

**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 DelhiTo :
M/S AARTI STEELS LTD

FOCAL POINT, LUDHIANA (PUNJAB)

M/S AARTI STEELS LTD

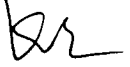
Appellant

Vs

Respondent

C.C.E. PANCHKULA

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 Publications 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 Kuni, New Delhi - 110070

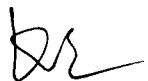
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

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 (Harvana)

16 Office Copy

17 Guard file


Assistant Registrar
(SM Appeal Branch)

2. ~~M/s~~ Pushpanjali Steel alloys Pvt. Ltd.
G.T. Road (Sialkot Side) Mandi Gobindgarh (P.B.)
3. Shri Ajay Goyal Director
M/s Pushpanjali Steel Alloys Pvt. Ltd. :-
4. M/s Nabha Steels Ltd.
G.T. Road (Sialkot 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 Ferric Alloys Ltd.
Shivam Chambers old Post office Road
Mandi Gobindgarh
10. M/s Tata Iron & Steel Co. Ltd.
AMDC 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 Estate Point Ludhiana

18. M/s K.L. Alloys Pvt. Ltd.

G.T. Road Mandi Gobindgarh

19. Shri. Subhash Dhillon, 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)

-
- | | | |
|--|---|------------------|
| 1. Whether Press Reporters may be allowed to see
CESTAT (Procedure) Rules, 1982. | : | } N ⁴ |
| 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? | : | } P.L. |
-

- (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, Director 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
Of M/s. K.L. Alloys (P) Ltd.

...Appellants

[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 submits 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 Newspaper 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.