IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/416/2007
CROSS-OBJECTION NO: E/CO-160/2007

[Arising out of Order-in-Appeal No: AT/1 to 5/Bel/2007 dated 12th January 2007 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

Commissioner of Central Excise
Belapur …***Appellant***

versus

Pearson Drums & Barrels Pvt Ltd
A K Saha
A B Banerjee
D P Acharya …***Respondents***

Appearance:

Shri N N Prabhudesai, Superintendent (AR) for appellant

Shri R C George, Advocate for respondents

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**14/07/2017**
Date of decision:	**14/07/2017**

ORDER NO: A/ 92369 / 2017

Revenue is in appeal against order-in-appeal no. AT/1 to 5/Bel/2007 dated 12th January 2007 of Commissioner of Central Excise (Appeals), Mumbai Zone – II which has set aside the order of the adjudicating authority demanding duty on goods that had been held to have been clandestinely removed and imposing penalty on various persons including the respondent.

2. The first appellate authority has held that there were two issues that were required to be determined, *viz.*, that of clandestine removal against invoices that had been recovered from the recipients of one of the respondents and that of admissibility of CENVAT credit on sixty one consignment of 'cold rolled coils' that were not received in the factory. He has held that because of clandestine removal has been made duty on the basis of documents which did not bear the remark and self-authentication and an essential requirement during the period of time which cast doubts on the presumption that these were transport documents. He was also critical of the failure to verify receipt of goods from the transfer consignees. The limited investigation that had been carried was, according to the adjudicating authority, was not sufficient to establish that the goods had not been actually received by the respondents.

3. Heard the Learned Authorised Representative and Learned Counsel for respondents.

4. Learned Authorised Representative has relied upon number of judgments including that of the Tribunal in *Commissioner of Central Excise, Ludhiana v. Indian Special Castings (P) Ltd [2008 (227) ELT 322 (Tri.Del.)]* which has been upheld by the Hon'ble High Court of Punjab & Haryana and of the Tribunal in *Bhagwati Steel Cast Ltd. v.*

Commissioner of Central Excise, Nashik [2013 (293) ELT 417 (Tri.-Mumbai)]. On a perusal of the grounds of appeal, it is seen that one of the contentions appears to be the non-scrutiny of the various evidences to corroborate non-receipt of materials and instead placing reliance on one or two abbreviations in the conclusion that could be derived from the documents. The non-consideration of the records maintained at various check-posts between the location of the alleged supplier and the recipient was also cited in support of the claim of inadequate consideration. The farfetched conclusions of the first appellate authority regarding illicit usage of non-permitted vehicles was also cited as indicative of failure to apply legality to the issue. The retracting affidavits on which reliance was placed by the first appellate authority has also been questioned.

5. On a plain consideration of the various issues raised in the appeal and upon a detailed examination of the various inferences of the first appellate authority it is seen that the impugned order is bereft of a careful consideration of the evidences in support of the allegations, a clear conclusion on the basis of these inferences and due application of mind. Consequently, the impugned order is set aside and the appeal of Revenue is allowed by way of remand.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*