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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/1194/2007, E/1301/2007, E/2279/2007, E/2304/2007, E/758/2007WITHE/CO/159/2007Date 31/03/2010
E/759/2007, E/760/2007, E/761/2007 WITH E /CO/ 156/2007, E/762/2007
E/763/2007, E/764 / 2007 -SM[BR]

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

To :
M/S NORTHERN INDIA STEEL ROLLING MILLS
GURU KI NAGARI, MANDI GOBINDGARH, PUNJAB.

M/S NORTHERN INDIA STEEL ROLLING MILLS — Appellant

Vs

C.C.E. CHANDIGARH — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 368-378 / 2010 -SM[BR] dated 10.3.2010 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult SHRI K.K.ANAND ADV.
   A-5,BASMENT LAJPAT NAGAR-III,
   NEW DELHI
   [2]SHRI ATUL GUPTA CO.SEC. B-1/1289-A,VASANT KUNJ NEW DELHI
   [3] SHRI SIDHARTH JOSHI ADV. 27/76 STRCET NO.8.
   VISHWAS NAGAR SHADARA DELHI -32.
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 A.R. ALLOYS
MANDI GOBINDGARH[PB]
3. M/S DHIMAN STEEL &AGRO INDS.
G.T. ROAD, KHANNA[PB]
4. M/S SURYA ISPAT UDYOG
G.T. ROAD. KHANNA [PB]
5. M/S J.K.JINDAL & SONS
MANDI GOBINDGARH[PB]
6. M/S GANPATI STEELS
G.T. ROAD KHANNA.
7. M/S DEV INDUSTRIES.
G.T. ROAD KHANNA
8. SHRI JATINDER KUMAR PROP.
M/S J.K. JINDAL & SONS MANDI GOBINDGARH
9. M/S SHIVA STEEL ROLLING MILLS, KHANNA.
10. M/S MANKOO STEEL INDUSTRIES
G.T. ROAD KHANNA.
11. M/S BABA RAM SINGH
STEEL INDUSTRIES KHANNA.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 10.3.2010

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Sl.No.	Appeal No.	Appellant	Respondent	Arising out of order in appeal No. & date	Passed by
1.	E/1194/07-	M/s Northern India Steel Rolling Mills	C.C.E., Chandigarh	30/CE/CHD/07 dated 9.2.2007	C.C.E.(Appeals) Chandigarh
2.	E/1301/07-	M/s A.R. Alloys	-do-	31/CE/CHD/07 dated 9.2.2007	-do-
3.	E/2279/07	M/s Dhiman Steel & Agro Industries	-do-	154/CE/Chd/ 2007 dated 24.5.07	-do-
4.	E/2304/07-	M/s Surya Inspat Udyog	-do-	141/CE/Chd/ 2007 dated 4.5.07	-do-
5.	E/758/07 with E/CO/159/07	C.C.E., Chandigarh	M/s J.K. Jindal & Sons	1010-1016/CE/CHD/ 06 dated 24.10.06	-do-
6.	E/759/07	- do-	M/s Ganpati Steels	-do-	-do-
7.	E/760/07	-do-	M/s Dev Industries	-do-	-do-
8.	E/761/07 with E/CO/156/07	-do-	M/s Jatinder Kumar, Prop. of M/s J.K. Jindal & Sons	-do-	-do-
9.	E/762/07	-do-	M/s Shiva Steel Rolling Mills	-do-	-do-
10.	E/763/07	-do-	M/s Mankoo Steel Industries	-do-	-do-
11.	E/764/07	-do-	M/s Baba Ram Singh Steel Industries	-do-	-do-

Appearance:

S/Shri

Hemant Bajaj, Advocate for the appellants at serial No.1, Atul Gupta, Company Secretary with Manish Saharan , Advocate for the appellants-assessees at serial Nos.2, 5, 8 and Siddharth Joshi, Advocate for the appellants-assessee at serial Nos. 3, 4, 6, 7, 9, 10, 11

Shri I. Baig, Authorised Departmental Representative (SDR) for the Revenue.

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 368 – 378/2010 SM (BR)

Per M. Veeraiyan:

1.1 Appeal No.E/1301/07 of M/s A.R. Alloys, Mandi, Gobindgarh and Appeal No.E/1194/07 of M/s Northern India Steel Rolling Mills are against demand of duty and imposition of penalty on the finding that they have availed Cenvat credit on the basis of invoices without receiving the materials.

1.2 Appeal No.E/2279/07 of M/s Dhiman Steel & Agro Industries, Khanna and Appeal No.E/2304/07 of M/s Surya Ispat Udyog, Khanna are against the penalties sustained by the Commissioner (Appeals). These two are re-rolling mills situated in Khanna city and according to the Department, they have connived with M/s J.K. Jindal & Sons in passing on credit irregularly to M/s A.R. Alloys and M/s Northern India Steel Rolling Mills.

