FAX : 0532-2400149

REGISTERED / AD

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

Dated: 28/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70282/2016-EX[DB] dated 14/06/2016

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/1170/2007	**MOTHERSON SUMI SYSTEMS LTD.** A-15, SECTOR-6, NOIDA.
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3Advocate(s) / Consultant(s): SH ATUL GUPTA,ADV
5, JANGPURA EXTENSION
LINK ROAD, 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 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,Panjagutta 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

Division Bench

Appeal No. E/1170/2007-EX(DB)

[Arising out of Order-in-Original No. 06/Commr/Noida/2007 dated 27.02.2007 passed by Commissioner Central Excise, NOIDA]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member
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

M/s. Motherson Sumi Systems Ltd. Appellant

Vs.

C.C.E., NOIDA Respondent

Appearance:
Present for the Appellant: Shri Atul Gupta, Advocate
Present for the Respondent: Shri V.R. Reddy (Asstt. Commissioner) (AR)

Coram: **Hon'ble Shri Anil Choudhary, Judicial Member**
Hon'ble Shri Anil G. Shakkarwar, Technical Member

Date of Hearing/Decision: 10/6/2016

<u>FINAL ORDER NO.</u> 70282/2016

Per: ANIL G. SHAKKARWAR

Present appeal is filed by M/s Motherson Sumi Systems Ltd.,

2. The brief facts of the case are that the appellant was issued with the show cause notice No. V(15)Adj/Noida/Motherson/05/06/8048 dated 29.3.2006 wherein there were three allegations

(i) Appellant had written off certain goods in the books of account and not reversed Cenvat Credit during the period from 2000-1 & 2001-2 and on this account there was a proposal for recovery of Rs.60,94,560/-.

(ii) During the period from October 2002 to March 2003 the appellant had taken Cenvat credit of Rs.17,278/- before actual receipt of inputs.

(II) It was alleged that the appellant had incurred expenses of Rs.45,568/- towards purchase of durable and returnable packaging for the period from August 2002 to July 2003 and allegation was that assessee has short paid Central Excise duty to tune of Rs.7,291/- on the said durable and returnable packaging.

3. The show cause notice was Adjudicated through Order-in-Original No. 06/Commr/Noida/2007 dated 27.02.2007 wherein it was held that as per the instruction in CBEC Circular 645/36/2002-CX., dated 16.7.2002 Cenvat credit on capital goods written off are recoverable. The original authority has confirmed the demand of Central Excise duty of Rs.14,11,040/- . The Original Authority confirmed the demand of recovery of Central Excise of Rs. 17,278/-

and also confirmed the demand of Central Excise duty of Rs. 7,291/- and imposed penalty.

4. Aggrieved by the said Order-in-Original the appellant is before us. The contention of the appellant is that during the material period there were no provisions in Cenvat credit Rules or Central Excise Rules 1944 to reverse Cenvat credit on Capital Goods if the Capital Goods were not removed from the factory and they were simply written off in the books of account. The appellant agreed that credit of Rs.17,278/- was taken prior to receipt of input into the factory and contested the demand of short levy of Rs. 7,291/- on the ground that there was no flow of additional consideration.

5. The ld. Counsel for appellant further elaborated that the duty was paid as payable as per the transaction value. Packing expenses incurred do not have any bearing on determination of value. He has further relied on ruling by Hon'ble High Court of Gujarat in the case of CCE Vs. Ingersoll Rand (India) Ltd. reported in 2014 (300) E.L.T. 347 (Guj.) wherein the Hon'ble High Court ruled that mere diminishing of value of goods in books of account of assessee, that itself would not permit the Department to insist on reversal of credit particularly when the goods are still available in the factory. The Ld. Representative of Revenue reiterated finding ~~is~~ in impugned order.

6. We have taken rival contentions into consideration. We also find that the said CBEC Circular provided that if the capital good are written off before use then the Cenvat credit availed has to be

reversed. In the present case, there were no allegation that the capital goods were not used at all nor there were allegations that the Capital goods were removed from factory. We, therefore, hold that the Original Order demanding Cenvat credit of Rs.14,11,040/- interest thereon and penalty equal to the same is not sustainable. In respect of Cenvat credit amounting to Rs.17,278/- where allegation are that the credit was taken before receipt of the inputs we find that there are no allegation that the inputs were not at all received in to the factory. Therefore, we hold that original order confirmation demand of Cenvat credit amounting to Rs.17,278/- and interest thereon and penalty equal to same is not sustainable. In respect of short levy of Rs.7,291/-, we find that no evidence has been produced to establish that additional consideration was received by appellants. The levy required as per transaction value was discharged. Therefore, original order is not sustainable to extent of confirmation of Central Excise duty Rs.7,291/- interest thereon and penalty equal to the same. To conclude we hold that impugned order is set aside and appeal is allowed with consequential relief if any.

(Dictated and pronounced in the open Court)

Sd/- 10

(Anil G. Shakkarwar)
Member (Technical)

Sd/- 16

(Anil Choudhary)
Member (Judicial)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
8.7.16
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