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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/3116/2007-3144/2007 – SM[BR] Date 27/01/2010

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

M/S SPARK STEEL SALES Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 125 – 153 / 2010 –SM[BR] dated 7.1.2010 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 SPARK STEEL SALES
   MOTIA KHAN, MANDI GOBINDGARH
2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.
   H.NO.5, SECTOR10-A, CHANDIGARH
   2. SHRI SAURABH KAPOOR ADV.
   141, SECTOR27-A, CHANDIGARH
   3. SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI
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

2. M/ S PUNJAB STEEL FORGING & AGRO INDUSTRIES MANDI GOBINDGARH

Assistant Registrar
(SM Appeal Branch)

P.T.O.→

3. M/S SHIV SHANKAR IRON & STEEL TRADING CO.
MANDI GOBINDGARH
4. M/S KRIHNA ALLOYS [P] LTD.
MANDI GOBINDGARH
5. M/S SHIV SHANKAR IRON & STEEL TRADING CO.
MANDI GOBINDGARH
6. M/S RANJEEV ALLOYS LTD.
MANDI GOBINDGARH
7. M/S SHIV SHANKAR IRON & STEEL TRADING CO.
MANDI GOBINDGARH
8. M/S SHIV SHANKAR ;-------------------------------------
9. M/S SHIV SHANKAR ;-----------------------------------
10. M/S SHIV SHANKAR;-----------------------------------
11. M/S L.R. ALLOYS [P] LTD.
MANDI GOBINDGARH
12. M/S SPARK STEEL SALES, MOTIA KHAN
MANDI GOBINDGARH
13. M/S SHIV SHANKAR IRON & STEEL TRADING CO.
MANDI GOBINDGARH
14. M/S NARAIN & CO. G.T. ROAD
MANDI GOBINDGARH
15. M/S RAGHAV ALLOYS [P] LTD.
MANDI GOBINDGARH
16. M/S SHIV SHANKAR IRON & STEEL TRADING CO.
MANDI GOBINDGARH
17. M/S K.L. ALLOYS [P] LTD.
MANDI GOBINDGARH
18. M/S NARAIN & CO. G.T. ROAD
MANDI GOBINDGARH
19. M/S PUNJAB STEEL AMLOH ROAD.
MANDI GOBINDGARH
20. M/S NARAIN & CO. G.T. ROAD
MANDI GOBINDGARH
21. M/S NARAIN & CO;---------------------
22. M/S BASSI ALLOYS [P] LTD.
MANDI GOBINDGARH
23. M/S NARAIN & CO. LTD. G.T. ROAD
MANDI GOBINDGARH
24. M/S NABHA STEEL LTD.
MANDI GOBINDGARH
25. M/S NARAIN & CO. G.T. ROAD
MANDI GOBINDGARH
26. M/S TWENTY FIRST CENTURY STEEL LTD.
MANDI GOBINDGARH
27. M/S A.R. CASTINGS [P] LTD.
MANDI GOBINDGARH
28. M/S JAGAT METALS [P] LTD.
AMBEY MAJRA MANDI GOBINDGARH
29. M/S PUSHPANJALI STEEL ALLOYS [P] LTD.
MANDI GOBINDGARH

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

**COURT-III**

**Single Member Bench**

**Date of hearing/decision: 7.1.2010**

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. | Central Excise Appeal No. | Name of the appellant | Respondent | Arising out of the order in appeal No. and date | Passed by the |
|---|---|---|---|---|---|
| 1. | 3116/07 | C.C.E., Chandigarn | Spark Steel Sales | 370-398/ CE/CHD/07 dated 12.092007 | C.C.E. (Appeals) Chandi-garh |
| 2. | 3117/07 | -do- | Punjab Steels Forgings & Agro Industries | -do- | -do- |
| 3. | 3118/07 | -do- | Shiv Shankar Iron & Steel Trading Co. | -do- | -do- |
| 4. | 3119/07 | -do- | Krishna Alloys P. Ltd. | -do- | -do- |
| 5. | 3120/07 | -do- | Shiv Shankar Iron & Steel Trading Co. | -do- | -do- |
| 6. | 3121/07 | -do- | Rajeev Alloys Ltd. | -do- | -do- |
| 7. | 3122/07 | -do- | -do- | -do- | -do- |
| 8. | 3123/07 | -do- | -do- | -do- | -do- |
| 9. | 3124/07 | -do- | -do- | -do- | -do- |
| 10. | 3125/07 | -do- | -do- | -do- | -do- |
| 11. | 3126/07 | -do- | L.R.Alloys P. Ltd. | -do- | -do- |
| 12. | 3127/07 | -do- | Spark Steel Sales | -do- | -do- |
| 13. | 3128/07 | -do- | Shiv Shankar Iron & Steel Trading Co. | -do- | -do- |
| 14. | 3129/07 | -do- | Narain & Co. | -do- | -do- |

