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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/849 /2011 – SM[BR] E / STAY/ 1034/2011-SM[BR]** **Date 20/10/2011**

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

To :
**M/S GUPTA STEEL ROLLING MILLS,**
**2, SUNDER SINGH MARKET, GILL ROAD, LUDHIANA (PUNJAB)**

**M/S GUPTA STEEL ROLLING MILLS,** Appellant

Vs

**C.C.E. LUDHIANA** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 727/2011-SM[BR]&S/654/2011** dated 10.10.2011 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. LUDHIANA**
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
**MR.SUDHIR MALHOTRA.**
13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

**Excise Stay Application No.E/S/1034/11-SM in
Excise Appeal No.E/849/11-SM**

[Arising out of Order in Appeal No. 318/CE/Ldh/10 dated 20.12.10 dated 6.1.11 passed by the Commissioner (Appeals), Chandigarh].

M/s.Gupta Steel Rolling Mills ...Appellant

Vs.

CCE, Ludhiana ... Respondent

Present for the Appellant : Shri.Poojan Malhotra, Advocate
Present for the Respondent:Shri.Fateh Singh, DR

**Coram: HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER**

**<u>Date of Hearing/Decision:10.10.2011</u>**

Final **ORDER NO.** 727/2011 SM(BR) + S-654/2011 SM(BR) **DATED:**________

**PER: ASHOK JINDAL**

The appellant are in appeal against the impugned order wherein their appeal has been dismissed for non-compliance of the stay order directing them to make the pre-deposit of Rs.2.00 Lakhs against the total demand of Rs.6,27,387/-.

The facts of the case are that on verification, it has been found that the vehicle number entered in the invoice do not match with the vehicles in which the goods were supplied. Therefore, it was found that the invoices are bogus and appellant has taken credit against the bogus invoices. In some of the cases, the vehicle number is also not entered in the invoice. Therefore, the demand was confirmed by both the lower authorities alongwith interest and penalties.

2. The ld. Advocate for the applicant submits that the impugned order is not on merit and appeal has been dismissed for noncompliance of the stay order. He further submitted that it is not the case that the applicant has not received the goods. As per the statement of supplier, the goods have been supplied and most of the cases the payment has been received through Cheques. As the godown of the supplier is situated at some other place from the place which the invoices has been prepared, the vehicle numbers has been entered in the invoices as submitted by the transporter themselves. Therefore, the allegation that they were not received the goods deserve no merit and no further investigation has been taken place. He further submitted that the factory of the appellant is closed since 2002 and prayed for financial hardship also. Therefore, he prayed that unconditional waiver of pre-deposit may be granted and the matter may be sent back to Commissioner (Appeals) for fresh hearing and to pass an order on merit.

3. Heard and considered.

4. After considering a submission made by ld. Advocate, it is admitted fact that the impugned order has not passed on merit and the Commissioner (Appeals) while dealing the stay application has asked the appellant to make a pre-deposit of Rs.2.00 Lakhs against the duty demand of Rs.6.27 Lakhs approximately. At this stage, I am also not going to the merit of the case but the allegation against the applicant is that the vehicle Nos. do not match the invoices and the vehicles are of such a nature which cannot transport the impugned goods, therefore, the merit of the case is to be seen by the Commissioner (Appeals) while dealing the issue. Further as submitted by the applicant their factory is closed in 2002. In that situation, it is the duty of the Tribunal to protect interest of Revenue also. In these circumstances, I direct the applicant to make a pre-deposit of Rs.1.5 Lakhs and report compliance before the Commissioner (Appeals) on or before 29th December, 2011. On such compliance, the Commissioner (Appeals) shall decide the issue on merit without insisting any further pre-deposit.

5. Both appeals as well as stay application are disposed off on the above terms.

[Dictated & Pronounced in the open Court].

**(ASHOK JINDAL)**
**JUDICIAL MEMBER**

Anita