1.3 Other appeals [Appeals No.E/758/07, E/759/07, E/760/07, E/761/07, E/762/07, E/763/07 and E/764/07] are by the Department. In Appeal No.E/758/07 and E/761/07, the Department is aggrieved against the order of the Commissioner (Appeals) in setting aside the penalties on M/s J.K. Jindal & Sons and Shri Jatinder Kumar, its proprietor. In other appeals, the Department is aggrieved that the Commissioner (Appeals) has set aside the penalties on the re-rolling mills who according to the department, connived with the registered dealer in passing on irregular credit to M/s A.R. Alloys and M/s Northern India Steel Rolling Mills.

1.4 All these appeals involve common facts and legal issues and are, accordingly are disposed of by this common order.

2. Heard both sides.

3.1 The relevant facts, in brief , are that M/s J.K. Jindal & Sons with Shri Jatinder Kumar as proprietor is a dealer of iron and steel products registered with the Central Excise Department for the purpose of passing on cenvat credit as a first stage dealer in terms of Rule 174 of Central Excise Rules, 1944. They procured ship breaking scrap and sold them. The investigation revealed that M/s J.K. Jindal & Sons supplied only invoices to several induction furnace/re-rolling mills, which included M/s A.R. Alloys and M/s Northern India Steel Rolling Mills and these two parties have taken credit without actually receiving the inputs and accordingly, it was proposed by the show cause notice to disallow the credit taken by them and to impose penalties on them. The other parties namely, M/s Dhiman Steel & Agro Industries, M/s Surya Ispat Udyog, M/s Mankoo Steel Industries, M/s Baba Ram Singh Steel Industries, M/s Ganpati Steel, M/s Dev Industries and M/s Shiv Steel Rolling Mills who were re-rolling mills based at Khanna City were alleged to have received the materials from M/s J.K. Jindal & Sons without invoices and thus colluded with M/s J.K. Jindal & Sons in passing on credit illegally to Mandi Gobingarh manufacturers like M/s A.R. Alloys and Northern India Steel Rolling Mills. Show cause notice also proposed imposition of penalties on M/s J.K. Jindal & Sons and its proprietor Shri Jatinder Kumar for having passed on the credit irregularly as above.

3.2 The original authority vide order in original No.72-77/CE/DC/MGG/05 dated 31.3.2006 demanded duty equal to irregularly availed credit amounting to Rs.4,09,782/- from M/s Northern India Steel Rolling Mills and Rs.2,18,181/- from M/s A.R. Alloys and imposed equal amounts as penalties. He also imposed Rs.8,39,449/- as penalty on M/s J.K. Jindal & Sons and also imposed penalty of Rs.8,39,449/- on Shri Jatinder Kumar. In addition, he imposed penalties on others as detailed below:

1.	M/s Dhiman Steel & Agro Industries,	Rs.1,46,000/-
2.	M/s Surya Ispat Udyog	Rs.59,000/-
3.	M/s Mankoo Steel Industries	Rs.1,13,000/-
4.	M/s Baba Ram Singh Steel Industries	Rs.43,000/-
5.	M/s Ganpati Steel	Rs.54,000/-
6.	M/s Dev Industries	Rs.22,000/-
7.	M/s Shiva Steel Rolling Mills	Rs.48,000/-

3.3 On appeals by the above parties, the Commissioner (Appeals) has set aside the penalties imposed on M/s J.K. Jindal & Sons, Shri Jatinder Kumar, Prop. of M/s J.K. Jindal & Sons, M/s Mankoo Steel Industries, M/s Baba Ram Singh Steel Industries, M/s Ganpati Steel, M/s Dev Industries and M/s Shiva Steel Rolling Mills. Hence the Department is in appeals. In other cases, the Commissioner (Appeals) rejected the appeals of the parties and hence they are in appeals before the Tribunal.

