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

Dated: 22/04/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70145/2016 SM dated 22/4/2016

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/1285/2003	TIN MANUFACTURING CO(INDIA) S-347 GREATER KAILASH II NEW DELHI-110048
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD CGO COMPLEX-II, KAMLA NEHUR NAGAR, GHAZIABAD

Other Appellants and Respondents as per Annexure

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 121005 (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.1285/03

Arising out of OIA Nos.104/CE/GZB/2003 dated 10/03/2003 passed by the Commissioner (Appeals), Central Excise & Customs, Ghaziabad.

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 Tin Manufacturing Co. (India)

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibbar, Adv. for the Appellant (s)
Shri Ashutosh Nath, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING : 29.03.2016

DATE OF PRONOUNCEMENT : 22-04-2016

Final ORDER NO. 70145/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

Appellant is in appeal against order in appeal dated 10/3/2003 passed by the Commissioner (Appeals), Customs and Central Excise, Ghaziabad.

2. The brief facts are that the appellant is a manufacturer of metal containers and is entitled to avail modvat credit benefit. During the period may and June 1994 the appellant availed modvat credit benefit of Rs. 7,81,302/- on 12 items or invoices which are the subject matter of dispute. This is the second round of litigation. Persuant to remand vide the final order dated 17/4/97 in final order number A/299/97 – NB (SM), this Tribunal remanded the case back to the Asstt. Commissioner for denovo decision, observing that the impugned order is deficient as the procedure followed does not satisfy the minimum requirement of a well considered adjudication order as 6 show cause notices on different points were clubbed together.

3. Pursuant to remand vide Order-in-Original dated 1/12/99 the Asstt. Commissioner allowed the credit on four items amounting to Rs.4,02,966/- observing that the Bills of Entry were issued before 1/4/94 but endorsed after 1/9/94. Relying on CBEC circular number 70/76/94 – CX NT and notification number 64/94 the said documents were held acceptable. So far credit availed against bill of entry numbers 142/34 dated 19/7/93, 462/241 dated 6/9/93 and GP I number 3766 dated 12/9/93 is concerned, it was observed that the appellant availed credit after 6 months of the issue of the document. In this regard it was observed that no stipulated time for taking credit

is prescribed by Modvat Rules, but the limit prescribed by the Act cannot be over-ruled/ignored. Further observed that the Central Excise Act under Section 11 A and 11 B clearly prescribed the limit of 6 months for taking and granting. Accordingly, it was held that time limit of six months is applicable for availing Cenvat or modvat credit. Accordingly the credit was denied. With respect to bill of entry number 1239/23 dated 2/5/94, observing that the same is neither issued in the name of the party nor endorsed to the party and also the party have not put any defence in this regard thus modvat credit cannot be allowed. So far the disallowance of credit on Bill of entry number 74 dated 6/6/94 is concerned for Rs.37,635/- the same is not contested by the appellant. Thus, the balance amount of dispute is Rs.3,40,701/.

4. Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order rejected the appeal observing that for abatement of Cenvat credit after 6 months from the date of issue of the documents, It is correct that there was no limitation prescribed under Rule 57G for taking credit but modvat credit shall be taken within a reasonable time and the Asst Commissioner have rightly denied the ~~y~~ credit ~~is~~ relying on the ruling of this Tribunal in Andhra Electro Galvanizing Works Vs. CCE 1995 (80) ELT 322. Regarding taking of credit against bill of entry which is not in the name of the appellant nor endorsed in their favour, it was observed that Rule 57G of CER 1944 prescribes bill of entry as valid document for taking of credit but as the bill of entry was not in the name of the appellant nor ~~enclosed~~ endorsed in its favour, it cannot be treated

as the goods are received by the appellant in the factory under the cover of proper documents. The disallowance of the same was upheld.

