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

Dated: 28/03/2016

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/ 70119/2016 SM dated 21/03/2016

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/54160/2014	SHREE BHAGESWARI PAPERS LTD 9TH KM , BHOPA ROAD MUZAFFARNAGAR, UP
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, MEERUT I EXCISE CHOWK, UNIVERSITY ROADE MANGAL PANDEY NAGAR, MEERUT

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(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 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.54160/14

Arising out of OIA No.02-CE/MRT-I/2014 dated 13/01/2014 passed by the Commissioner (Appeals), Central Excise & Customs, Meerut.

For approval and signature:

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

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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? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Shree Bhageswari Papers Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Meerut I

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri D. K. Deb, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 21.03.2016

Final ORDER NO. 70119/2016

Per Mr. Anil Choudhary :

The appellant is a manufacturer of krafts paper and MS Ingots, is in appeal against order in appeal dated 13/1/14 passed by Commissioner of Central Excise (Appeals) Meerut-I, by which demand of duty under Rule 3 (5) and Rule 3(5A) of Cenvat Credit Rules, 2004 read with Rule 14 of Cenvat Credit Rules, Rs. 2,16,300/- have been upheld along with interest and penalty of equal amount have been imposed under Rule 15 of CCR, 2004.

2. The brief facts are that the appellant purchased one second hand boiler in June,1997 vide cheque dated 13/6/97 Rs.2,00,000/- from one M/s Agarwal Pulp & Paper Mills Ltd., Muzaffarnagar. After purchasing of the boiler, the appellant wrote to the Director of Boiler, U.P., for necessary mutation of records stating the factum of purchase with request to transfer the ownership in the favour of the appellant further stating that the boiler will remain installed in the same premises. After using the boiler for some years, the appellant disposed of the boiler by selling it along with its accessories at Rs.21,00,000/- vide invoice dated 11.09.2008. During the course of Audit in March 2010, Revenue pointed out that duty is payable on the boiler source sold and in reply the appellant stated that the sale of the second hand boiler in 1997 by the seller, which did not attract any Excise duty liability and accordingly, they had not taken any Cenvat credit. That as the said boiler is disposed off after the use of 10 years or more, it does not attract any payment of duty by way of reversal of Cenvat credit. SCN

dated 5/5/11 was issued as it appeared to revenue that the facts are covered by Rule 3 (5A) of CCR, 2004, wherein under the provisions, the appellant was required to pay an amount equal to the duty leviable on the transaction value of the old boiler. It further appeared that the boiler disposed off by the appellant is classifiable under chapter heading 8402 of the first schedule to the Central Excise Tariff Act and attracts duty @ 10.3% including cess and accordingly, duty of Rs. 2,16,300/- was demanded. It is further stated that the appellant did not bring this fact into knowledge of the Department and accordingly, indicates mala fide intention to evade duty on the transaction value of the boiler.

2.1 The appellant contested the show cause notice and the same was adjudicated and the proposed demand was confirmed along with equal amount of penalty under rule 15 of CCR read with Rule 25 of the Central Excise Rules read with Section 11AC of the Act. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order have been pleased to reject the appeal observing that the appellant failed to submit relevant documents/ records from which the fact of not availing Cenvat credit could be verified, as the appellant have not maintained proper records as required by Rule 9(5) of Cenvat Credit Rules which are required for a manufacturer to maintain proper records for the receipts, disposal, consumption and inventory of the inputs and capital goods, in which the relevant information regarding the value, duty paid, Cenvat credit taken and utilised is recorded and the burden of proof regarding the admissibility of Cenvat credit shall lie upon the manufacturer. Further, it was observed that when capital goods on which credit has been availed are cleared by the manufacturer, he is required to pay the amount of equal/proportionate Cenvat credit thereon or the amount of Central Excise duty on transaction value, as per the provisions provided under Rule 3 (5) read with Rule 3 (5A) of CCR. Being aggrieved the appellant is before this Tribunal.

3. Ld. Counsel for the appellant states that there is no allegation in the show cause notice that the appellant had availed Cenvat credit at the time of purchase of the second hand boiler in question. He further draws attention to the document of purchase at page 59 of the paper book, which is issued on the letter head of the Seller stating that they have received the amount of Rs.2.00 lakhs by cheque from the appellant being consideration for transfer of boiler. No amount of duty have been charged in the said memorandum of sale. It is further argued that no demand can be raised on the basis of presumption of having availed Cenvat credit, when the appellant have categorically denied of availing of any Cenvat credit, nor the revenue could bring any facts on record in support of the same. It is further contention that there is no suppression of facts by the appellant as the revenue audit found the facts from the books of accounts maintained by the appellant in the ordinary course of business. He further states that for argument sake even if it is presumed that the appellant took Cenvat credit at the time of purchase in the year 1997, even then under Rule 3 (5A)(a) which was brought in the Rules earlier and by way of

substitution with effect from 27.9.13 provides that if capital goods, on which Cenvat credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to Cenvat credit taken on the said capital goods reduced by the percentage points calculated by straight-line method – (ii) for capital goods, other than computers and computer peripherals at the rate of 2.5% for each quarter. Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on the transaction value. Clause (b) of Rule 3 (5A) of CCR provides if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. It is further argued that it is evident that the Cenvat credit purchase not charging section but only provide for reversal of Cenvat credit taken, on the disposal of the asset. Accordingly, he prays that the appeal be allowed and the impugned order be set aside.

4. The ld. A.R. for revenue relies on the impugned order

5. Having considered the rival contentions and that the facts of the present case, I hold that the provisions of rule 3 (5A) read with Rule 3 (5) are not applicable in view of the categorical assertion of the appellant that no Cenvat credit was availed, which fact is further corroborated by the memorandum of purchase of 1997. I also hold that the extended period of limitation is not invokable as no case of any suppression or misconduct is made out on the part of the

appellant. Thus, the appeal is allowed with consequential benefits in accordance with law.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

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प्रमाणित प्रति / Certified True Copy
6.4.16
सहायक पंजीकार / Asstt. Registrar
(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001