FAX : 0532-2400149

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

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70980/2016-SM[BR] dated 07/10/2016

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
1	E/51912/2015	SHRI RATHI STEELS LTD PLOT-E, PHASE-III, UPSIDC INDUSTRIAL AREA, MASURI GULAOTHI ROAD HAPUR,UPP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3 Advocate(s) / Consultant(s):

Prabhat Kumar
B-51(BASEMENT), SARVODAYA
ENCLAVE
NEAR MOTHER INTERNATIONAL
SCHOOL ,NEW DELHI

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), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi 110032
14 CD.R. 15 Office Copy 16 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

REGL. (ORIGINAL SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

APPEAL No. E/51912/2015-EX[SM]

(Arising out of Order-in-Appeal No. HPU/EXCUS/000/APPEALS-I/144/2014-15 dated 20/02/2015 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

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 Shri Rathi Steels Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri S.S. Dabel, Advocate, for Appellant
Shri Pawan Kumar Singh, Superintendent. (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 07/10/2016

FINAL ORDER NO....70980/2016........

Per: Anil Choudhary

The present appeal is filed by, M/s Shri Rathi Steels Ltd., against Order-in-Appeal No. HPU/EXCUS/000/APPEALS-I/144/2014-15 dated 20/02/2015 passed by Commissioner of Central Excise & Customs (Appeals), Meerut.

2. The issue in this appeal is whether the appellant manufacturer who cleared finished goods to M/s DLF Ltd (SEZ Developer) under bond without payment of duty and the same were again returned to the appellant by M/s DLF Ltd (SEZ Developer) under bonded Challan for replacement, and on failure of the appellant to replace in the time permitted M/s DLF Ltd. (SEZ Developer) deposited the Excise duty, and claimed reimbursement from appellant, the same was taken credit of by the appellant, whether the said credit was rightly taken by the appellant.

3. The brief facts are that the appellant manufacturer of Bars and Rods of steel and iron etc. cleared and supplied MS Bars (TMT)/Reinforcement Steel to M/s DLF Ltd (SEZ Developer) under ARE-1 procedure without payment of duty vide seven invoices dated 28-29/09/2008 for a total quantity of 200.730 MT valued at Rs.73, 31, 043/- involving Excise duty of Rs.10, 57, 135/-. The goods so supplied were found to be defective and after obtaining permission from the SEZ

Authority, vide permission dated 05/12/2008 the purchaser-SEZ Developer returned the goods vide pre-authenticated Challan under rule 27(9) of SEZ Rules, 2006 wherein the Challan is marked "for removal of defective goods to domestic tariff area for replacement, not for sale defective material for replacement, material removed vide permission No. Cus/DLF/Misc./2000/87 dated 05/12/2008" giving the value and the duty involved. Accordingly, vide 8 such Challans the total goods supplied was returned. As the appellant manufacturer could not replace the defective goods within the time permitted, M/s DLF (SEZ Developer) deposited the duty of Rs.10, 57, 084/- with GAR Challan number 09/09-10 dated 23/07/2009 after obtaining permission from SEZ authorities vide letter dated 13/04/2009. Thereafter, M/s DLF Ltd. claimed the reimbursement of the said duty of Excise paid, from the appellant vide their letter dated 26/08/2009 enclosing the copy of original Excise duty payment Challan dated 23/07/2009 The appellant then took Cenvat credit of the said duty of Rs.10, 57, 084/- vide Entry No. 2162 dated 31/08/2009 in their Cenvat register. Subsequently, the appellant reversed the Cenvat credit so taken vide Entry No. 3091 dated 11/11/2009. The goods so received back from DLF SEZ were entered in the daily stock register and thereafter removed on payment of duty to a separate set of buyers. The appellant thereafter made an application before the Commissioner on 5th January, 2011, praying that they be allowed to take Cenvat credit of Rs.10, 57, 084/- paid by them to the SEZ Developer for the defective goods, which were returned to them and could not be replaced. On such application the Revenue issued Show Cause Notice dated 13/09/2013 as it appeared to the Revenue that the goods returned by the SEZ Developer where the final product of the appellant which had been cleared without payment of duty for supply to the SEZ Developer under bond and as such no Excise duty was paid at the time of clearance. The appellant had claimed Cenvat credit under Rule 16 of Central Excise Rules, 2002, but as per the said rule it appeared, that this rule applies in respect of goods on which duty has been paid at the time of removal and the said goods are subsequently brought back to the factory. The show cause proposed to disallow the Cenvat credit of Rs.10, 57, 084/- as wrongly taken with further proposal to appropriate from the amount already reversed along with interest and penalty was also proposed.