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|---|---|---|---|---|---|
| 15. | 3130/07 | -do- | Raghav Alloys P. Ltd. | -do- | -do- |
| 16. | 3131/07 | -do- | Shiv Shankar Iron & Steel Trading Co. | -do- | -do- |
| 17. | 3132/07 | -do- | K.L. Alloys P. Ltd. | -do- | -do- |
| 18. | 3133/07 | -do- | Narain & Co. | -do- | -do- |
| 19. | 3134/07 | -do- | Punjab Steels | -do- | -do- |
| 20. | 3135/07 | -do- | Narain & Co. | -do- | -do- |
| 21. | 3136/07 | -do- | -do- | -do- | -do- |
| 22. | 3137/07 | -do- | Bassi Alloys P. Ltd. | -do- | -do- |
| 23. | 3138/07 | -do- | Narain & Co. | -do- | -do- |
| 24. | 3139/07 | -do- | Nabha Steels Ltd. | -do- | -do- |
| 25. | 3140/07 | -do- | Narain & Co. | -do- | -do- |
| 26. | 3141/07 | -do- | Twenty First Century Steels Ltd. | -do- | -do- |
| 27. | 3142/07 | -do- | A.R. Castings P. Ltd. | -do- | -do- |
| 28. | 3143/07 | -do- | Jagat Metals P. Ltd. | -do- | -do- |
| 29. | 3144/07 | -do- | Pushpanjali Steel Alloys P. Ltd. | -do- | -do- |

Appearance:

Shri S. N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue
S/Shri Saurabh Kapoor, Vikrant Kackria, Manish Saharan, Advocates for the respondents

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

Oral Order No. 125-153/2010 SM (Br)

Per M. Veeraiyan:

All these appeals by the Department arise out of a common order in appeal No. 370-398/ CE/CHD/07 dated 12.092007 passed by the Commissioner (Appeals), Chandigarh.

2.1. Heard the learned SDR for the Department. Heard the learned Advocate Shri Vikrant Kackria , who represented for Punjab Steel Forging & Agro Industries, Krishna Alloys (P) Ltd., Rajeev Alloys Ltd., K.L. Alloys Ltd., Nabha Steels Ltd. and Pushpanjali Steel Alloys Ltd. Heard the learned Advocate Shri Saurabh Kapoor who represented for Spark Steel Sales, Shiv Shankar Iron & Steel Trading Co., Rajeev Alloys Ltd. Also heard the Company Secretary Shri Atul Gupta and Shri Manish Saharan, Advocate who represented for Twenty First Century Steels Ltd. There is a request by the learned Advocate Shri Gaurav Aggarwal seeking adjournment of some of the appeals listed today in respect of A.R.Castings (P) Ltd., L.R. Alloys (P) Ltd., Raghav Alloys (P) Ltd., Spark Steel Sales, Bassi Alloys (P) Ltd., Jagat Metals (P) Ltd., Narain & Co. and Punjab Steels. In view of the order proposed to be passed, in other cases, these appeals are also being disposed off.

2.2. The respondents in Appeals No.E/3116/07, E/3118/07, E/3120/07, E/3122/07, E/3123/07, E/3124/07, E/3125/07, E/3127/07, E/3128/07, E/3129/07, E/3131/07, E/3133/07, E/3135/07, E/3136/07, E/3138/07, E/3140/07 are importers who imported heavy melting scrap under concessional rate of duty. These importers were registered under Section 6 of the Central Excise Act read with Rule 9 of Central Excise Rules as dealers with a view to pass on Cenvat credit as first stage dealers.

2.3. The respondents in rest of the Appeals No. E/3117/07, E/3119/07, E/3121/07, E/3126/07, E/3130/07, E/3132/07, E/3134/07, E/3137/07, E/3139/07, E/3141/07, E/3142 to 3144/07 are manufacturers of iron and steel products who have claimed to have received the inputs from the above mentioned registered dealers.

