REGISTERED / AD

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

Dated: 28/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70054 /2015-DB dated 14/10/2015

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
28.10.15

Application	Appeal	Name and Address of Appellant
	E/1765/2006	GAIL(INDIA) LTD U.P.PETROCHEMICALS COMPLEX PATA DISTT AURIYA(UP)

Name and Address of Respondent	CCE KANPUR 117/7, SARVODAYA NAGAR, KANPUR(UP)

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH S.C.KAMRA&CO,ADV
B-2/210(BASEMENT)
SAFDARJUNG ENCLAVE, N DELHI.

4 Bar Association, CESTAT, Delhi
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), Vaithyaram 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 AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.1765/06

Arising out of O/A No.65-CE/APPL/KNP/06 dated 25.01.2006 passed by Commissioner of Central Excise(Appeals), Kanpur

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

M/s GAIL (India) Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, LTU, Delhi RESPONDENT (S)

APPEARANCE

Shri S. C. Kamra, Adv. for the Appellant (s)
Shri Ahibaran, Addl. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 14.10.2015

FO ORDER NO. 70054/2015

Per Mr. Raju :

The Appellants, M/s GAIL (INDIA) Pvt. Ltd., are engaged in the manufacture of LPG Gas and Polymers. During the period from February, 1999 to February, 2000, the Appellants were in process ~~in~~ of installation of their LPG Plant. The contract for the installation of plant was given to various contractors. These contractors were importing capital goods and installing different components of the plant. The Appellant filed declaration for availing CENVAT credit on the capital goods under Rule 57T (1) of the Central Excise Rules, 1944. The said Rule required filing the declaration before receipt of capital goods. The sub-rule (3) of Rule 57T, permitted the Assistant Commissioner to condone the delay in filing all declarations upto three months under exceptional circumstances. The Appellants had filed declaration, in which the delay varied from one to ten months. A notice was issued to the Appellant for denial of the capital goods credit, primarily on the ground of delay in filing the declaration. The notice also alleged certain deficiencies in documents in some cases and restrictions on availability of cenvat credit under Rule 57 (2) of the Central Excise Rules, 1944. The Assistant Commissioner confirmed the notice on both counts and denied the credit on capital goods. The matter was taken up with the ld.Commissioner (Appeals) who vide his order dated 25th January, 2006, upheld the order of the Assistant Commissioner solely on the ground ~~of~~ that delay in filing the declaration could not be condoned. The ld. Commissioner (Appeals) did not go into the other grounds for denial of credit for specific cases. The Appellants are in appeal against the said order of the ld.Commissioner (Appeals).

2. The appellants argued that the matter regarding delay in filing the declaration has since been settled by the various judgements of Tribunal as well as the Hon'ble High Court. They cited the following judgements in support of their claim :

(i) Union of India Vs. Grasim Industries Ltd. : 2006 (204) ELT 230 (Raj.) ;

(ii) CCE, Chennai Vs. ITC Ltd. : 2008 (224) ELT 226 (Mad.) ;

(iii) CCE, Delhi III Vs. A.B.Card Clothing Pvt. Ltd. : 2008 (222) ELT 359 (P & H) ;

(iv) Kamakhya Steels Pvt. Ltd. Vs. CCE, Meerut : 2000 (121) ELT 247 (Tri.-LB);

(v) Hindustan Paper Corpn. Ltd. Vs. CCE, Shillong : 2007 (212) ELT 156 (Tri.-Kol.);

(vi) Ashok Leyland Ltd. Vs. CCE, Nagpur : 2014 (307) ELT 151 (Tri.-Mumbai).

