CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 5/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70168/2016 SM dated 13/4/2016

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
	E/51842/2015	K.R.PULP&PAPERS LTD JALALABAD SHAHJAHANPUR,UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, LUCKNOW 7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH VINEET KR SINGH,ADV
5, NARAIN NAGAR
SECTOR-11, INDIRA NAGAR
LUCKNOW

4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONEL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/51842/2015-AL

(Arising out of Order-in-Appeal No. 66-CE/APPL-LKO/LKO/2015 dated 23/02/2015 passed by A. Commissioner of Central Excise & Service Tax, Lucknow)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	Yes

M/s K.R. Pulp & Papers Ltd. **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Shri Vineet Kumar Singh (Advocate) for Appellant
Shri S.L. Karoliya Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 13/04/2016
Date of Decision : 13/04/2016

Final ORDER NO. 70168/2016

Per: Anil Choudhary

Heard the parties.

2 The appellant a manufacturer of Kraft paper and Writing paper, is in appeal against Order-in-Appeal dated 23.02.2015 by which Cenvat Credit availed on items like HR Coil/sheet/Plate, TMT Bars, Hot Plates Shapes & Sections etc falling under chapter 72 of CET, which has denied on the ground that there is lack of sufficient proof that these items are used in eligible capital assets.

3. The brief facts are that, the show cause notice dated 16/01/2013 was issued in pursuance to audit and enquiry made during the year 2012 for the period 2009-10 & 2010-11 Cenvat credit was proposed to be disallowed for an amount to Rs. 29,10,683.00/- in respect of the said items as it appeared, to revenue that utilization of the items aforementioned is not in eligible capital assests as defined in Rule 2(a) of CCR, 2004 read with rule 2(k) of CCR , 2004, which defines input, further interest was also proposed with further proposal to appropriate the amount of Rs. 29,10,683/- reversed by the appellant during the course of enquiry on 29/03/12, along with proposal to levy penalty under Rule 15(2)of the CCR, 2004.

4. The appellant appeared & contested the show cause notice. The SCN was decided vide Order-in-Original dated 16/06/14 holding that the appellant is liable to reverse the Cenvat credit appropriating the tax the demand. Further order to pay interest and equal amount of penalty was imposed under Rule 15(2) of the CCR, 2004 read with Section 11AC ~~again~~ of the Act. It appears from the Order-in-Original that the adjudicating authority has relied upon a report of the Range officer dated 28/04/14 received with letter of the Assistant Commissioner dated 08/05/14 stating therein the said items were used in fabrication of columns and foundations of the factory. It is further evident, after the issues of show cause notice, this report was obtained at the back of the appellant, and no copy of the same was provided to the appellant to offer its objection and/or submissions. The appellant had preferred an appeal before the Learned Commissioner (appeals) who has also dismissed the appeal of the appellant, in view of this information on the record.

5. Thus there has been violation of principles of Natural justice. In this view of the matter, I set aside the impugned order/order-in-original and order-in-appeal and remand the matter back to the file of the adjudicating authority. I direct the adjudicating authority to provide a copy of the report of superintendent, dated 28.02.2014 and also a copy of letter of Assistant Commissioner dated 08.05.2014, relied in Order-in-

Original. The appellant be given sufficient opportunity to offer an explanation and lead evidence. Under the facts & circumstances the appellant is also free to file additional explanation, evidence and submission which may be considered appropriate in their defense. All issues including the issue of limitation are kept open. The adjudicating authority shall record also finding on the applicability of extended period of limitation. Thus, the appeal is allowed by way of remand, the appellant is also directed to appear before the adjudicating authority within 60 days from receipt of this order and seek opportunity of hearing.

(Dictated in Court)

(Anil Choudhary)
MEMBER (Judicial)

Akp/

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001