3.1 The facts of the case are that on the basis of information that the said importers - registered dealers have diverted the imported goods and issued only invoices and based on such invoices and without receiving the inputs the respondents-manufacturers have taken credit illegally and used them for paying duty on the final products manufactured and cleared by them. Investigations were commenced including about the vehicles claimed to have been used to transport the heavy melting scrap from the dealers' premises to the manufacturers. In many cases, it was found that the invoices carried the vehicle numbers which were not even allotted by the DTO/RTA; in certain cases, the vehicle numbers recorded in the documents were found to be numbers allotted to the three wheelers/two wheelers, auto cycles, jeep/passenger cars. The original authority held that the goods could not have been actually supplied by the registered dealers to the manufacturers;

the invoices issued by them were not proper documents for the purpose of passing on the credit; the credit taken by the manufacturers based on such documents were not available to them and therefore, to be recovered. On such findings, the original authority ordered recovery of duty equivalent to the credit availed by the manufacturers; authority also imposed penalty on the manufacturers equal to the credit wrongly availed and utilised by them; the original authority also imposed varying amounts as penalties on the registered dealers.

3.2 On appeals by the importer-registered dealers and the manufacturers, the Commissioner (Appeals) set aside the orders of the original authorities as above. As a result, the Department is in appeal.

4.1 Learned SDR reiterating the grounds of appeal draws my attention that the registered dealers have imported the impugned inputs under concessional rate of duty in terms of Notification No.17/2001-Cus dated 1.3.2001. The end-use certificates by the Central Excise authorities were, prima facie, based only on records and not based on actual verification. The importers-dealers have not offered explanation as to how the goods could have been transported by non-transport vehicles. Further, some of the vehicle numbers on the documents were numbers which have not been allotted by the transport authorities. Under these circumstances, the dealers have not discharged the burden to prove that the goods have been supplied to the manufacturers. He submits that it is a case of wide spread fraud involving diversion of the imported goods and therefore, the documents based on which the manufacturers have taken credit are not proper documents enabling the manufacturers to take credit. Under these circumstances, the orders of the original authority in confirming demand of duty and imposition of penalties on the importers-registered dealers and manufacturers are justified and therefore, the order of the Commissioner (Appeals) should be set aside and the orders of the original authority should be restored.

4.2 The Learned SDR relies on the following decisions:

*i) Ranjeev Alloys Limited vs. C.C.E., Chandigarh - 2009(236) ELT 124 (Tri-Del.)*

*ii) Kamal Castings and others vs. C.C.E., Chandigarh - Final Order No.799-828/2009-EX dated 16.9.09*

*iii) Shri Vinod Kumar Gupta vs. C.C.E., Chandigarh - Final Order No.829/09-Ex. dated 16.9.09.*

*iv) Shri Hari Steel Industries vs. C.C.E., BBSR-II - 2003 (160) ELT 161 (Tri-Kolkata)*

*v) Mahesh C. Kadakia vs. C.C. & Cus., Nasik - 2007 (217) ELT 223 (Tri-Mumbai)*

*vi) R.K. Induuction Industries P. Ltd. vs. C.C.E., Jaipur - 1998 (97) ELT 342 (Tri)*

5.1. Shri Saurabh Kapoor, learned Advocate on behalf of Shiv Shankar Iron & Steel Trading Company , importers-registered dealers made the following submissions:

The imported materials have been supplied by them as per invoices to the manufacturers concerned. The payments for supply have been received through banking channels. The mere fact that the vehicle numbers were found to be of the non-transport vehicles cannot lead to the conclusion that the transportation has not taken place and that the goods have not been delivered to the manufacturers as per invoices. In all probability, the vehicle owners/ transport union might have used wrong vehicle numbers for their own purposes like evading local taxes. There is no basis for the original authority concluding that the goods have not been supplied to the manufacturers. Investigators as well as the adjudicating authority have not revealed as to "who had purchased the same" and "why a person would make a payment or receive the payment without corresponding sales/purchase of the sale". In view of the above, the conclusion reached by the original authority that the importers-registered dealers have not supplied the goods as per invoices is erroneous and therefore, the Commissioner (Appeals)'s order setting aside the penalties on them should be upheld. Learned Advocate seeks for remanding the matter, if need be, so that evidence can be produced by them before the original authorities.

5.2. Learned Advocate Shri Vikrant Kackria and Shri Atul Gutpa on behalf of manufacturers made the following submissions:

They have received materials from the registered dealers and only the registered dealers arranged for transport. It was not expected of them to verify the correctness of the vehicle numbers in each case when they have received goods. They have made payments through banking channels for the goods received by them. They have utilised the goods received under the invoices by them for manufacture and the credit taken has been utilised for paying duty on the finished goods. In fact, they have got end-use certificates duly given by the jurisdictional Central Excise authorities. Even after the commencement of investigations about alleged fake vehicle numbers, the jurisdictional Central Excise authorities have issued end-use certificates. The show cause notices has been issued long after the investigation. As manufacturers, they have received the goods from the registered dealers who are in existence and paid for the goods through banking channels. Therefore, the demand on the findings of irregular availment of Cenvat credit and imposition of penalties are not justified. On behalf of the manufacturers also , prayer was made that the matter may be remanded to the original authority as was done in similar cases.

6.1. I have carefully considered the submissions from both sides and perused the records. The registered dealers were actually importers of melting scrap who imported the said inputs under concessional rate of duty in terms of Notification No.17/2001-Cus dated 1.3.2001. As importers they had obligations to fulfil the conditions under Notification No.17/2001-Cus dated 1.3.2001 which reads as under:

*18. " If, -*

*(a) the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, that such imported goods will be used for the purpose specified and in the event of his failure to comply with this condition, he shall be liable to pay, in respect of such quantity of the said goods as is not proved to have been so used, an amount equal to the difference between the duty leviable on such quantity but for the exemption under this notification and that already paid at the time of importation; and*

*(b) the importer produces to the said Deputy Commissioner or 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 said goods have been used in such unit, that the said goods has been so used".*

As dealers, they have claimed that the consignments of imported scrap have been supplied to various melting units who are manufacturers-respondents. It was also claimed that the jurisdictional Central Excise authorities have issued end-use certificates. According to the Learned SDR the said end-use certificates are, prima facie, based on records produced by the said manufacturers- respondents and they cannot be reliable evidence in the light of the major discrepancies in their claim of transporting of the goods to the manufacturers. The burden to prove that the importers-Registered dealers have fulfilled the condition under the exemption Notification is on them.

6.2. It is a strange case where a large number of vehicles shown to have been used for transport of huge quantity of melting scrap in the range of 10 to 12 MTs. per trip contained vehicle numbers of two wheelers/three wheelers, passenger cars, jeeps etc. which obviously could not transport such huge quantity of materials. In some cases, the claimed vehicle numbers have not even been allotted by the concerned authorities to any vehicles. It was claimed that the dealers have arranged the transports. On behalf of the registered dealers, it was claimed that the persons availing the services of vehicles for transportation of goods were not expected to verify the correctness of vehicle numbers. It was also claimed that the discrepancies could be mischief of the transport companies and the transporters.

6.3 The dealers who are permitted to pass on credit under the Cenvat Scheme are registered under Rule 9 of Central Excise Rules read with Section 6 of the Central Excise Act.

The obligation of the registered dealers have been considered by the Tribunal in the case of V.K. Enterprises and others - 2010 (249) ELT 462 (Tri.-Del.) and the relevant portions are reproduced below:

> ***9.1 The registered dealers, thus, have specific roles and obligations in the context of Cenvat Scheme.The role of the dealers, thus, include procurement of duty paid inputs along with duty paying documents, maintaining accounts of receipt and storage and disposal of the inputs; while selling the goods to second stage dealers/or manufacturers issue cenvat invoices to pass on proportionate credit to the buyers relating to the goods sold to them. The role of the second stage dealers is similar; while selling the goods by second stage dealers to manufacturers, they are required to issue cenvat invoices to pass on proportionate credit to the buyers relating to the goods sold to them.***
>
> ............
>
> ***9.3 The dealers were not registered with excise authorities to deal in cenvatable invoices but to deal in duty paid excisable goods and, in the process, to issue cenvatable invoices while selling the said duty paid goods. The dealers are required to buy duty paid goods from the manufacturer along with duty paying documents and take credit. When the registered dealer issues invoices enabling the buyer to take credit, it goes without saying that the goods have to be supplied.***
>
> ............
>
> ***18. From the above, the following emerges:***
>
> ***a) The term excisable goods has been defined as goods mentioned in the Schedules to the Central Excise Act, 1985 as subject to excise duty. The inputs involved in the present cases are clearly excisable goods and there is obligation of accounting the receipt, storage and disposal goods in the manner prescribed is cast on the persons who have taken Cenvat credit. In view of this the term should include excisable goods on which the registered dealers/manufacturers have taken Cenvat credit.***

*(b) The first stage dealers have purchased, from SAIL stock yard, the duty paid goods and sold the said goods with out raising invoices, in the grey market on cash basis; they have shown the goods as if received in their registered premises; made entries in the stock registers; took credit; prepared invoices in relation to goods which have already been diverted; prepared or got prepared transport documents; received payments in respect of the said diverted goods; in the process they passed on the credit of duty paid by SAIL. In respect of the second stage dealers, situation is identical as in the case of the first stage dealers except that they have shown purchase from first stage dealers the duty paid goods. Possession of the goods is no doubt a must for the purpose of transporting. However, possession is not a must for dealing otherwise in the goods like purchase or sales.*

*c) There is also a clear obligation on the part of any registered dealers who have purchased the excisable goods and taken credit and passed on the credit to the manufacturer of final products not to act in any way which is prejudicial to utilisation of the input for the intended purpose.*

*There is also a continuing obligation to account for the goods on which the credit was taken and passed on. The goods have moved in an undisclosed direction and financial transactions have been fraudulently made to avail and utilise ineligible credit. There is a clear obligation on the part of any manufacturer who has received the excisable goods and taken credit to utilise the same for the intended purpose. Thus, the obligation is on the manufacturer/registered dealer to account for the goods on which the credit has been taken and that the said obligation is a continuing obligation even when the credit is transferred through the dealers.*

*(d) The registered dealers have clearly dealt with the duty paid goods on which credit has been taken by the ultimate users. The action of the registered dealers in having diverted the said goods, have rendered the said goods liable for confiscation. Having diverted the goods and having taken credit and having passed on the credit, the registered dealers have by their action rendered the goods so diverted liable for confiscation; they have also rendered themselves liable for penal action.*

*(e) The documents issued by these dealers /manufacturers without supply of goods are clearly invalid documents and no credit can be passed through such documents and no such credit can be taken by the recipients.*

*(f) United Chain Industries and Kay Iron Works, having availed the credit in respect of inputs namely, HR coils and CR*

***coils and having utilised the same towards payment of duty on capital goods, the credit so taken being irregular the same is recoverable from them along with interest. They are also liable for penalty under sub-rule (2) of Rule 13 of the CENVAT Credit Rules, 2001/2002, under sub-rule (2) of Rule 15 of the CENVAT Credit Rules, 2004, read with Section 11AC of the Central Excise Act, 1944. Their liability to duty and penalty is unaffected by the subsequent events relating to the "ultimate users" including their settling the cases before the Settlement Commission, as the offences by the ultimate users are separate from the offences of these parties.***

6.4 The registered dealers can pass on the credit to the manufacturers only subject to fulfilment of their obligations as mentioned above. The documents issued by them should meet certain criteria for being considered as valid documents. When the Department has shown that certain particulars relating to transport of the goods mentioned therein are on the face of it wrong, the burden of proving that the goods mentioned in the documents were delivered to the manufacturers is shifted to the said dealers. Even if their claim that they could not/need not verify the correctness of the vehicle numbers as given by the transporters were to be accepted, it is to be observed that nothing prevented them from adducing other evidence relating to transport of the goods to the manufacturers. They could have identified the persons who actually transported or persons who arranged the transport vehicles, and from the manner of payment of freight i.e., if paid by cheque and other like evidences.

6.5 The eligibility for taking of credit by the manufacturers on the basis of documents issued by the dealers is necessarily dependent upon the eligibility of the dealers to pass on the credit. If the goods are not proved to have been delivered by the dealers to the manufacturers, the invoices issued by the dealers could not be treated as valid documents for passing on the credit. In other words, if it was held that the dealers were not eligible to pass on the credit, in view of serious defects in the documents, the question of manufacturers taking credit based on such ineligible documents will not arise. The burden to prove that the documents under which credit taken are valid documents is shifted to the manufacturers after major discrepancies have been brought out by the Department.

6.6 The submissions on behalf of the Registered Dealer that the Department has not revealed as to who had purchased the allegedly diverted materials and why a person would make a payment or receive payment without corresponding sale/purchase are devoid of merits. In view of the discrepancies in the documents, it was for the respondents to prove that the dealers supplied the impugned inputs and that the manufacturers received them.

7.1. Commissioner (Appeals) has dealt with the 29 appeals before him by a very cryptic order with the following findings:

> ***"7. I have examined the records including the appellants submissions made at the time of personal hearing. The Department's allegation is that the manufacturers had availed the Cenvat Credit on the basis of the invoices only without actual receipt of the inputs as the vehicles Nos. reflected in those invoices are those of Auto Cycles,Scooters, Jeep and Nos. not even allotted to any vehicle and that those vehicles were not capable of transporting such heavy quantity of HMS, so the transaction is only on papers made by the Registered Dealers to facilitate the manufacturers to avail the Cenvat Credit fraudulently. The Department's allegation is based upon the verification of the vehicle in question caused from the concerned DTO/RTO. The appellant contended that the transporter generally use fake number plate to avoid taxes leviable and that mentioning of wrong vehicle numbers on the invoices issued by the registered dealers did not warrant any action as they had taken the Cenvat Credit on the basis of the materials received.***
>
> ***From the case records, I find that the appellants have relied upon Final Order No.958-978/07-SM(BR) dated 29.5.2007 passed by CESTAT, New Delhi in the appeal case of Commissioner of Central Excise,Chandigarh vs. M/s TATA Iron & Steel Co.Ltd. & Others in support of their submissions that he Cenvat credits availed by them in the above mentioned circumstances could not be denied. I have perused the facts and findings contained in this judgment. The Hon'ble CESTAT after relying upon their earlier judgment in the case of C.C.E., Chandigarh vs. Neepaz Steels (India) and others – Final Order No.437 to 447/07 dted 5.4.2007 has held that the Cenvat credit to the appellants were eligible***

***since the inputs were received by the appellants, payments made thereof and also the details of such inputs were shown in the RT-12 returns submitted to the Department . I find that the facts in the present appeals are identical to the above case law relied upon by the appellants wherein the Hon'ble CESTAT after consideration of the above discussed evidence had allowed the Cenvat credit in such transaction. Therefore, following the ratio of the above decision in the cited case, I set aside the orders appealed against.***

7.2. The Commissioner (Appeals) has not dealt with the obligations the registered dealers in relation to passing on the credit and ~~there~~ those of the manufacturers in relation to taking the credit. He has not discussed as to how the facts of these cases are identical the facts of case he relied up on. The department is relying up on several decisions which have been rendered after passing of the order by the original authority. The original authority has not given his finding on some of the issues raised now, like the end-use certificates relied upon by the respondents. On behalf of the respondents, prayer has been made that they should be given another opportunity to prove that the dealers have indeed supplied the impugned inputs to the manufacturers and that the latter have received them and used them in the manufacture.

7.3. The manufacturers shall be eligible to take credit only when they have received duty paid goods under cover of invoices which are prescribed for the said purpose. The eligibility of credit to the manufacturers presupposes the eligibility of the registered dealers to pass on to the credit which is based on factual verification that the goods mentioned as per invoices have indeed been delivered by them to the manufacturers. The claims made by the dealers form the basis for the availability of credit to the manufacturers and the issues are fully interlinked.

7.4 The learned Advocates for the respondents request for remand of the matters for fresh consideration. In the interest of justice and to enable them to produce evidence , if any in this regard, the request on behalf of the respondents for remand of the matters is also justified. In view of the above, the respondents deserve to be given an opportunity to show that they have fulfilled their obligations as registered dealers in passing on the credit and their obligation as manufacturers to take credit.

8. To enable the same, the orders of the Commissioner (Appeals) and the orders of the original authority are set aside and the matters remanded to original authority for fresh consideration in the light of above observations. The respondents are directed to make written submissions if any, along with evidence within 45 days from the date of receipt of this order.

9. The original authority shall given detailed findings in respect of each of the issues involved in the above cases taking in to account the submissions raised by the respondents. He shall grant reasonable opportunity to the parties before decision is taken.

10. Appeals are allowed by way of remand on the above terms.

(M. Veeraiyan)
Member (Technical)

scd/