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

Dated: 18/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70218/2016 DB dated 2/11/2015

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/55613/2014	INDIAN DIE CASTING INDUSTRIES SANSIGATE, AGRA ROAD ALIGARH(UP)
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE, LUCKNOW 7-A, ASHOK MARG, LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH N.L.JANGIR,ADV
1530, SECTOR 21-D
FARIDABAD, HARYANA

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, I-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

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Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal No.55613/14

Arising out of OIA No.71-CE/LKO/2014 dated 25/07/2014 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Lucknow.

For approval and signature:

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

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 Indian Die Casting Industries ...APPELLANT(S)

VERSUS

Commissioner of C.Ex. & Customs, S.Tax, Lucknow RESPONDENT (S)

APPEARANCE

Shri N. L. Jangir, Adv. for the Appellant (s)
Shri H. M. Dixit, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 02.11.2015

Final ORDER NO. 70218/2016

Per Mr. Anil Choudhary :

The appellant assessee is in appeal against order in appeal dated 25/7/14, whereby the Cenvat credit is disallowed on the allegation of taking it prior to the receipt of goods have been upheld.

2. The brief facts are that in the course of audit conducted during the year 2011 for the period 2007-08 it was found that the appellant have taken Cenvat credit on invoice number 50 and 51 both dated 27/6/2007 where in the goods were dispatched by the supplier on 27/6/07 at about 20.00 hours from Daman, and the goods were claimed to be received by the appellant on 30/6/2007 at Aligarh. Further goods dispatched vide invoice number 95 dated 25/9/2007 by the same supplier – Spring Merchandisers ~~and either is~~ private Ltd, Daman, the goods were claimed to have been received on 29/9/2007. It appeared to revenue that on invoice number 50 and 51 despatched by the same truck, some paper slip was pasted to hide the tax check post stamp which bears ~~of~~ the date on which, the goods entered in the U.P.state. Whereas it further appeared that there was any manipulation also in the gate register and also overwriting. Further it appeared, so far invoice 95 dated 25/9/07 is concerned that the same is tempered or torn from the portion bearing trade tax check post stamp and the assessee put their own stamp for taking modvat credit by hiding the date of entry of goods in U. P. State. Accordingly show cause notice was issued as it appeared that the appellant in order to avoid paying the Excise duty in cash have manipulated their record and have taken

the credit prior to the date of receipt of the goods and accordingly have utilised Cenvat credit not available on the date of utilisation.

3. The appellant contested the show cause notice by filing reply. It is stated that the receipt of goods is not disputed. It was further contended that the Cenvat credit ~~is~~ utilised as on 30^{th} June, 2007, could also have been used subsequently in July 2007 and similarly the credit taken on 30^{th} September, 2007 could have been utilised in October 2007. It was further urged that there is no apparent mistake, whatever mistake is there, it is of technical or procedure in nature. Further the appellant deposited the interest for 2 days on the Cenvat amount and intimated to the revenue on 16/9/11 prior to issue of the SCN. The SCN was adjudicated vide order-in-original dated 31/12/12 and the proposed demand for cenvat credit at Rs.3,51,464/- was disallowed and further penalty of Rs. 3,62,008/- was imposed under Rule 15 read with Section 11 AC of the Act.

4. Being aggrieved the appellant assessee preferred appeal before Commissioner (Appeals), who vide the impugned order was pleased to reject the appeal. As regards the ground of time bar taken by the assessee, that neither the proviso to section 11A was invoked nor the demand was confirmed in the order-in-original denying them credit with reference to the proviso to section 11A, thus, the whole demand is vitiated on the ground of limitation itself. The ld. Commissioner (Appeals) held that from the allegations in the show cause notice it is made out that the Cenvat credit was not available and the assessee have resorted to tempering of the record and as such, the ingredients to

invoke extended period have sufficiently been made out in the show cause notice and accordingly extended period was rightly invocable and demand confirmed.

5. Being aggrieved, the appellant is in appeal before this Tribunal. The ld. Counsel for the appellant takes me through the xerox copy of the invoices and gate register. From invoice number 95 dated 25/9/2007 wherein the time of removal is entered as 18 hours (approx). The invoice contains the seal of the tax barrier at Ghaziabad ~~was~~ dated 29/9/07 and the goods have been entered in the gate register vide number 447 dated 29/9/07. Prior to this entry, another number 447 was made which have been crossed out. In respect of invoice number 50 and 51, both have been dispatched by the same truck on 27/6/07 at about 20 Hours from Daman. From these Invoices, the seal of the Commercial Tax Department ~~and~~ at the check post is not evident and Further some paper or Part of the Lorry Receipt appears to be pasted at the place tax barrier Stamp is put and thereafter, the Modvat Credit Stamp have been affixed. Further from the Gate Register, it is seen that after Entry Number 287 on 30/6/07 Dated, Another Entry dated 1/7/07 which have been renumbered by over~~costing~~writing as Entry Number 289 and Thereafter Entry Number 288 having been made showing the Entry for the invoices in question and the goods received on 30/6/07 and there is overwriting in the date. The Ld. Counsel explains that the pasting of the slips on the invoice is wholly attributable to the transporter and they have not manipulated in respect of the same. So far the issue of limitation is concerned, the ld. Counsel places reliance

on the ruling in the case of Pushpam pharmaceuticals company versus CCE : 1995 (78) ELT 401. Whereas ~~the~~ it has been held that from perusal of the proviso to section 11A, indicates that the expression – suppression of fact has been used in the company of strong words such as fraud, collusion or wilful default. Thus, it does not mean omission. The act must be deliberate. In taxation it can have only one meaning that the correct information was not disclosed, deliberately to escape from payment of duty.

6. Heard the ld.A.R., who supports the impugned order.

7. Having considered the rival contentions I find that so far invoice number 95 dated 25/9/07 is concerned, there is no material alteration in the gate register or on the body of the invoice. Accordingly the demand relating to this invoice is set aside along with the penalty imposed. So far the demand relating to Cenvat credit for invoice numbers 50 and 51 dated 27/6/07 is concerned I find that the modvat Stamp is affixed in a different place in spite of there being space available at the usual place and secondly I find that there is material alteration in the gate register both in the serial number as well as ~~gate~~ the date in entry number 288 and 289. Thus manipulation is writ large on the face of the record. Thus, the demand in respect of invoice number 50 and 51 is upheld.. So far limitation is concerned in such cases of manipulation and/ deliberate avoiding the tax liability, I hold that extended period of limitation is available. Accordingly, the demand is held to be within time.

8. Thus, the appeal is allowed in part as indicated above. Appellant will be entitled to consequential benefits.

(Pronounced in the open Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

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