

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/3152/2007 – SM[BR]

Date 11/02/2010

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

Respondent

M/S KISCO CASTINGS

I am directed to transmit herewith a certified copy of **Final order No. 182 / 2010 –SM[BR]** dated 6.1.2010
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 KISCO CASTINGS

MANDI GOBINDGARH

2. Adv. / Consult SHRI GAGAN KOHLI ADV.
394 , SECTOR 30-A , CHANDIGARH

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)

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Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 3152 of 2007-SM

(Arising out of Order-in-Appeal No. 410/CE/CHD/2007 dated 19.09.2007
passed by the Commissioner (Appeals), Central Excise, Chandigarh).

DATE OF HEARING : 06.01.2010

DATE OF DECISION : 06.01.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	See
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

CCE, Chandigarh

....

Appellant

(Rep. by Sh. I. Baig, DR)

VERSUS

M/s Kisco Castings

....

Respondents

(Rep. by Sh. Gagan Kohli, Adv.)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT

ORAL ORDER NO. 192/2010 Sm.(Br)

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned Departmental Representative for the appellant and learned advocate for the respondents. This appeal arises from the order dated 19th September, 2007 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the appeal filed by the respondents against the order of the adjudicating authority has been allowed and the demand made against the respondents has been dropped. The Assistant Commissioner by his order dated 13th June, 2007 had confirmed the demand of Rs. 33,429/- along with interest against the respondents, besides imposing penalty of equal amount. Penalty of Rs. 10,000/- was also imposed against M/s Shiv Shankar Iron & Steel Trading Company, G.T. Road, Mandigobindgarh. The said order was passed on adjudication of the show cause notice dated 09th March, 2006.

2. The respondents herein are engaged in the manufacture of Non-Alloy Steel Ingots falling under Chapter 72 of the Central Excise Tariff Act, 1985 and have been availing facility of cenvat credit. M/s Shiv Shankar Iron & Steel Trading Company, Mandigobindgarh, who are also the holder of Central Excise Registration Certificate of Registered Dealer for dealing in excisable goods, were passing on cenvat credit to the respondents of the excisable goods. The said dealer was importing the scrap through CFS, Ludhiana, and availing benefit of customs duty in terms of Notification No. 17/2001 dated 01st March, 2001. The availment of benefit of customs duty under the said Notification was subject to fulfilment of certain conditions which included the condition that the imported goods were required to be used for the purpose specified. In case of goods supplied to the respondents on which credit was passed were for melting, as the goods so supplied

formed raw material for the production of the final product manufactured by the respondents.

3. It is the case of the appellant that, information was received by the Department that the said dealers were issuing invoices without actual supply of the goods to the respondents. On verification of the said information, it was revealed that the vehicle numbers disclosed in the invoices were not of the trucks but were those of the vehicles which could not have been used for transportation of goods or huge quantity like scrap in question. It was revealed that the invoices were disclosing fake numbers of the vehicles in support of the claim of transportation of the goods by the said dealers to the respondents. The transaction made in such a manner, being fraudulent paper transaction to enable the consignee to avail cenvat credit to which they were not entitled to as no goods had accompanied the invoices so issued, a show cause notice dated 09th March, 2006 came to be issued to the respondents and the said dealers. The proceedings thereunder were contested and ultimately the Assistant Commissioner, Mandigobindgarh, under his order dated 13th June, 2007 confirmed the demand, as stated above. Being dissatisfied, the respondents filed the appeal before the Commissioner (Appeals), Chandigarh, which came to be allowed under the impugned order. Hence, the present appeal.

