Ludhiana].

CCE, Ludhiana — Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

Respondents

1. M/s Adhunik Steels Limited
   In Appeal No.E/1042/2006 — [Rep. by Shri Kamaljeet Singh, DR]

2. Sh. Sushanta Banerjee of M/s Adhunik Steels Limited
   In Appeal No.E/1043 of 2006

3. M/s Tata Iron & Steels Co. Limited
   In Appeal No.E/1044 of 2006

4. M/s Northern Industrial Corporation
   In Appeal No.E/1045 of 2006

5. Sh. Nirmal Kumar Agarwal, Director of
   M/s Adhunik Steels Limited
   In Appeal No.E/1046 of 2006

6. Sh. Krishan Lal Chopra, Prop. of M/s Chopra Brothers
   In Appeal No.E/1047 of 2006

7. M/s Neeraj Steels (India)
   In Appeal No.E/1048 of 2006

E/1264 – 1265/06 –SM (Br.)

[Arising out of order-in-appeal No. 475-476/CE/Appl/Ldh./2005 dated 29.12.2005 passed by the Commissioner of Central Excise (Appeals), Ludhiana]

CCE, Ludhiana — Appellants
[Rep. by Shri S.K. Bhaskar, DR]

Vs.

Respondents

1. M/s Neepaz Steels (India)
   In Appeal No.E/1264 of 2006 — [Rep. by Shri Kamaljeet Singh, Advocate]

2. M/s Tata Steels Limited
In Appeal No.E/1265 of 2006

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

Final Order No. 964-999/2009-SM(CBR)/Dated:04.05.2009

Per P.K. Das:

Heard both sides and perused the records.

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

3. After hearing both the sides and on perusal of the records, it has been alleged that manufacturer of final product availed Cenvat credit without receiving the goods. It has further been alleged that the registered dealers issued invoices to the manufacturer to avail credit without supplying the materials. The allegation is based on the basis of invoices, indicating vehicle numbers of two wheelers viz., mopade, scooter, etc. which are incapable to carry such huge quantity of goods. The Original Authority confirmed the demand of duty and imposed penalty on the manufacturer and imposed penalties on all the registered dealers, respondents herein. The Commissioner (Appeals) set aside the adjudication orders. Hence, Revenue filed these appeals.

4. Ld. DR on behalf of the Revenue reiterates the grounds of appeal. He submits that the Revenue discharged the burden of proof that the goods were not received by the manufacturer on the basis of invoices indicating the two wheelers numbers. He further submits that the manufacturer failed to refute the evidences placed by them. He also

submits that the Central Excise Officers obtained the certificate from the motor vehicle that the numbers indicating in the invoices are two wheelers' numbers. He further submits that the respondents did not produce single evidence before the Commissioner (Appeals) to substantiate that the goods were received by them. He relied upon the decision of the Tribunal in the case of M/s. Ranjeev Alloys Ltd. Vs. CCE, Chandigarh vide Final Order No.684 of 2008-Excise dated 5.9.2008.

5. Ld. Advocate appearing on behalf of the registered dealers reiterates the findings of the Commissioner (Appeals). He submits that they have discharged the onus lies with them by producing evidences as recorded in the impugned order. He further submits that the Revenue has not disputed the evidences as recorded in the impugned order in the grounds of appeal. He also relied upon the decision of the Tribunal in the case of Arti Steels Ltd. & Ors Vs. CCE reported in 2008 (89) RLT 235(CESTAT-Delhi). He also relied upon the Single Member decision in the case of CCE, Chandigarh Vs. M/s. Taksus Steels Pvt. Ltd. and Another vide Final Order No.1615-1616/08-SM (BR) dated 10.12.2008. He submits that following the decision of the Tribunal in the case of Ranjeev Alloys Ltd. (supra), the Tribunal remanded the matter to the Original Authority for de novo adjudication. He further relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of

CCE, Chandigarh Vs. Neepaz Steels Ltd. & Ors. reported in 2008 (87) RLT 465 (P&H)..

6. After hearing both the sides and on perusal of the records, it appears that the vehicle numbers mentioned in the invoices are incapable to transport the huge quantity of materials. So, the credit was denied on the ground that the manufacturer availed credit without receiving the goods. Similarly, penalty was imposed on the registered dealers that they have issued invoices in order to facilitate the credit to the manufacturer. It is revealed from the impugned order that the respondents took a stand before the Commissioner (Appeals) that they received the inputs at their factory as evident from the following facts:-

(1) Payments for the purchase of the inputs have been made through Cheque and Demand Draft.

(2) The inputs in question have been used in the manufacture of final products which have been cleared on payment of duty.

(3) The Department has not been able to prove that any other alternative raw material was received and used in the final products.

(4) The RT-12 Returns have been assessed finally by the Range Officers, which contains all the documents including

the invoices under dispute) on the basis of which the Modvat credit has been availed and utilized.

(5) The vehicles in question were weighed on the various Dharamkanta which have issued the weighment slips contain the Registration Number of the vehicles, which shows that they were the trucks only.

(6) The number of such consignments is very insignficated and is less than 01%, which shows that there was no planned move to evade any tax by way of any fraud. All these facts prove that the inputs were regularly received by the manufacturers and the mention of wrong Registration numbers on the vehicles was not to evade any duty of excise rather the same was done by the owners or Drivers of the trucks for the reasons known to them only and the same has been confirmed by the reports of the press as mentioned above.

7. On a query from the Bench, the ld. Advocate submits that these evidences were not placed before the Original Authority. It appears that the above evidences were not placed before the Adjudicating Authority and, therefore, the Commissioner (Appeals) accepted without any verification. In the case of Ranjeev Alloys Ltd. (supra), the Tribunal held as under:-

> "We are of the view that onus initially lies on the Department but having established that the vehicles in

> question were incapable of transporting large quantities of iron and steel items – as admitted by all concerned, the movement of goods from Mandigobindgarh stock yard of TISCO being fake and fictitious, - an allegation duly made known to appellant by the show cause notice read with Annexure-I thereto, the onus shifted onto the appellant to prove that the goods were duly received by them and used in the manufacture of iron and steel items. We are satisfied that the appellant utterly failed to discharge the onus."

8. In the case of Arti Steels Ltd. and Others (supra), the Tribunal remanded the matter to the Original Authority to examine the evidences following the order of M/s. Ranjeev Alloys Ltd. (supra). The findings of the Tribunal 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."

9. In the present case, I find that the respondents took a stand before the Commissioner (Appeals) that the vehicles in question were weighed on the various Dharamkantas and weightment slips were issued containing the registration certificate of the vehicles, which is computer generated.

10. In my view, the evidences are required to be verified by the Original Authority. As such following the decision of the Tribunal in the case of Aarti Steels Ltd. (supra), the impugned orders are set aside. The matter is remanded back to the Original Authority to decide afresh after considering the evidences. 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.