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

Dated: 07/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70759/2016-SM[BR]** dated **01/09/2016**

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/CROSS/51546/2015,	E/51914/2015	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
		Name and Address of Respondent
2		MAHAVEER CYLINDERS LTD 59/1/5, SITE-IV, INDUSTRIAL AREA SAHIBABAD,,GHAZIABAD ,U.P

Copy To

3 Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

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 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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

SINGLE MEMBER BENCH

E/CO/51546/2015
E/51914/2015-EX(SM)

Dated of Hearing/decision: 01/9/2016

[Arising out of Order-in-Appeal NO. GZB/EXCUS/000/APP/302/2014-15 dated 26.12.2014 passed by Commissioner (Appeals), Central Excise, Ghaziabad]

For approval and signature:

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

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

C.C.E & S.T. - Ghaziabad — Appellant

Vs.

Mahaveer Cylinders Ltd. — Respondent

Appearance:
Present for the Appellant: Shri Rajeev Ranjan (Joint Commissioner) A.R.
Present for the Respondent: Shri Rajesh Chibber, Advocate

Coram: Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70759/2016

Per: Anil G. Shakkarwar

The Respondent were manufactures of LPG Cylinders and registered with the Central Excise Department and were availing Cenvat Credit facility. The respondent were issued with a Show Cause Notice dated 4/7/2013 alleging that they were engaged in trading of H.R. Coils, S.C. Valves, LPG Cylinders etc. and they became the provider of exempted service as per the explanation to Rule 2(c) (e) of the Cenvat Credit Rules, 2004 and they were required to pay an amount 5% / 6% of value of the goods traded and they were called upon to Show Cause as to why amount of Rs.12,38,632/- should not be demanded from them. In reply to the said show cause notice the respondent submitted that they cleared input as such which have been either returned to same party or the third party, on which they made reversal of Cenvat Credit availed. They also contested that removing the input after reversal of Cenvat credit in no circumstances would be treated as trading activity. The original authority did not agree with the same and confirmed the demand. The respondent preferred appeal before Commissioner (Appeals) who vide Order-in-Appeal No. 302/14-15 dated 29.12.2014 set aside the Order-in-Original and allowed appeal filed before him.

2. Aggrieved by the order passed by the ld. Commissioner (Appeals) Revenue is before this Tribunal with a prayer to set aside order passed by Ld. Commissioner (Appeals).

3. The ld. D.R. submitted the ground of appeal which is basically repetition of contentions in the order-in-original.

4. The ld. Counsel for the respondent have submitted that they were clearing input as such on which Cenvat credit was taken, by reversal of Cenvat credit. Such action of clearance of inputs as such was treated by Revenue as trading actions. The Revenue treated such clearance of inputs as such ~~as~~ on reversal of Cenvat credit as exempted service and demanded amount under Rule 6(3) of Cenvat Credit Rules 2004. The said contention was available ~~as~~ on the record of the proceedings still Revenue did not raise any ground to establish that the same is not tenable in law. Further ld. Counsel relied on this Tribunal Final Order No. A/51689-51690/2015 passed in the case of Commissioner of Central Excise Ghaziabad Vs. M/s UP Telelinks, in which exactly same point was settled by holding that removal of inputs does not amount to trading. Rule 3 (5) of Cenvat Credit Rules provide that if inputs are removed as such, the assessee is required to reverse only Cenvat credit availed on such inputs.

5. I have taken rival contention into consideration and I am of the view that removal of input as such by a manufacturer cannot be treated as trading activity and hence allegations in the show cause notice are not sustainable. Therefore, I reject the appeal. The respondent shall be entitled to consequential relief. Cross Objection No. 51546 of 2015 also stand disposed.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
3/10/16
SPS
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