4. While assailing the impugned order, the learned DR submitted that, the respondents had failed to produce any evidence regarding actual transportation of the scrap under the invoices stated to have been issued by the dealer to the respondents. On the other hand, investigation established that the invoices disclose fake vehicle numbers and this was verified through the concerned DTO/RTA, and considering the numbers which were disclosed in the invoices, it was apparent that the vehicles bearing said numbers were not in a position to carry the load of scrap disclosed from the invoices from

the dealers' premises to that of the respondents. According to the learned DR, the Commissioner (Appeals) totally ignored this aspect and allowed the appeal merely on assumptions and presumptions without properly analyzing the materials on record. He further submitted that, the Commissioner (Appeals) erred in relying upon the decision of the Tribunal in the matter of **CCE, Chandigarh vs M/s Neepaz Steels (India)**, reported in 2007 (213) ELT 100, ignoring the decision of the Tribunal in the matter of **Ranjeev Alloys Ltd. vs CCE, Chandigarh**, reported in 2009 (236) ELT 124. He further submitted that, the challenge to the decision in **Ranjeev Alloys Ltd.**'s case (supra) by the assessee was rejected by the Punjab & Haryana High Court vide its order dated 18th August, 2009. He also submitted that, no much credence could have been given to the end use certificate stated to have been produced by the respondents as such a certificate is issued merely on the basis of the records submitted by the assessee and not on physical verification of actual use of the product. According to the learned DR, the end use certificate in question dated 22nd March, 2002 related to the product which was stated to have been utilized for the manufacture of the final product in the month of July, 2001 and, therefore, it is apparent that physical verification of actual use of the product was impossible. He further submitted that, the case clearly involves element of fraud played by the respondents and, therefore, penalty is warranted and justified.

5. On the other hand, the learned advocate for the respondents submitted that, the respondents were never furnished with the copy of the report stated to have been submitted by the concerned DTO/RTA in relation to the verification of the vehicle numbers and, therefore, there was violation of basic principles of natural justice and on this count itself no fault can be found with the impugned order. He further submitted that, the end use certificate was never challenged by the Department and, therefore, that

clearly establishes actual utilization of the raw material procured by the respondents from the said dealer and it simultaneously establishes transportation of the said raw materials from the dealers' premises to the respondents. Making grievance about failure on the part of the Department to examine the dealer in the matter, learned advocate submitted that, it shows lapses in the investigation proceedings and absence of most important piece of evidence which could have clearly established actual transportation of the goods in question by the dealers to the respondents. He further submitted that, it is a normal practice to enter fake vehicle numbers in the invoices for various purposes including to avoid the octroi duty as well as harassment by certain authorities. In any case, according to the learned advocate, the entries in that regard were made by the dealers and for that purpose the respondents cannot be held responsible. He also submitted that, the end use certificate clearly discloses the evidence in support of the plea raised by the respondents and the same having been clearly accepted by the Commissioner (Appeals) in the impugned order, there is no cause for interference therein. He further submitted that, the fact that the raw material was utilized for manufacture of the final product and thereupon even the duty has been paid on such final product was clearly stated in the appeal before the Commissioner (Appeals) under ground (J). Obviously, if the raw material has been utilized for production of the final product on which duty has already been paid, it would disclose that such raw material was transported from dealers to the respondents. He has placed on record a copy of the appeal which the respondents had filed before the Commissioner (Appeals).

6. The allegation of issuance of fake invoices in the sense that there was no actual transportation of the goods, as disclosed in the invoices, and the invoices were issued merely to enable the respondents to avail

cenvat credits, was sought to be established on the basis of the investigation carried out by the Department in relation to the identity of the vehicles described in such relevant invoices. The invoices were stated to have been issued in the month of July, 2001. It is the case of the Department that two of the invoices which referred to transportation of 37.945 MT of the scrap from the dealers to the respondents of the total value of Rs. 3,22,492/- on which cenvat credit of Rs. 33,429/- is sought to be availed by the respondents, disclose the vehicle number as PCK-4292 and PAP-7557. The verification of the same through the concerned DTO/RTA Office reveals that the vehicle no. PCK-4292 was a auto cycle, whereas there was no vehicle issued with the number PAP-7557. In response to the said material by the Department, it was the case of the respondents that the discrepancy with regard to the vehicle numbers in the invoices issued by the dealers was in all probability attributable to the fact that it was the practice with the truckers to use duplicate or false number plates. In that regard, news items published in 'Patiala Kesari' (Hindi) dated 02.04.2006 and the 'Telegraph Calcutta' dated 02.01.2006 were sought to be relied upon. The respondents also had made grievance about the non-receipt of copy of the report which was referred to in the show cause notice as having been received from the Officers of the Customs Commissionerate, Amritsar, regarding verification of the vehicle numbers disclosed in the said invoices.

