FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 02/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70038-70040/2018-SM[BR] dated 01/01/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1855/2011	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
2	E/1982/2011	**Associated Machinery Corp. Ltd.** F-64, B S Road, Indl. Area, Ghaziabad.
3	E/1983/2011	**Sh. Pawan Tyagi, Director Of** M/s Associated Machinery Corp. Ltd. F-64, B S Road, Indl. Area, Ghaziabad.
		Name and Address of Respondent
4		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
5		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
6		Associated Machinery Ltd F-64, B.s. Road, Industrial Area,,, ghaziabad ,UP

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise, I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Second Folder Copy 21 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1855, 1982 & 1983/2011-EX[SM]

(Arising out of Order-in-Appeal No. 266-267-CE/GZB/2011 dated 31/03/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad)

Commissioner of Central Excise, Ghaziabad (In Appeal No. E/1855/2011),

M/s Associated Machinery Corp. Ltd. (In Appeal No. E/1982/2011) &

Shri Pawan Tyagi (In Appeal No. E/1983/2011) **Appellant**

Vs.

M/s Associated Machinery Corp. Ltd. (In Appeal No. E/1855/2011) &

Commissioner of Central Excise, Ghaziabad (In Appeal No. E/1982 & 1983/2011) **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, for Appellant/Assessee
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Respondent/Revenue

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 28/12/2017

FINAL ORDER NO. 70038 - 70040/2018

Per: Anil G. Shakkarwar

The above stated three appeals are arising out of common Order-in-Appeal No. 266-267-CE/GZB/2011 dated 31/03/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad. Therefore, they are taken together for decision.

2. The brief facts of the case are that the manufacturer-appellants were engaged in the manufacture of various machines and they were availing benefit of Cenvat credit for the purpose of manufacture of various machines. The manufacturer-appellant procured input such as M. S. Plate, M. S. Round/Bar, Shapes & Sections, C. R. Sheet, C. R. Coil, H. R. Sheet/Plate & H. R. Coil. The Officers of Central Excise visited manufacturing premises on 06/10/2006 and directed the manufacturer-appellants to give information about various inputs consumed in individual machines manufactured over a period from 2004-2007. They also directed them to deposit various amounts for the period from 2006-2009, stating that the consumption of raw-material i.e. inputs was excess. Subsequently, a Show Cause Notice dated 02/06/2009 was issued, wherein manufacturer-appellants was called upon to show cause as to why the amount they were made to deposit should not be recovered under Rule 14 of the Cenvat Credit Rules, 2004 and why the amount deposited should not be appropriated. Further, there was a proposal for imposition of penalty. On contest, the Show Cause Notice was adjudicated through Order-in-Original dated 31/08/2010 wherein demand was confirmed and amount was appropriated. Further, equal penalty was imposed on the manufacturer-appellants. Further, penalty of Rs.3,00,000/- was imposed on Shri

Pawan Tyagi Director of M/s Associated Machinery Corporation Ltd. Aggrieved by the said order, both manufacturer-appellant and Shri Pawan Tyagi preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) reduced the mandatory penalty to 25% of already imposed penalty. Aggrieved by the said reduction in penalty, Revenue has preferred appeal bearing No. E/1855/2011. Aggrieved by the said impugned Order-in-Appeal dated 31/03/2011, both manufacturer-appellant and Shri Pawan Tyagi preferred the present appeals before this Tribunal.

3. Heard the ld. Counsel for both manufacturer-appellant and Shri Pawan Tyagi. He submitted that there is no provisions in Central Excise Act and Rules made thereunder to retrospectively ask for consumption of individual raw-material or input in unit, final product manufactured and decide the admissibility of Cenvat credit on such criteria and that the entire Show Cause Notice is based on such methodology and manufacturer-appellants were force to deposit Rs.38,08,379/- and such deposit was without any authority of law and same amount was appropriated through passing of Original Order and that Exchequer does not have authority to retain such amount.

4. Heard the ld. A. R. for Revenue, who has submitted that once the amount is confirmed, equal penalty is mandatory. Therefore, he prays to allow the appeal filed by Revenue.

5. Having considered the rival contentions and on perusal of the facts on record, I find that the proceedings were not in accordance with the provisions of Central Excise Act and Rules made thereunder. The provisions related to Cenvat Credit are that the Cenvat credit is to be availed on receipt of inputs into the factory and Cenvat credit equal to the duty paid on inputs is to be availed. Further, such inputs are required to be used in the manufacture of final product. If inputs are removed as such then Central Excise duty equivalent to the Cenvat credit availed is required to be paid. In the present case, Revenue could not establish that inputs as such were cleared by the manufacturer-appellants. Therefore, the said Show Cause Notice is not sustainable. I, therefore, allow appeal bearing No. E/1982/2011 & E/1983/2011 [illegible], by setting aside the impugned Order-in-Appeal dated 31/03/2011. I, further, dismiss the appeal bearing No. E/1855/2011 filed by Revenue.

(Dictated in Court)

Sd/-

ANIL G. SHAKKARWAR

(MEMBER TECHNICAL)

Ansari

प्रमाणित प्रति/Certified True Copy

[illegible]/02/18

[illegible]/Asstt. Registrar

[illegible] (C.E.S.T.A.T.)

38 [illegible] 211001

38, [illegible] MARG, ALLAHABAD-211001