4.1 Learned Advocate Shri Hemant Bajaj representing Northern India Steel Rolling Mills submits that they have received consignments covered by 15 invoices issued by M/s J.K. Jindal & Sons; they have made payments by cheque; the allegation of the Department and finding by the lower authorities that the goods were not received by them and were actually sent to Khanna city based re-rollers was based on octroi receipts recovered from local authorities maintained at Khanna city octroi post. Such inference was not justified in the light of other evidence. Shri Jatinder Kumar, proprietor of M/s J.K. Jindal & Sons has clearly stated that the goods have been delivered to the appellants; the appellants have confirmed the receipt of the materials and payment by cheque; the appellants have maintained day to day statutory records regarding receipt and use of inputs and manufacture of finished goods and clearance of finished goods on payment of duty using the cenvat credit so taken by them on the inputs. All the alleged consignees of the inputs as per octroi records maintained at Khanna city octroi post had denied having received the materials. Under these circumstances, relying on the octoi records brushing aside the concurrent version of the supplier of the inputs and recipient of the inputs is not justified. He also submits that no statements have been taken by the Department from the transporters or the drivers. No allegation has been made that there was flow back of payments made by them to M/s J.K. Jindal & Sons. Under these circumstances, he submits that confirmation of demand of duty of Rs.4,09,782/- along with interest and imposition of equal amount as penalty on the appellant M/s Northern India Steel Rolling Mills are not justified. Learned Advocate submits that in similar cases, the Tribunal has set aside the demand and penalty in Final Order No.1636-1639/08 dated 28.11.2008 in Central Excise Appeal No.740, 755-757/07 in the case of C.C.E., Chandigarh vs. M/s Param Steel Indus. and others which has been upheld by the High Court. He also relies on the decisions of the Tribunal in the case of Modern Alloys vide Final Order No.1640/08 dated 28.11.2008 against which the appeal filed by Revenue has been dismissed by the Hon'ble High Court of Punjab and Haryana vide order dated 16th November 2009 in Central Excise Appeal No.94/2009.

4.2 Shri Atul Gupta, learned Company Secretary representing M/s A.R. Alloys adopted the submissions made by Shri Hemant Bajaj. In addition, he submits that no evidence has been adduced by the Department about the procurement of raw materials other than what was claimed by them to have been received from M/s J.K. Jindal & Sons. They had used the materials procured, manufactured final products and cleared the same. As the moment of the goods was by the local transport, the G.Rs. were not being issued as a matter of practice. The payment of duty on the final products by them is not in dispute. Further, the allegation of diversion of the inputs to Khanna city based re-rollers have not been proved by the Department adducing evidences like payment for such materials by them. He draws my attention to the grounds of appeal by the Department which refers to the previous order of the Commissioner (Appeals) relating to M/s Swastic Steel and others and submits that the appeals have been disposed of by the Tribunal in favour of the parity vide Final Order No.1315A to 1322/08 dated 3.6.08 which has been upheld by the High Court.

4.3 Shri Atul Gupta on behalf of M/s J.K. Jindal & Sons and Shri Jatinder Kumar submits that the inputs as per the invoices have been supplied and payments have been made received through banking channels. The evidence given by the recipients is supporting the claim of M/s J.K. Jindal & Sons. On the other hand, the statements of Khanna city based re-rollers do not support the case of the Department. Therefore, no penalty can be imposed on M/s J.K. Jindal & Sons and its proprietor. At any rate, no separate penalties can be imposed on the proprietary concern and proprietor.

4.4 Shri Siddharth Joshi, learned Advocate representing Khanna city based re-rollers submits that none of them received the materials allegedly diverted by M/s J.K. Jindal & Sons. No reliance can be placed on the octroi records to show that the materials have been actually received by these parties. None of them have taken any cenvat credit and the question of conniving with M/s J.K. Jindal & Sons does not arise. He seeks that the penalty upheld by the Commissioner (Appeals) against M/s Dhiman Steel and Agro Industries and M/s Surya Ispat Udyog should be set aside. In respect of others, he seeks that the order of the Commissioner (Appeals) setting aside the penalties should be upheld.

5. Learned SDR submits that as a registered dealer M/s J.K. Jindal & Sons are under obligations to fulfil certain conditions to enable them to pass on the credit; M/s A.R. Alloys and M/s Northern India Steel Rolling Mills are entitled to take credit only subject to receipt of the inputs along with duty paying documents and use of the same for the intended purposes. The burden of proving that they have satisfied these conditions are ~~is~~ on the recipients M/s A.R. Alloys and M/s Northern India Steel Rolling Mills so that they are eligible for the credit. Inasmuch as the investigation by the department revealed that the consignments with the same description, same quantities in the vehicles with same number have been shown to have been passed through Khanna city based octroi post, the burden heavily shifts to M/s A.R. Alloys and Northern India Steel Rolling Mills to prove that the goods were actually received by them. They have not produced any G.Rs. or other evidence like payment of freight for transport of consignments. In view of the above, the credit has been rightly denied and penalties imposed on M/s J.K. Jindal & Sons as well as the persons who have taken credit based on mere invoices without receiving the goods. He also reiterates the grounds of appeal relating to penalties on Khanna city based re-rollers who have received the consignments as per octroi receipts and have failed to record the receipts in their accounts and thus connived in irregular availment of credit by M/s A.R. Alloys and M/s Northern India Steel Rolling Mills.

