

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/199 - 207 /2009 – SM[BR]

Date 02/12/2010

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 ANSHUL STEEL SCRAP CORPORATION,

I am directed to transmit herewith a certified copy of Final order No. 1324 – 1332 / 2010-SM[BR] dated 16.11.2010
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 ANSHUL STEEL SCRAP CORPORATION,

2 KM, INDUSTRIAL AREA, PHASE-I, CHANDIGARH.

2. Adv. / Consult

MR.BIPIN GARG

[2] SHRIVIKRANT KACKRIA ADV.

B-1/1289,A-VASANT KUNJ, NEW DELHI

H.NO.-5, SECTOR 10-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 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 (Harvana)

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

2. M/S A.K.TRADING CO. PVT. LTD.
VILLAGE PABHAT, ZIRAKPUR.


Assistant Registrar
(SM Appeal Branch)

P.F.O. →

3. M/S ANSHUL STEEL SCRAP CORPORATION,
MOTIA KHAN MANDI GOBINDGARH.
4. M/S N.K. TRADING CO. MOTIA KHAN
MANDI GOBINDGARH.
5. M/S B.D. GUPTA & SONS MOTIA KHAN, MANDI GOBINDGARH.
6. M/S RATTAN STEEL INDUSTRIES ,
G.T.ROAD, MANDI GOBINDGARH.
7. M/S DINESH KUMAR, SUDHIR KUMAR,#170,
SECTOR-20,BLOCK-B,OPP.STEEL&AGRO IND.
OUTSIDE NANDIAL MARKET MANDI GOBINDGARH
8. M/S MINI ISPAT, OPP.RAILWALY STATION, MANDI
GOBINDGARH..
9. M/S MINI STEEL TRADERS OPP. RAILWAY STATION.
MANDI GOBINDGARH.

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

Excise Appeal No. 199 - 207 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 524-535/CE/CHD/2008 dated 31.10.2008 passed by the Commissioner of Central Excise(Appeals), Chandigarh]

For approval and signature:

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

- | | |
|--|-------------|
| 1. Whether Press Reporters may be allowed to see :
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982? | <i>Yes</i> |
| 2. Whether it should be released under Rule 27 :
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not? | <i>Yes</i> |
| 3. Whether Their Lordships wish to see the fair :
copy of the Order? | <i>Seen</i> |
| 4. Whether Order is to be circulated to the :
Departmental authorities? | <i>Yes</i> |
-

Excise Appeal No. 199, 201 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. Anshul Steel Scrap Corpn.

Respondent

Excise Appeal No. 200 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. A.K. Trading Co. Pvt. Ltd.

Respondent

Excise Appeal No. 202 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. N.K. Trading Co.

Respondent

Excise Appeal No. 203 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. B.D. Gupta & Sons.

Respondent

Excise Appeal No. 204 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. Rattan Steel Industries

Respondent

Excise Appeal No. 205 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. Dinesh Kumar, Sudhir Kumar

Respondent

Excise Appeal No. 206 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. Mini Ispat

Respondent

Excise Appeal No. 207 of 2009-SM(BR)

Commissioner of Central Excise
Chandigarh

Appellants

Vs.

M/s. Mini Steel Traders

Respondent

Appearance: Shri A.Khanna, JDR for the Appellants
Shri Bipin Garg, Advocate and Shri Vikrant Kackria,
Advocate for the Respondent

Date of Hearing/decision : 16.11.2010

final ORAL ORDER NO. 1324-1332/2010 SM(BR)

Per M. Veeraiyan:

All these 9 appeals filed by the Department are arising out of common order in Appeal No. 524-535/CE/CHD/2008 dated 31.10.2008.

2. Heard learned SDR for the department. Heard the learned advocate Shri Vikrant Kackaria for respondent M/s. Dinesh Kumar Sudhir Kumar in Appeal No. E/205/09 and heard Shri Bipin Garg for respondent M/s. Arshul Steel Scrap Corpn. in Appeal No. E/199/09 and E/201/09.