7. The adjudicating authority relying upon the said discrepancy in relation the vehicle numbers in the invoices rejected the contentions sought to be raised on behalf of the respondents and held that, the respondents had availed the said cenvat credit without actual receipt of the inputs from the dealers. On the other hand, the Commissioner (Appeals), relying upon the decisions in **M/s Neepaz Steels'** case (supra) as well as in **CCE vs M/s Tata Iron & Steel Co. Ltd.'s** case delivered by the Tribunal on 29.05.2007

allowed the claim of the respondents in relation to the eligibility to avail the cenvat credit.

8. As regards the end use certificate, the adjudicating authority did not take the same into consideration at all. Similarly, the Commissioner (Appeals) also did not take into consideration the end use certificate for arriving at the finding contrary to that was arrived at by the adjudicating authority.

9. It was also sought to be contended on behalf of the respondents that, it was absolutely necessary for the Department to examine the dealers as the goods were actually supplied by the dealers to the respondents and it was the dealers who were in a better position to explain as to how the goods were transported to the respondents.

10. Considering the rival contentions and the facts of the case, following points arise for consideration :

- (i) Whether in the facts and circumstances of the case, the Department could have relied upon the materials in relation to the discrepancy about the vehicle numbers in the invoices in question without providing copy of the report in that regard to the respondents or that there is violation of principles of natural justice on account of failure on the part of the Department to furnish the copy of the said report to the respondents?
- (ii) Whether in the facts and circumstances of the case, the end use certificate sufficiently establishes that the scrap in question was actually and factually transported by the dealers to the respondents under the invoices in question?
- (iii) Whether payment of duty on clearance of final product during the relevant period by the respondents by itself sufficient to establish that the allegation against the

respondents regarding illegal availment of cenvat credit without actual receipt of the goods under the invoices in question is false?

- (iv) Whether in the facts and circumstances of the case, the same warrant penalty?

11. There is no doubt that copy of the report was not supplied to the respondents even though a grievance was made by them in relation to non-receipt of the copy thereof in their reply to the show cause notice. This is evident from the order passed by the adjudicating authority wherein he has summarized the reply to the show cause notice. At the same time, it is also a matter of record that the adjudicating authority had essentially relied upon the said report to arrive at the finding about non-transportation of the material by the dealers to the respondents. Being so, as a rule, the finding based on such report without copy thereof being made available to the assessee, can hardly be said to be a finding arrived at in compliance of the principles of natural justice. The matter, however, does not end here. It is necessary to ascertain, whether from the records the appellant is able to establish its allegations in that regard de hors such report.

12. From the bare perusal of records and in particular, the summary of the reply by the respondents to the show cause notice as incorporated in the order of the adjudicating authority as well as the submissions which were made on behalf of the respondents and the analysis thereof by the adjudicating authority, particularly in relation to the vehicles which were used for transportation of the materials in question by the dealers to the respondents, it is abundantly clear that there was no dispute sought to be raised either by the respondents herein or the said dealers, who was also issued with the same show cause notice along with the respondents, about the fact that the invoices in question disclose the vehicle numbers as PCK-

4292 and PAP-7557 and also that the said numbers were not genuine numbers of the vehicles which transported the materials described in the invoices. In other words, there is no dispute about the contents of the invoices in question as also the fact that the numbers of the vehicles disclosed in the invoices were not genuine numbers of the vehicles which are claimed to have been used for transportation of such goods. The submission in this regard on the part of the respondents as described in the order of the adjudicating authority reads thus :

"The discrepancy with regard to number of vehicles in the invoices of the registered dealer is, in all probability, attributable to the fact that it was practice with the truckers to use duplicate number plates. Sufficient material in this regard had been placed on record in other cases of the same kind. Recently such a news has been published in "Patiala Kesari" (Hindi) dated 02.04.06 and the "Telegraph Calcutta" dated 02.01.06 enclosed with reply."

