FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
SINGLE MEMBER 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/70290/2016-SM[BR] dated 22/06/2016

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/1321/2003	**TIN MANUFACTURING CO (INDIA)** S-347,GREATER KAILASH II NEW DELHI
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202,,,WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3Advocate(s) / Consultant(s):

SH RAJESH CHIBBER,ADV
FA-9, KAVI NAGAR
GHAZIABAD

4 Bar Association, CESTAT, Delhi

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,Penjegutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,Ist Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

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

APPEAL No.E/1321/2003(SM)

(Arising out of Order-in-Appeal No. 120-CE/GZB/2003 dated 17/03/2003 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

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

Tin Manufacturing Co. (India) — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

Appearance:

Shri Rajesh Chibber, — for Appellant
Shri Pawan Kumar Singh, Supdt (AR), — for Respondent

CORAM:

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

Date of Hearing : 22/06/2016
Date of Decision : 22/06/2016

AC

FINAL ORDER NO...70290/2016....

Per: Anil Choudhary

The appellant is filed this appeal against Order-in-Appeal No. 120-CE/GZB/2003 dated 17/03/2003 filed by the Commissioner (Appeals) Customs and Central Excise, Ghaziabad. By which denial of Cenvat credit on inputs have been upheld.

2. The brief facts are that the appellants are engaged in the manufacture of metal containers & availed Cenvat credit on certain inputs being raw material. Vide a show cause notice, objection was raised by the Revenue on availing the Cenvat credit for want of proper documents or original duty paying documents not submitted to Revenue. The documents in question, are at Serial. No. 12 to 18 of the chart annexed to SCN. The details of which are as follows: –

12-	Inv-No.1284 dated 05.08.94
13-	Inv-No.72 dated 12.08.94
14-	Inv-No.73 dated 12.08.94
15	Inv-No.1249 dated 20.08.94
16-	Inv-No.1261 dated 23.08.94
17-	Inv-No.521 dated 25.08.94
18-	Inv-No.40 dated 31.08.94

3. The appellant appeared and contested the show cause notice which are decided by the O-I-O dated 31/07/96 wherein it is observed that the appellant filed original copy of invoice bearing I. No. 40 dated

31/08/94 (serial No.18 of payment) as certified by Income Tax Authority with the request that same may be considered for allowing credit.

4. So far the document at Sl. No.12 for input credit of Rs.20,753/- is concerned the appellant stated that the same was misplaced and the appellant is under the impression that the said document was certified by the Income Tax Department. During the pendency of this appeal, the appellant found the same and have produced the original – transport copy of the invoice cum challan along with the Xerox copy of RG23A part-II wherein credit have been taken in the register at Sl. No. 16 mentioning the challan number. The learned Counsel prays that as the order is available and the same may be considered for allowing credit.

5. So far documents at Sl. No. 13 to 17 is concerned it has been observed in the impugned order-in-appeal that the appellant had produced certified copies of the same issued by the Income Tax Authority (Deputy Commissioner) of Income Tax and had paid the modvat credit, which may be allowed on the basis of such certified copies. As regards document, it is submitted that the argument submitted before the Assistant Commissioner as is evident from the order-in-original but no specific reasons have been given for disallowing the same and the amount was disallowed, it appeared erroneously. However, the learned Commissioner (Appeals) rejected the Cenvat credit for document at Sl. No. 12 to 17 observing that although the appellant produced the certified copy which is issued by

the Income Tax Department but it is not explained as to why even after the lapse of a period of 9 years, such original documents have not been received back by the appellant and on this ground alone, it is observed that the existence of documents and taking payment of duty on inputs as prescribed by Rules, is not a technicality to be complied with for availing modvat credit. Accordingly, modvat credit cannot be allowed on the strength of photocopy or certified copy of documents.

6. Being aggrieved the appellant is in appeal before this Tribunal. The learned Counsel for the appellant have urged that the rejection of documents certified copy, which were at Sl. No. 12 to 17, is admitted. Hence, the same should be allowed. So far, document at Sl. No. 18, is concerned, he urges that the said document was admittedly filed before the Revenue and no need to set aside for rejection and as such the credit needs to be allowed for the interest of Justice. So far, the document at Sl. No. 12 is concerned the same is now available and accordingly, may be considered for allowing credit. He further relies on the ruling of Honourable Allahabad High Court in the case of CCE versus Matsushita Television & Audio India Limited 2015 (324) ELT 264(All.), wherein the question before the Honourable High Court, was whether on the facts and circumstances the modvat credit can be taken on the basis of the Photostat copy of bill of entry. The Honourable High Court held and there is no allegation in the SCN that the goods in question were not received under the relevant documents or paid the duty on the goods and the facts that goods are received in the factory for the intended purpose nor there is finding recorded as to

the contention of the assessee that the document was misplaced, which was also not misbelieved. Further, the assessee had obtained from the bank the exchange control copy of the relevant bill of entry and also executed and admitted Bonds, observing that Revenue would've verified the authentic control copy of the bill of entry. It was held that the plain reading of sub Rule (3) of Rule 57G of Central Excise Rules, 1944 clearly indicates that no credit under sub Rule 3 shall be taken by the manufacturer, unless the inputs are received in the factory under the cover of any of the specified documents. It is undisputed fact that the inputs received in the factory under the cover of a triplicate copy of bill of entry which was subsequently misplaced. Accordingly, the Honourable High Court is apparently allowed the credit as per order of this Tribunal. Learned Counsel also relies on another Co-ordinate Bench decision's Ruling of this Tribunal in CCE versus JSW Steel Ltd 2011 (265) ELT 50 (Tri.Chennai) under the fact that credit was denied on the ground that the assessee produced only Photo copy of the order-in-original on the strength of which credit was taken but did not produce original copy of the transporter. This Tribunal held that the receipt of the goods and use in the factory is confirmed by the Revenue. Under the circumstances the original document was not produced as the same was lost and the Photostat copy of the original invoice and report of discharged duty that the two related circumstances lead to the conclusion that credit is to be extended to the assessee.

7. The learned A.R. for revenue, who relies on the impugned order.

8. Having considered the rival contentions, I find that there is no dispute as to the receipt of the goods in the factory and in the production of taxable output. I further hold that rejection of the claim of credit on the document at Sl. No. 13 to 20 is concerned the same is directive and accordingly, I allow the credit on the same. So far document of Sl. No. 12 is concerned the transport original copy of which is produced in the course of hearing before this Tribunal, I allow the appeal with respect of Sl. No. 12 by way of remand with a direction to the adjudicating authority to consider the same on following order allowing the credit. Such a remand order will be passed within a period of 60 days from the date of receipt of a copy of this order. The appellant is also directed to appear before the authority with the condition and the original copy of the invoice which has been returned here within the Court to the appellant. Thus, the appeal is allowed in part with consequential benefits and remanded in part as directed in the afore-mentioned paragraphs.

(Dictated in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

olp

प्रमाणित प्रति / Certified True Copy
12.7
Asstt. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001