3. Other respondents are not represented inspite of notice.

4. Relevant facts, in brief, are that the respondents are the dealers registered under Rule 9 of the Central Excise Rules. The registration is for the purpose of passing on Cenvat credit of duty paid on excisable goods procured from the manufacturers of inputs and distributed to the users of inputs so that users of inputs can avail the Cenvat credit of duty paid on such inputs. The investigation reveal that these registered dealers have

shown as if goods were purchased from one M/s. I.S. Steel & Agro Industries, Mandi Govindgarh. The case of the department is that the said party has no facility for manufacture and has not manufactured any excisable goods and merely issued invoices to the respondents—dealers who in turn merely issued invoices to the manufacturer of final products and based on such invoices, the manufacturers like A.R. Alloys, Mandi Gobindgarh, and Bhawani Castings Pvt. Ltd., Mandi Gobindgarh, availed Cenvat credit. The show cause notices were issued inter-alia, proposing demand of duty from the manufacturers of final products who have actually availed Cenvat credit based on such invoices and proposing impositions of penalties under Rule 13 of the Cenvat Credit Rules, 2002 and Rule 26 of the Central Excise Rules, 2002. The original authority confirmed demand of duty from the manufacturers of final products and imposed varying penalties on respondents-dealers. All these parties filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) dismissed the appeals of the manufacturers of final products challenging the demand of duty and penalties imposed but allowed the appeals of respondent-dealers. Therefore, the department is in appeal against the order of the Commissioner (Appeals) challenging the setting aside of penalties on the respondent-dealers.

5. Learned SDR relying on decision of the Tribunal in the case of V.K Enterprises vs. CCE, Panchkula, reported in 2010 (249) ELT 462 submits that the respondents-dealers having issued invoices without actually supplying the goods shall be liable to penalties as held by the original

authority. Relying on the decision in the case of Vinod Kumar Gupta vs. CCE, Chandigarh reported in 2010 (252) ELT 157 (Tri-Del), he submits that even before amendment to Rule 26 with effect from 1.3.2007, a person who issues cenvatable invoices without supplying the goods is liable to penalty. He also submits that Notification No. 8/07 CE (NT) dated 1.3.07 which prescribed penalty on a person issuing invoices without delivery of goods, being clarificatory nature, is applicable retrospectively.

6. Learned Advocate Shri Vikrant Kackria, relied on the decision dated 18.2.2010 of the Hon'ble High Court of Punjab and Haryana in the case of Commissioner of Central Excise vs. Ashish Gupta in Central Excise Appeal No. 56/2009 wherein it has been held that where the assessee is issuing only invoices when there is no movement of goods, they cannot be visited with penalty under Rule 209 (A) of Central Excise Rules, 1944. He submits that the said decision is very much applicable to penalty under Rule 26 prior to amendment with effect from 1.3.07.

7. I have carefully considered the submissions from both sides and perused the records. As per the show cause notice, M/s. I.S. Steel & Agro Industries have not undertaken any manufacturing activity and therefore, the question of their supplying any goods does not arise. Apparently the said party was only a manufacturer on paper. Therefore, the transactions between the said manufacturer and the respondents-dealers, are only paper transactions without actual movement of goods. On these grounds, the original authority held that the concerned manufacturers of final products who have taken Cenvat credit based on invoices, are not eligible for Cenvat

credit and also imposed penalties on them. The order of the original authority was upheld by the Commissioner (Appeals). Of course there is no appeal by any of the said manufactures of final products before me. Therefore, it emerges that there were no goods manufactured, sold or transferred. It is not the case of diversion of duty paid goods in one direction and invoices moving in another direction unlike in the case of V.K. Enterprises vs. CCE, Panchkula cited supra. In the case of V.K. Enterprises, the duty paid goods have moved in one direction having been diverted and only the invoices moved in another direction. The dealers therein were held to have dealt with the goods knowingly and that the goods were held liable for confiscation. In the present case, as there are no goods, question of rendering any goods liable for confiscation does not arise. By notification No. 8/2000 dated 1.3.07 issue of such invoices without supply of the goods also attract penal provisions. Prior to that, there is no provision for imposing penalty for merely dealing with the invoices. This may attract penal action under other Acts. The Hon'ble High Court in the case of CCE, Chandigarh vs. Ashish Gupta considered the following question of law:

“(i) When it has been proved in the investigations that a person has facilitated the other parties in evading Central Excise Duty, by fraudulently facilitating MODVAT credit by supplying /endorsing gate passes without actual supply of impugned duty paid goods, whether penalty is imposable on such person under Rule 209 A of Central Excise Rules 1944 or not?”

The decision of the Hon'ble High Court also took note of the fact that the Revenue has filed appeals where no penalty was imposed on persons who issued invoices without delivery of the goods prior to amendment of sub rule (2) of Rule 26 of the Central Excise Rules, 2002. After considering the above question of law, it has been held that where a person merely arranges modvatable document to the manufacturer without actual delivery of goods, penalty could not be imposed under Rule 209 A. Rule 26(2) of Central Excise Rules, 2002 prior to amendment on 1.3.2007 is akin to Rule 209A. Therefore, the decision of the Hon'ble High Court will apply to the facts of the present case.

8. Therefore, the appeals by the Department are rejected.

(M. Veeraiyan)
Member(Technical)

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