This apparently discloses that, it was the case of the respondents that the discrepancy as regards the number of the vehicles in the invoices in question was on account of the fact that it was practice with the truckers to use false number plates and in that regard, reliance was sought to be placed on news items. The news items, obviously, were not in relation to the trucks in question nor even in relation to the alleged practice at the relevant period i.e. in July, 2001, but were with reference to the news items published in the year 2006. This, however, discloses that, it was within the knowledge of the respondents that the numbers disclosed in the invoices were not genuine numbers of the vehicles which could have transported the materials described in the concerned invoices. This clearly leads to a conclusion that the investigation carried out by the Department about non-disclosure of correct numbers of vehicles which could have transported the material described in the invoices was not only undisputed, but it clearly did not require the Department to rely upon the report submitted in the course of the

investigation and the onus had clearly shifted upon the respondents to establish that the materials described in the invoices were actually and factually transported from the dealers to the respondents and the same were actually received by the respondents.

13. Undisputedly, the said burden was sought to be discharged by the respondents on the basis of the document in the form of end use certificate, apart from contending failure on the part of the Department to record the statement of the dealers and also contending manufacture and clearance of final product out of the raw material which was allegedly received under the said invoices.

14. As regards the end use certificate, the same is clearly the requirement of Notification No. 17/01 dated 01.03.2001. The condition no. 18(b) clearly requires "the importer" to produce to the Deputy Commissioner or the Assistant Commissioner, as the case may be, within six months or such extended period, as that Deputy Commissioner or Assistant Commissioner may allow, a certificate issued by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in whose jurisdiction the goods in question have been used in the concerned unit, that such goods had been so used. Herein, the importers are the said dealers. The factum of production of such certificate dated 23rd March, 2002 is not in dispute. There is no dispute that the certificate was issued by the competent authority in terms of the said condition. It is, however, the contention on behalf of the Department that the certificate itself cannot establish the actual receipt of the raw material in question by the respondents. According to the learned DR, such certificates are issued essentially on the basis of the documentary evidence produced by the assessee and there is no actual physical verification either of the raw material or the use thereof. It is difficult to accept the contention regarding

such practice in the absence of any material being placed on record. At the same time, it also cannot be disputed that, in the matter in hand, on the face of such certificate, it would be difficult to assume that the same was issued on actual physical verification of the raw material or the utilization thereof. It is so because, undisputedly, the material was stated to have been utilized in the month of July, 2001. The certificate is issued on 23rd March, 2002. Apart from the said certificate, there is no other material on record which could reveal that the authority issuing the certificate had occasion for physical verification of the raw material or the utilization thereof at the relevant period. Being so, undoubtedly, in the case in hand and in the facts and circumstances of the case, it is difficult to accept the contention on behalf of the respondents that the end use certificate itself establishes actual use of the materials described under the invoices in question as having been received by the respondents and used for manufacture of the final product in the month of July, 2001. It is pertinent to note that, there is no dispute that the statutory documents required to be maintained by the manufacturer did disclose production of the final product during the relevant period and consumption of raw material for such final product. The same also disclose necessary entries with reference to the invoices in question. But the fact remains that, pursuant to the investigation and issuance of the show cause notice, the defence taken by the respondents which clearly raised doubt about the genuineness of those entries and those documents in relation to the month of July, 2001 and particularly with reference to the material covered by the said invoices in question, the primary burden upon the Department having been discharged, it was necessary for the respondents to establish the defence with cogent evidence.

15. Once the respondents clearly admitted about the absence of genuineness of the vehicle numbers which are stated to have transported the

material described under the invoices in question, the burden was upon the respondents to establish that the material thereunder was actually delivered to and received by the respondents.

