FAX : 0532-2400149 REGISTERED / AD

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

Dated: 28/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70216/2017-EX[DB] dated 22/02/2017

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/137/2008	HAN SUNG METAL PVT. LTD. A-39, SECTOR 80, PHASE II NOIDA UP
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3Advocate(s) / Consultant(s):

BIMAL JAIN (C. A.)
650, POCKET-V, MAYUR VIHAR,
PHASE-I,
DELHI
110091

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy ~~16~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos.E/137/2008-EX[DB]

Arising out of Order-in-Original No.38/Commissioner/NOIDA/07 dated 18.10.2007 passed by Commissioner (Appeals) of Central Excise, Noida.

For approval and signature:

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

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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 Han Sung Metal Pvt. Ltd.

...APPELLANT(S)

VERSUS

C..C.E., Noida

...RESPONDENT (S)

APPEARANCE
Shri Bimal Jain, CA for the Appellant
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 07.11.2016

FINAL ORDER NO.- 70216/2017

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant, M/s Han Sung Metal Pvt. Ltd., filed this appeal against Order-in-Original No. No.38/Commissioner/NOIDA/07 dated 18.10.2007 passed by Commissioner (Appeals).

2. The appellant, for the imports made by them during the period December, 2003 to August, 2004., used DEPB scrip and took the amount which was so debited in DEPB scrip as Cenvat Credit. Subsequently, in pursuance of audit objection and after gathering details from the appellant, a show cause notice dated 24.01.2007 was issued seeking reversal of the Cevnat Credit taken by them.

3. Ld. Chartered Accountant, appearing for the appellant, submits that the Exim Policy during the relevant period treated the use of DEPB scrip (which is purchased on payment of premium from the market) as payment of duty in cash and they were under the bona fide impression that utilization of DEPB credit was amounting to payment of duty and have taken the credit accordingly. That was also the interpretation given by the Tribunal in the decision rendered in November, 2002 in the case of Polyhose India Pvt. Ltd. Vs. Commissioner of Central Excise, Chennai, reported in 2003 (152) ELT 361 (T-Chennai). Under these circumstances, he submits that the demand is clearly time-barred. He also contests the demand on merits.

3. The learned DR have submitted that the EXIM Policy during the relevant period dealt with the case of payment of duty in cash under

DEPB scrip and the amendment of Custom notification holding use of DEPB scrip as amounting to payment of duty, came in September, 2004 only. It is further contended that the appellant has taken a unilateral decision without consulting the Department and therefore, case of suppression is made out and extended period of limitation is rightly invoked.

4. Heard the parties.

5. Having considered the rival contentions, we find, in view of the ruling of this Tribunal, in the case of Polyhose India Pvt. Ltd. reported at 2003(152) ELT 361 (Tri.-Chennai), and further in view of the Law as explained by Hon'ble Karnataka High Court in Yokogawa Bluestar Ltd. (supra), and in view of the fact that although the Exim Policy was amended with effect from 28.01.2004, but the Customs Notification was issued subsequently being 96/2004-Cus dated 17.09.2004. We hold that no case of suppression or contumacious conduct is made out against the appellant in taking the credit during the relevant period prior to 01.09.2004. Accordingly, we allow the appeal both on merits of limitation. Accordingly, the impugned order is set aside. The appellant will be entitled to consequential benefits, if any, as per Law.

(Dictated and Pronounced in the open Court)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
03/03/17

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001