5. Being aggrieved the appellant is before this Tribunal. The ld. Counsel urges that the limit of 6 months was prescribed with effect from 26/6/95. Further the documents in question are all dated July and September 1993, and accordingly no time limit is applicable and further relies on the ruling of Honourable Supreme Court in the case of Collector of Central Excise Vs. Raghuvar (India) Ltd. 2000 (118) ELT 311 (SC) wherein the Apex Court considered the issue of recovery of modvat credit, availed under rule 57I, held that the provisions of section 11 A of the act have no application to any action taken under rule 57I, prior to its amendment on 6/10/1988 and further held Rule 57I, is not in any manner subject to section 11 A ibid. It is further stated that following this ruling of the Apex Court, division bench of this Tribunal considered the issue of limitation for availing credit during the period prior to amendment of Rule 57G with effect from 29/6/95 held, the credit is not deniable even if taken 3 to 4 years after issue of duty paying documents. Accordingly, the ld. Counsel prays for allowing the Cenvat credit. So far the credit on bill of entry number 1239/23 dated 2/5/94 is concerned, the ld. Counsel points out that there is some clerical error as this number 1239/23 is the IGM number dated 2/5/94. A copy of the declaration form along with the copy of the way bill in Form number 31 (issued under the provisions of U. P. Sales Tax Rules, 1948), it is stated that from these documents it is evident that the appellant had duly purchased the goods from the importers who is

located at Delhi, and further the receipt of goods in the factory of the appellant is corroborated by the pre-authenticated ~~vide~~ way bills issued by the Sales Tax Department. In this view of the matter the learned Counsel prays that this issue may be remanded for consideration in accordance with law to the adjudicating authority.

6. The ld. A.R. for revenue relies on the impugned order. He further states that 'form 31' under the Sales Tax Rules of Uttar Predesh, is for getting exemption of sales tax on procurement of goods from the supplier. He further states that on the bill of entry, not endorsed in favour of the appellant, no Cenvat credit is available. He further stated, with effect from4/7/94 when provision of registration for dealer have been made, no credit can be taken on the basis of endorsement and it can only be taken on proper invoice issued by the manufacturers/dealers. He further relies on the larger bench ruling of this Tribunal in the case of Balmer Lawrie & Co. Ltd. v/s Commissioner of Central Excise, Kanpur 2000 (116) ELT 364 Wherein in it is held that after and issuance of notification number 32/94 – CE dated 4/7/94 and insertion of section 57 GG and instruction number 76/94-CE dated 8/11/94 authorizing the Asst. collector to accept the invoices issued by those unregistered dealers, who subsequently got proper registration by 25 December 94, it was observed that this relaxation was given in order to avoid any general difficulty by the end user of the inputs and further held that the deviation in following the rules cannot be permitted as the ~~way the~~ very object of notification 32/94 and insertion of rule 57 GG and Rule 174 requiring the registration of the

dealer's dealing with excisable goods would stand ~~if~~ nullified, if these are taken to be only procedural and not mandatory Further it was held that invoices can be issued only by registered dealer after issuance of notification number 32/94 and only then the Modvat credit can be claimed on the strength of the same in respect of the goods mentioned by the end user and not otherwise. He also relies on the ruling of Madras High Court in the case of Automotive Coaches and Components Ltd. : 2015-TIOL-2101-HC-MAD-CX, wherein held that invoice on which credit is availed must be in the name of the manufacturer availing credit. Under the fact that the appellant had received duty-paid trailers to remake and convert for required model and availed Cenvat credit on the basis of endorsed invoices issued in the name of consignee, It was held that Invoice being not endorsed in the name of the appellant, as such it is not a valid duty paying document to avail Cenvat credit.

7. The learned Counsel for the appellant, in reply, states that the ruling of Balmer Lawrie of the larger bench of this Tribunal deals with situation after change in the Rules when dealer regn. Became compulsion~~s~~ with effect from 4/7/94. Further in the matter of Automotive Coaches and Components Ltd. (supra), it is stated that the period in the question was 2002, and as such the said ruling is also not relevant in the facts of the present case.

8. Having considered the rival contentions I hold that the appellant is entitled to Cenvat credit and the same cannot be denied on the ground that Cenvat credit have been availed after more than 6 months

of the date of document, as the documents are dated prior to 26/06/95 when the period of 6 months was introduced. It have also been so held by Hon'ble Supreme Court in the case of Raghuvar (India) Ltd. (supra). So far the credit on bill of entry/IGM number 1239/23 dated 2/5/94 is concerned. I find that although there is some discrepancy in documents and/or some document is missing, I find that it is admitted fact by the revenue that the appellant have received the goods in question. Accordingly, I remand this issue for re-determination to the adjudicating authority. The appellant is also directed to appear before the authority within a period of 75 days from the date of receipt of a copy of this order along with all supportings, They want to rely and seek an opportunity of hearing.

9. Thus, the appeal is allowed in part and remanded in part.

(Pronounced in the open Court on 22-04-16)

Sd/-

(Anil Choudhary)
MEMBER (Judicial)

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प्रमाणित प्रति / Certified True Copy
4.5.16
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