16. It is true that the records do not disclose any statement of the dealers having been recorded by the Department. But, I fail to understand, as to how that could be relevant to decide the issue in question. Besides, it is pertinent to note that the show cause notice was not only issued to the respondents but was also simultaneously issued to the dealers. Nothing prevented the dealers from coming forward to explain their stand in the matter. Besides, the same dealers had stated to have supplied the material to the respondents and based on which the respondents sought to have availed cenvat credit. There is no explanation as to what prevented the respondents from procuring necessary affidavit from the dealers as regards their stand in the matter. This is not a criminal case. This is essential at the adjudication proceedings. Once the party does not dispute absence of genuineness in the numbers of vehicle, which have stated to have transported the material, burden would squarely lie upon that party to establish the true state of affairs in relation to the transportation of such material. This burden cannot be discharged by merely pointing out at some lapses, if at all they can be called as the lapses, on the part of the investigation.

17. As regards the contention that the respondents had utilized the raw material for production of the final product, it is pertinent to note that, in the summary of the reply enumerated in the order of the adjudicating authority, it nowhere discloses any such defence having been raised. Even in the grounds of appeal, enumerated in the impugned order, the same also does not disclose any such ground. The learned advocate for the respondents, however, has drawn my attention to ground (J) in the appeal

memo filed before the Commissioner (Appeals). The said ground (J) reads thus :

“(J) The appellant had taken reasonable steps to ensure that the inputs in respect of which they had taken the modvat credit are goods on which the appropriate duty of excise was paid. The appellant fails to understand if they have not received the goods then how they have manufactured the final goods and the department has also not brought on record that final goods were manufactured by goods other than these goods. The department has also failed to prove that payments made to registered dealer were not in regard to goods purchased by the appellant. In case the goods were not received and used in the factory than how the final goods were manufactured. It is not the contention of the department that the appellant had not manufactured the final products and had only passed the modvat credit on paper of duty paid on final products. If the appellant has not manufactured the final products by not using said goods then why he has paid the duty on final goods, which should then be refunded to them.”

18. At the outset, it is to be noted that the contents reproduced above are in relation to the grounds to assail the order passed by the adjudicating authority. The contents are not in relation to the factual matrix. There is no statement of fact either in the earlier portion of the memo of appeal or even in the grounds of appeal including in the ground (J), quoted above, that the material described under the invoices in question and allegedly received by the respondents was actually utilized for manufacture of final product. Apart from relying on the end use certificate in that regard, there is no statement of fact made in that regard by the respondents either before the adjudicating authority or before the Commissioner (Appeals). Even in the present appeal before the Tribunal, the respondents have not come forward to file any affidavit with necessary documentary proof that the material which is described under the invoices was received by the respondents at the relevant time and the final product manufactured by the respondents during the month of July, 2001 was on utilization of such material. Obviously, therefore, the ground (J) in the memo of appeal cannot

be construed as sufficient material to contend that the respondents had discharged their burden in relation to the matter in issue.

19. The Division Bench of the Tribunal in **Ranjeev Alloys Ltd.'s** case (supra) relying upon the another decision of the Division Bench of the Tribunal in the matter of **Viraj Alloys Ltd. vs CCE, Thane-II**, reported in 2004 (177) ELT 892, had rejected the claim of assessee regarding utilization of the raw material on account of failure to establish receipt and use of the goods in the manufacture of the final products. While arriving at the said conclusion, the Division Bench had quoted the relevant observations from the decision in **M/s Viraj Alloys Ltd.'s** case (supra) which read thus :