4. The Show Cause Notice was adjudicated vide Order-in-Original No. 35/Addl. Commissioner/M-II/2014-15 dated 12/09/2014, on the contest confirming the demand of Cenvat credit under Rule 14 of Cenvat Credit Rules, 2002 and further appropriating the same from the amount already reversed. Further, interest was demanded for Rs.27, 108/-.

However, no penalty was imposed. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal upholding the Order-in-Original No. 35/Addl. Commissioner/M-II/2014-15 dated 12/09/2014 observing that Rule 16 of Central Excise Rules, 2002 clearly suggest that it is applicable only in respect of those situations where duty had been paid on the finished goods at the time of their initial removal from the factory. Under the facts and circumstances it was held that it is clear that the provision envisaged under Rule 16 of Central Excise Rules, 2002, have not been followed properly. Being aggrieved the appellant is before this Tribunal.

5. The ld. Counsel for the appellant urges that they are entitled to take the Cenvat credit. Rule 16 of Central Excise Rules, 2002 carved out a special provision to cater to a situation where duty paid goods are received back by factory/manufacturer for being remade, refined, reconditioned or any other reason. In the present facts it is undisputed that the appellant have received back the goods from the SEZ Developer on payment of duty for being reconditioned etc. It is further admitted fact that the appellant have entered the goods in the stock register and thereafter removed the same on payment of duty to other buyers. It is further urged that under the provisions of Rule of

Cenvat Credit Rules, particularly Rule 3, the goods has been admittedly received on payment of duty, the appellant is entitled to take Cenvat credit of the same. The ld. Counsel further urges that it is not a case of clandestine removal, the goods were removed under proper ARE -1 procedure under bond to the SEZ Developer. Further, the said developer under proper procedure returned the goods, under bond, for replacement and when the said goods could not be replaced within the given time, the said SEZ Developer paid the duty which have been claimed from the appellant and the said claim have been admitted and entertained by the appellant. Accordingly, the appellant should be held entitled to take the Cenvat credit under Rule 3 of Cenvat Credit Rules read with Rule 16 of Central Excise Rules, 2002. It is further urged that under Rule 9 of Cenvat Credit Rules, Challan is one of the duty paying documents on which credit can be taken.

6. The ld. AR for the revenue relies on the impugned order.

7. Having considered the rival contentions, I find that it is undisputed fact that the goods were removed under bond under the procedure and permissible under law. Further, the goods were again received back, being defective, under proper procedure and permission. Further, the duty was paid by the SEZ Developer on non-fulfillment of the condition of the bond, as the appellant could not return the goods within the

stipulated time. Such duty was admittedly paid, although under wrong head (Customs duty) and the same have been accepted by the appellant. Accordingly, I hold that the procedure of Rule 16 of Central Excise Rules, 2002 does not come in the way in denying the credit. I hold that the appellant is entitled to take credit under Rule 3 of the Cenvat Credit Rules as they have admittedly received the goods under proper documents reflecting the duty involved and the said duty have been admittedly paid on the removal of the goods, being the SEZ Developer, to the appellant. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is held entitled to take the Cenvat credit of the duty of Rs.10,57, 084/-.

(Dictated and pronounced in Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Member (Judicial)

Ansari

प्रमाणित प्रति / Certified True Copy
26.10.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001