6. I have carefully considered the submissions from both sides. The allegation on behalf of the Department is that M/s J.K. Jindal & Sons supplied the inputs to re-rollers at Khanna city without invoices and raised only invoices to Mandi Gobingarh based A.R. Alloys and Northern India Steel Rolling Mills. Undisputedly, the invoices issued to Mandi Gobingarh based manufacturers contained certain vehicle numbers. The octroi receipts also contained the same vehicle numbers in addition to other details like description of goods, quantity of goods and consignee of the goods. However, it is not forthcoming from the records as to whether the octroi records indicated the names of consignor. The Tribunal directed the Department to produce the octroi receipts, invoices and truck receipts vide order dated 21.10.09. These records could not be produced by the Department before me.

7. Learned Advocates contesting the demands against M/s Northern India Steel Rolling Mills and A.R. Alloys heavily relied on the decisions of the Tribunal in the case of Param Steel Industries and others and in the case of Modern Alloys and in both these cases, the Department filed appeal before the Hon'ble High Court of Punjab and Haryana. The relevant portion of the decision of the Hon'ble Punjab & Haryana High Court in CEA No.94 of 2009 are produced below:

> " ***This appeal filed by Revenue under Section 35G of the Central Excise Act, 1944 (for brevity, the Act) challenges order dated 28.11.2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, the Tribunal).The Revenue has claimed that following substantive question of law would arise for determination of this Court:-***
>
> > '***Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the octroi receipts containing details of vehicle no., description and quantity of goods issued by the State Revenue Authority authenticating removal of goods but without consignor's name & address and his bill no., do not constitute sufficient evidence for holding that the goods covered under the octroi receipts were not received by*** the parties enabling them to take cenvat credit immediately.'
>
> ***Having heard learned counsel for the revenue, we find that the matter is no longer res integra. A similar question of law came up for our consideration in the case of Commissioner of Central Excise , Chandigarh v. M/s Swastik Steel Works (CEA No.47 of***

2009, decided on 8.7.2009) and other connected appeals. In the said case the Tribunal has placed reliance on the findings recorded by the Commissioner (Appeals) that no reliance could be placed on the octroi receipts which do not contain any iota of evidence that the material mentioned therein had been cleared/sold by one M/s Surbhi Gas Service, Mandi Gobindgarh. The receipts only depicted the description of the goods and vehicle number but do not establish by any evidence that the octroi receipts relate to M/s Surbhi Gas Service as it did not contain any reference to their name or their bill number. It was further held that no enquiry was made by the Revenue from the Octroi Post Authorities as to how and on what basis octroi receipts were issued and, therefore, the charges against the dealer-assessee remained unsubstantiated. Accordinlgy, the aforementioned appeals were dismissed holding that no question of law much less a substantive question of law would arise for determination of this Court because pure findings of fact were recorded. Same is the position in the instant appeal. Accordingly, there is no merit in the instant appeal and the same is also dismissed."

In the absence of the octroi receipts and in the absence of clear cut findings on this issue by the original authority and the Commissioner (Appeals), I deem it appropriate that the matter should be considered afresh by the original authority.

8. There is one more reason for ordering de novo consideration of the entire issues. The basic issue relates to whether the consignments covered by the invoices were delivered to Mandi Gobingarh based manufacturers namely M/s A.R. Alloys and M/s Northern India Steel Rolling Mills or were diverted to Khanna city based re-rollers or to any other parties. M/s A.R. Alloys and Northern India Steel Rolling Mills merely submitted that they have received the consignments covered by the invoices. Undisputedly, the consignments were in huge quantities and could have been transported only using trucks or other transport vehicles. As several consignments using several trucks as per invoices were claimed to have been transported, it may be possible for M/s A.R. Alloys and Northern India Steel Rolling Mills to produce evidence, if any, relating to transport of such consignments instead of merely making a submission that the goods have been received and utilised.

9. On the above grounds , I deem it appropriate to remit the matter to the original authority for fresh consideration of all the issues.

10. In view of the above, I set aside the orders of the Commissioner (Appeals) and original authorities in so far as the same relate to appellants M/s A.R. Alloys , Northern India Steel Rolling Mills, Dhiman Steel & Agro Industries, Surya Ispat Udyog and orders of the lower authorities relating to the respondents in other cases and remit the matter to the original authority for fresh consideration after granting reasonable opportunity of hearing and after taking into account the observations as above. The parties are permitted to adduce evidence within 45 days from the date of receipt of this order.

11. The appeals of the parties and those of the Department are allowed by way of remand as above.

(M. Veeraiyan)
Member (Technical)

scd/