(47)

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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 / 763 – 764 , 767 – 775 , 1849 – 1851 , 3450 – 3452 , 3852 ,2870 / 2006-SM[BR] Date 21/08/2009
E / 850 – 851 , 884 / 2007 –SM[BR]

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

To :
C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA — Appellant

Vs

M/S HBR STEEL CORPORATION. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1027 – 1048 / 2009 –SM[BR] dated 5.5.2009 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 HBR STEEL CORPORATION.
GALI NO-2,SUNDER SINGH MARKER,GILL ROAD,LUDHIANA

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ
NEW DELHI-70.

[2] SHRI KAMALJEET SINGH ADV.
J-144, PATEL NAGAR –I, GHAZIABAD[U.P]

[3]SH. G.S. SANDHE ADV.
163/D, MODEL TOWN , PATIYALA.

[4] SH. SUDHIR MALHOTRA ADV.
13-R , HUKAM CHAND COLONY
NEAR D.A.V. COLLEGE JALANDHAR

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 HBR STEEL CORPORATION
GALI NO-2,SUNDER SINGH MARKET,GILL ROAD,LUDHIANA

[3] M/S GARG FORING&CASTINGS LTD.
KANGANWAL ROAD LUDHIANA
[4] M/S THAPAR ISPAT LTD. B-47, PHASE-VII,
FOCAL POINT, LUDHINA
[5] SH. DAMANJIT SINGH, DIRECTOR. M/S THAPAR ISPAT LTD;---------
[6] M/S HBR STEEL CORPORATION, GALI NO. 2 ,
SUNDER SINGH MARKET, GILL ROAD, LUDHIANA
[7] M/S HBR STEEL CORPORATION;---------------
[8] M/S HBR STEEL CORPORATION;---------------
[9] M/S HBR STEEL CORPORATION;---------------
[10] M/S HBR STEEL CORPORATION;---------------
[11]M/S HRB STEEL CORPORATION;----------------
[12] M/S HRB STEEL CORPORATION;--------------
[13] M/S HBR STEEL CORPORATION;-------------
[14]M/S HRB STEEL CORPORATION;-------------
[15]M/S HRB STEEL CORPORATION;---------------
[16]M/S HRB STEEL CORPORATION;--------------
[17]M/S HRB STEEL CORPORATION;-------------
[18]M/SVISHWAKARMA ISPAT LTD.
KANGANWAL ROAD, JUGIANA LUDHIANA
[19]M/S ADHUNIK STEEL LTD. SHIVAM CHAMBERS
OLD POST OFFICE ROAD MANDI GOBINDGARH
[20]M/S MAKHANLAL VINOD KUMAR
[21] SHRI VINOD KUMAR GUPTA, PARTNER
AMLOH ROAD, MANDI GOBINDGARH
[22] M/S C.L. ENGINEERING LTD.
C-201, PHASE- VII, FOCAL POINT, LUDHIANA.

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

COURT – III

CENTRAL EXCISE APPEAL NO. 763-64, 767-69, 770-775, 1849-51, 3450-52, 3852, 2870 OF 2006 & 850-51, 884 OF 2007

[Arising out of Order-in-Appeal No. 411-420/CE/Appl/Ldh/05 dated 29.11.2005, 406/CE/Appl/Ldh/05 dated 28.10.2005, 403-404/CE/Appl/Ldh/05 dated 28.10.2005, 251-277/CE/Appl/Chd/06 dated 30.3.2006, 54-55/CE/Appl/Ldh/2006 dated 29.9.2006, 17-18/CE/Ldh/06 dated 28.7.06, 20/CE/Ldh/06 & 19/CE/Ldh/06 both dated 31.7.06, 03-04/CE/CHD/07 dated 5.1.07 & 10/CE/LDH/2006 dated 29.1.2007 passed by the Commissioner (Appeals), Central Excise, Ludhiana & 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?	No
2.	Whether it would 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?	No
4.	Whether order is to be circulated to the Departmental authorities?	Yes

E/763, 764, 767-770 to 775/2006-SM

Commissioner of Central Excise,
Ludhiana

Versus

M/s. H.B.R. Steel Corporation,
M/s. Garg Forging & Casting Ltd.,

M/s. Thapar Ispat Ltd.,
Shri Damanjit Singh, Director — Respondents

AND

E/1849-1851, 3450-52/2006-SM

M/s. H.B.R. Steel Corpon,

E/850-851/2007-SM
M/s. Makhan Lal Vinod Kumar,
Shri Vinod Kumar, Partner

E/3852/2006-SM

M/s. Vishwakarma Ispat Ltd.,

E/2870/2006-SM

M/s. Adhunik Steel Inds. Ltd.,

E/884/2007-SM

M/s. C.L. Engineering Ltd., — Appellants

Vs.

