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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 / 1778 , 2172 – 2177 , 2183 – 2188 , 2205 ,2223 – 2224 ,
E / 2322 , 2392-2393 / 2006 –SM[BR]

Date 20/08/2009

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

To :
M/S AARTI STEELS LTD

FOCAL POINT, LUDHIANA (PUNJAB)

M/S AARTI STEELS LTD — Appellant

Vs

C.C.E. PANCHKULA — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1000 – 1018 / 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. PANCHKULA

SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.

2. Adv. / Consult

MR.R. SANTHANAM

C-3/210, JANAK PURI, NEW DELHI - 110 058.

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. M/s Pushpanjali Steel Alloys Pvt. Ltd.
G.T. Road (Sirhind Side) Mandi Gobindgarh (Pb)

3. Shri Ajay Goyal Director
M/s Pushpanjali Steel Alloys Pvt. Ltd :—

4. M/s Nabha Steels Ltd.
G.T. Road (Sirhind Side) Mandi Gobindgarh

5. Shri Ajay Goyal Director
M/s Nabha Steels Ltd :—

6. M/s Modern Steels Ltd.
Post Box No. 12. G.T. Road Mandi Gobindgarh

7. Shri V.K. Sahi, G.M.
M/s Modern Steels Ltd :-

8. M/s Futuristic Steels Ltd
Shivam Chambers, Old Post Office Road
Mandi Gobindgarh.

9. M/s Adhunik Ferro Alloys Ltd
Shivam Chambers Old Post Office Road
Mandi Gobindgarh

10. M/s Tata Iron & Steel Co. Ltd
Amloh Road Mandi Gobindgarh

11. M/s Tata Iron & Steel Co. Ltd :—

12. Shri Sushanta Banerjee
M/s Tata Iron & Steel Co. Ltd :-

13. M/s APS Associates Pvt. Ltd
D-133, Phase-V, Focal Point Ludhiana

14. M/s DMK Castings Pvt. Ltd
412, Industrial Area-A,
Miller Ganj, Ludhiana

15. M/s M.R. Alloys Ltd
G.T. Road Mandi Gobindgarh

16. Shri. Gopal Krishan. Director
M/s M.R. Alloys Ltd :—

17. M/s Upper India Steel Mfg. & Engg. Co. Ltd
Dhandari Industrial Focal Point Ludhiana

18. M/s K.L. Alloys Pvt. Ltd.
G.T. Road Mandi Gobindgarh

19. Shri Subhash Dhingra, Director.
M/s K.L. Alloys Pvt. Ltd
G.T. Road Mandi Gobindgarh (P.b)

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

Appeals Nos.1778, 2172-77, 2183-88, 2205 of 2006-SM (BR), E/2223-24, 2322, 2392-93 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.251 to 277/CE/CHD/06 dated 30.03.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:04.05.2009

For approval and signature:

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

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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? :

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(1)M/s. Aarti Steels Ltd.
(2)M/s.Pushpanjali Steel Alloys (P) Ltd.
(3) Shri Ajay Goyal, Director of M/sPushpanjali Steel Alloys(P) Ltd.
(4)M/s. Nabha Steels Ltd.
(5)M/s.Ajay Goyal, Director of M/s. Nabha Steels Ltd.
(6)M/s.Modern Steels Limited
(7)Shri V.K. Sahi, General Manager (Commercial) of
M/s. Modern Steels Ltd.

Appeals Nos.E/2183-88 of 2006-SM (BR)

(8)M/s.Futuristic Steel Pvt. Ltd.
(9)M/s. Adhunik Ferro Alloys Ltd.
(10)M/s.Tata Iron and Steel Co. Ltd. in Appeals Nos.E/2185 and 2186 of 2006
(12)Shri Sushanta Banerjee
C/o M/s. Tata Iron & Steel Co. Ltd.
(13)M/s.APS Associates (P) Ltd.

Appeal No.E/2205 of 2006-SM (BR)

(14)M/s. DMK Castings (P)Ltd.

Appeals Nos. E/222-24, 2322, 2392-93 of 2006-SM

(15)M/s.M.R. Alloys (P) Ltd.
(15)Shri Gopal Krishan, Direcotr of M/s. M.R. Alloys (P) Ltd.
(16)M/s. Upper India Steel Mfg. Engg. Co. Ltd.
(17)M/s.K.L. Alloys (P) Ltd.
(19)Shri Subhash Dhingra, Director ...Appellants
Of M/s. K.L. Alloys (P) Ltd.

[Rep. by Shri R. Santhanam, Advocate]

Vs.

CCE, Chanigarh ....Respondent

[Rep. by Shri S. Gautam, DR]

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

Final Order No.1000 - 1018/2009 SM (BR)/Dated:04.05.2009

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 and also manufacturer of final products. He also submits that duty was demanded and 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-Delhi).

3. Learned DR on behalf of the Revenue submits that on investigation it was found that the vehicle numbers mentioned in the invoices are of two wheelers, like scooter and moped, etc. He also submitted that the appellants failed to establish that they supplied the material with invoices with any evidence. Learned DR relied upon the decision of the Tribunal in the case of Rajeev Alloys Ltd. Vs. CCE reported in 2008 (89) RLT 227 (CESTAT-Delhi).

4. After hearing both the sides and on perusal of the records, I find that the Commissioner (Appeals) on identical issue in earlier orders set aside the demand of duty and penalties on the basis of Newspaper reports of "Tribune' and "The Time of India' wherein it has been reported that 500 vehicles are running in Punjab State on fake registration. In the present case, 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, demand of duty and 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-Delhi)]. 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. 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."

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.

Order dictated & pronounced in open court on 04.05.2009.

(P.K. Das)
Member (Technical)

Ckp.