"We observe that the department raised a presumption against the appellants by establishing that the inputs could not have been received in the factory in vehicles mentioned in the invoices. This allegation itself is based on the reports by RTOs, who certified that the registration numbers belonged to vehicles other than goods transport vehicles with 10 tons capacity. It is for the appellants thereupon establish that indeed such vehicles as mentioned in the invoice did bring the input to their factory. They have failed to do so. Their gate register was burnt in some fire accident and the bills/vouchers indicating payment of cash to the drivers/owners of the trucks were also, destroyed in fire. One could understand that bills/vouchers, getting destroyed in fire or lost. But one cannot understand as to what has happened to the ledgers and registers to which the transactions done in cash are ultimately transferred. It is not the appellant's case that even such ledger and registers were destroyed in the fire. The fact that the inputs in the form of ship-breaking scrap was entered in RG 23A, Part-I does not establish that the goods were received in the factory. At least two truck owners have categorically denied having transported any goods to the appellant. The plea that the truck owners indulged in mal-practices and run them with false numbers is farfetched. In the appellants case 99 vehicles were such that they could not have carried the goods from the supplier to the buyer, some of the numbers belonged to auto-rickshaws, motorcycles and some numbers did not exist. The fact that out of the list of vehicles which were shown to be tankers, according to RTOs Office, two vehicles turned out to be regular carriers of goods does not establish that the case of other vehicles also it was true. An exception cannot make a rule. Once it is established that the input has not been transported in

the vehicle mentioned in the invoice it is but reasonable to say that the inputs were not received in the factory as required under Rule 57G".

20. Considering the decision in **Ranjeev Alloys Ltd.'s** case (supra), as rightly submitted by the learned DR, the Commissioner (Appeals) was not justified in placing reliance in the decision of **M/s Neepaz Steels** (supra), which was a decision by the Single Member of the Tribunal, apart from the fact that the same was delivered in the peculiar facts of that case which are revealed from para 4 of the decision which are not in *pari materia* with the facts in the case in hand.

21. The decision in **M/s Tata Iron & Steel Co. Ltd.'s** case (supra) was also of a Single Member and was based solely on the decision in **M/s Neepaz Steels'** case (supra). Obviously, therefore, it is of no relevance to the facts in the case in hand.

22. It is pertinent to note that the decision in **Ranjeev Alloys Ltd.'s** case (supra) was sought to be challenged before the Punjab & Haryana High Court without any success as the appeal was dismissed under order dated 18th August, 2009.

23. In the facts and circumstances of the case, therefore, mere non-supply of copy of the report to the respondent can hardly be said to be violation of principles of natural justice.

24. A plain reading of the impugned order nowhere discloses that the Commissioner (Appeals) had considered the above relevant aspects of the matter. Rather the impugned order discloses a very casual approach in disposing of the appeal. After recording the submissions made by the party before the Commissioner (Appeals), the same has been disposed of by merely referring to the decisions in **M/s Tata Iron & Steel Co. Ltd.'s** case (supra) and **M/s Neepaz Steels'** case (supra). The Commissioner (Appeals)

did not bother to analyse the materials on record at all. While dealing with the appeal, it is absolutely necessary for the appellate authority, against whose order further appeal lies, to analyse the materials on record and then to arrive at a logical conclusions on the basis of such analysis. The Commissioner (Appeals) totally failed to carry out such exercise while disposing of the matter by way of impugned order.

25. The first point for determination, therefore, is accordingly answered in the above terms.

26. As regards the second point for determination, the same stands already answered in the course of the discussion in relation to the first point for determination.

27. As regards the third point for determination, as already stated above, the same was neither raised in defence nor any material in that regard was placed on record even at the stage of appeal before the Commissioner (Appeals) and as already discussed in the course of answering to point no. (i), the same needs no further discussion.

28. As regards the fourth point for determination, once it is established that the goods were not received by the respondents and it was merely on the basis of the invoices that cenvat credit was sought to be availed, the fraudulent movement of the goods described in the invoices in question being established, obviously the penalty is not only warranted, but justified.

29. For the reasons stated above, therefore, the impugned order cannot be sustained and is liable to be set aside and the order passed by the adjudicating authority is to be restored and confirmed. Accordingly, the appeal is allowed and the impugned order is set aside and the order passed

by the adjudicating authority is restored with all consequential relief. The appeal stands disposed of in the above terms.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

Golay