Commissioner of Central Excise,
Ludhiana/ Chandigarh

Appearance:

Shri Bipin Garg, Shri S. Malhotra, Shri Kamaljeet Singh,
Shri G.S. Sandhu, Advocates for the assessees;
Shri S. Gautam, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 5th May, 2009

FINAL ORDER NO. 1027 - 1048/2009 SM (BR) **dated**

Per P.K. Das:

Since common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. The learned Advocates submit that the assessees are registered dealers and Director/ Partner and manufacturers of final products. Original authorities disallowed Modvat credit and imposed penalties on the manufacturers of final products and also imposed penalties on the registered dealers on the ground that assessees passed irregular Cenvat Credit to different manufacturers fraudulently on the basis of central excise invoices without supplying materials. On investigation, it was found that the registered dealers have no proper go-down. It was also found that the invoices indicate vehicle number of two wheelers namely scooter, moped etc., which are incapable to carry huge quantity of materials. The learned Advocates submit that the assessees submitted several evidences, such as, weighbridge bill, R.G. 23D register maintained by registered dealers, RG-23A, Part-I register maintained by manufacturer of final products etc. Commissioner (Appeals) allowed appeals in some cases, against which Revenue filed appeals before the Tribunal. It is submitted that in other cases, Commissioner (Appeals) rejected their appeal, without considering evidences, against which assessees filed appeals. Learned Advocates submit that penalty cannot be imposed under Rule 173Q of erstwhile Central Excise Rules, 1944 on

the registered dealer during the relevant period. They relied upon decisions as under:-

(a) Steel Tubes of India Ltd. vs. CCE, Indore – 2007 (217) ELT 506 (Tri.-LB);

(b) CCE, Chandigarh vs. Neepur Steels Ltd. – 2008 (230) ELT 218 (P&H)

They also submit that the assessee/registered dealer discharged the burden of proof by producing several evidences in support of their contention that the registered dealer supplied the goods with invoices to the manufacturer of final product.

3. The learned D.R. on behalf of the Revenue submits that the issue has already been decided by the Division Bench of the Tribunal in the case of M/s. Rajeev Alloys Ltd. vs. CCE, Chandigarh, reported in 2008 (89) RLT 227 (CESTAT-Del.). He submits that the allegation of non-receipt of goods by the manufacturer and fraudulent availment of credit are based on several evidences as recorded in the show cause notice and also in the finding of the original authority. He also submits that motor vehicle authorities certified that vehicle numbers shown in invoices are of two wheelers. He submits that the assessee/registered dealers failed to discharge the onus lies on them and, therefore, the Tribunal in the case of Rajeev Alloys Ltd. (supra) rejected the appeal filed by the assessee. He submits that Commissioner (Appeals) allowed the appeals without considering evidences placed by the department against which Revenue

filed appeals. Similarly, in some cases, Commissioner (Appeals) had properly appreciated the evidences and rejected the appeals filed by the assessees, which are liable to be upheld.

4. The learned Advocates submit that the Division Bench of the Tribunal in the case of Aarti Steel Ltd. & Ors. Vs. CCE, Ludhiana & Ors., 2008 (89) RLT 235 (CESTAT-Del.) after considering the decision of the Tribunal in the case of Rajeev Alloys Ltd., (supra) set aside the impugned orders and remanded the matter to the original authority for verification of evidences.

5. After hearing both sides and on perusal of the records, I find from the impugned orders against which Revenue filed appeals, Commissioner (Apepals) observed that on identical issue in earlier orders he set aside the duties and penalties 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 in fake registration and therefore, he allowed these appeals also. But, in appeal No. 1849-51/2006 and 2870/2006, Commissioner (Appeals) rejected the appeals filed by assessee on the ground that the same practice is still continuing as the assessees have not taken any remedial action to amend the said mistake. In my view, demand of duty and penalty cannot be upheld/set aside on the basis of News paper report, without examining records and evidences.

6. In other appeals, Commissioner (Appeals) rejected the appeals filed by the assessees on the basis of details of investigation conducted by

the Revenue. It has been observed that no evidence such as gate register to show entries of vehicles mentioned on the invoices in their premises has been produced by the assessees to substantiate the receipt of goods under invoices in question. It is revealed from the impugned order that Registered dealers took a stand that goods were duly recorded in statutory records RG.23D registers. It is contended by the assessee that the vehicles carrying the goods were actually subjected to weighment on public weighbridges (Dharamkanta) and were issued weighment slips. It is also contended by the assessees that invoices were issued FOR basis.

7. I find that the identical issue has been decided by the Division Bench of the Tribunal in the case of Aarti Steel Ltd. & Ors. (supra) and the matter was remanded to the original authority after following the decision of Tribunal in the case of Rajeev Alloys Ltd. (supra) Relevant portion of the decision in the case of Aarti Steel Ltd. & Ors. (supra) is reproduced below:-

"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."

8. Accordingly, the impugned orders are set aside and the matters are remanded back to the original authority to decide afresh after considering the evidences placed by the assessee/registered dealers. All the issues are left open. Needless to say that the original authority shall pass the order after affording reasonable opportunity of hearing to the parties.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK