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/3173/2007 – SM[BR] Date 28/09/2010

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 GARG CONCAST LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1092 / 2010-SM[BR] dated 9.9.2010 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 GARG CONCAST LTD
   G.T.ROAD, DORAHA DISTT- LUDHIANA(PB)
2. Adv. / Consult SHRI KAMAL JEET SINGH ADV.
   M/S RESPONDENT:------------------

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

Date of hearing:9.9.2010

Central Excise Appeal No.3173 of 2007-SM

Arising out of the order in appeal No.264/CE/Appl/Jal/2007 dated 6.9.2007 passed by Commissioner (Appeals), Central Excise , Jalandhar.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

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

C.C.E., Ludhiana ... Appellant

Vs.

M/s Garg Concast Limited ... Respondent

Appearance:

Shri Anil Khanna, Authorized Departmental Representative (SDR) for the Revenue and Shri Kamal Jeet Singh, Advocate for the respondents

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

Final Oral Order No. 1092/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 264/CE/Appl/Jal/2007 dated 6.9.2007.

2. Heard both sides.

3. A show cause notice dated 1.7.2005 was issued proposing denial of modvat credit to the tune of Rs.2,27,333/- taken by M/s Garg Concast Limited on the strength of invoices received from M/s Neepaz Steel (India), a registered dealer , who in turn, has shown purchase of material from TISCO, Mandigobind Garh. Show cause notice alleged various discrepancies in the invoices relating to vehicles said to have been used for transportation. The original authority dropped the proceedings initiated to deny the credit against M/s Garg Concast Limited and at the same time, imposed penalty of Rs.25,000/- each on M/s Neepaz Steel (India) and M/s TISCO. On appeal by the Department against dropping of proceedings demanding duty, the Commissioner (Appeals) upheld the order of the original authority.

4. Learned SDR submits that the order of the original authority is contradictory as he has imposed penalties on the supplier of the material including the registered dealer and the same time, held that the recipient is eligible for modvat credit. Learned SDR relying on the decision of the Tribunal in the case of Ranjeev Alloys Limited vs. C.C.E., Chandigarh reported in 2009 (236) ELT 124 which stands upheld by the Hon'ble High Court of Punjab and Haryana submits that there has been a conspiracy in taking credit without actually receiving the goods. The manufacturing unit has not proved that the goods have been received after the Department brought out several discrepancies in their claim for transportation of the goods.

5. Learned Advocate for the respondents supports the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides and perused the records. The denial of credit was proposed on the ground that the respondents have not received the duty paid goods as per the invoices in view of various discrepancies mentioned in the show cause notice. Apparently, there is a contradiction in the order of the original authority in imposing penalties on M/s TISCO and the registered dealer, namely, M/s

Neepaz Steel (India) and at the same time, setting aside the demand of duty on M/s Garg Concast Limited. Both sides are not in a position to submit as to whether the other two parties have filed any appeal before the Commissioner (Appeals) and if so, the status of appeal. Therefore, I set aside the order of the Commissioner (Appeals) and that of the original authority in so far as the same relates to dropping of proceedings against M/s Garg Concast Limited and remit the matter to the original authority for fresh consideration in the light of the decision of the Tribunal in the case of Ranjeev Alloys Limited vs. C.C.E., Chandigarh cited supra. The respondents shall be heard by the original authority before decision is taken.

(M. Veeraiyan)
Technical Member

scd/