They also cited a Circular No.441/7/99-CX dated 23.02.1999. They have also pointed out that in February, 1999, sub-rule (13) of Rule 57T, was introduced, which reads as follows :

"(13) Credit under sub-rule (6) shall not be denied on the grounds that –

(i) any of the documents specified under sub-rule (3) or rule 57-G does not contain all the particulars required to be contained therein under these rules, if such document contain details of

payment of duty, description of the capital goods, assessable value, name and address of the factory or warehouse ;

(ii) *the declaration filed under sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under sub-rule (1) :*

Provided the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer intending to take credit is satisfied that the duty due on the capital goods have been paid and such capital goods have actually been used or are to be used in the manufacture of final products , and such Assistant Commissioner shall record the reasons for not denying the credit so in each case."

Thus, they claimed that procedural requirements became secondary and condonable by virtue of rub-rule (13) of Rule 57T.

3. The ld.D.R. cited a decision of the Tribunal in the case of Commissioner of Central Excise, Shillong Vs. Halmira Tea Estate (SMB) reported in 2001 (138) ELT 349 (Tri.-Kolkata), wherein it has been held that the condonation of delay under sub-rule 3 of Rule 57T, can only be done under exceptional circumstances. He also cited sub-rule (1) & (3) of Rule 57T for the said purpose. He also submitted that the Appellants have not filed any application under Rule 57T (3) of Central Excise Rules,1944. Further, they submitted that since there was an inordinate delay in filing the declarations, it was beyond the power of the Assistant Commissioner to condone the same.

4. We have considered the rival submissions. It is noticed that the receipt of goods and duty paid character, has not been challenged. In few cases, ~~where~~ certain objections other than of delay, have been

raised in the show-cause notice. The Hon'ble High Court of Rajasthan in the case of Union of India Vs. Grasim Industries Ltd. reported in 2006 (204) ELT 230 (Raj.), has observed as under :

> "**14.** *If we read in that light sub rule (13) of Rule 57T, it leaves no room of doubt that the procedural requirement considered hitherto before as mandatory condition for availing benefit of MODVAT, has been relegated to subsidiary position and had been made subservient to fulfilment of substantive requirement for availing MODVAT credit.*
>
> **15.** *The substantive requirement of availing MODVAT credit of Duty Paid on the inputs or capital goods received in factory is that such goods must have suffered excise duty required to be paid thereon. Payment of such excise duty must be evidencing by relevant document that inputs on which MODVAT credit can be availed under Rule 57-G or capital goods in respect of which MODVAT credit can be availed under Rule 57-Q or 57-R must be received in and used in the manufacturing of end products in the factory. If these conditions are fulfilled then procedural lapses on the part of the assessee in making of declaration or furnishing incomplete particulars should not come in the way of assessee in availing MODVAT benefit is clear intent of insertion of sub-rule 13 with effect from 9-2-99.*
>
> **16.** ....
>
> **17.** *The expression used in clause (ii) of sub-rule (13) of Rule 57T envisages that credit under sub-rule (6) shall not be denied on the ground that the manufacturer fails to comply with any other requirement under sub-rule (1) : It must be in respect of requirement other than filing declaration containing requisite information i.e. to say it relates to limitation within which declaration has to be furnished. It leads to irresistible conclusion that while requirement of sub-rule (1) to file declaration is necessary, the within limitation prescribed under sub-rule (1) read with sub-rule (3) which operates as proviso thereto, is not*

mandatory requirement. If other substantial conditions have been satisfied the MODAVT credit availed on Capital goods is not to be withdrawn. ...."

The other decision cited by the Appellants also proceeds on the same line, in so much as interpreting sub-rule 13 of Rule 57T, they concluded that so long as receipt and duty paid nature of the goods is not challenged, the delay in filing the declaration can be condoned. Respectfully following the aforesaid judgement in cases where sole grounds of denial of credit is delay, the delay is condoned. The appeal for such cases is allowed by condoning the delay. In cases where apart from delay, there are other issues raised in the Order-in-Original, but it has not been dealt with in the Order-in-Appeal, the Order-in-Appeal is set aside and the matter is remanded to the jurisdictional Commissioner (Appeals). Consequential relief may be allowed in terms of this Order.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

प्रमाणित प्रति / Certified True Copy
03.11.15
सहायक पंजीयक / 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