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

Dated: 14/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70010/2016 SM dated 30/10/2015

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/56011/2014	MAKINO AUTO INDUSTRIES PVT LTD D-146-148, SECTOR-63 NOIDA,UP-201301
	Name and Address of Respondent	CCE, NOIDA C-56/42, SECTOR-62 NOIDA(UP)201307

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH V.K.SEHGAL,ADV
SE 181 SHASTRI NAGAR
GHAZIABADUP),

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 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.56011/14

Arising out of OIA No. NOI – EXCUS – 000 – APPL – I 46 – 14 dated 25.7.2014 passed by the Commissioner, Central Excise & Service Tax, Noida, UP.

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.

M/s Makino Auto Industries Pvt. Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.Tax, Noida RESPONDENT (S)

APPEARANCE

Shri Rakshit Verma, Adv. for the Appellant (s)
Shri V.K. Shastri , Additional Commissioner (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 30. 10. 2015

Final ORDER NO. 70010/2016

Per Mr. Anil Choudhary :

The appellant assessee is in appeal against order in appeal dated 25.7.2014 passed by the Commissioner (Appeals I), Customs, Excise and service tax, Noida by which the Cenvat credit availed on inputs utilised in the fabrication of tools and dies have been denied.

2 The appellant is manufacturer of motor vehicle components and parts. The show cause notice dated 20/7/12 was issued on the basis of audit as it appeared that the appellant have availed Cenvat credit on capital goods being goods falling under chapter 72 utilised for fabrication of tools/dies, which have been further used in the manufacture of taxable final products. It appeared to revenue that as the inputs fall under the chapter 72 of CETH, the inputs will not fall under the definition of capital goods as defined in rule 2 of the Cenvat credit rules 2004. Further it appeared that the appellant failed to make proper disclosure to the revenue from time to time and accordingly extended period was invoked covering the period from 2008 - 09 to May 2012. Accordingly the appellant was required to show cause as to why not Cenvat credit of Rs.1, 94, 134 be not denied and recovered along with interest and further penalty was proposed.

3. The appellant contested the show cause notice by filing reply. It was also contended that extended period of limitation is not attracted as the

appellants have disclosed regularly in the returns filed with the revenue of the Cenvat credit availed. It is also contended that books of accounts were audited by internal audit team's regularly. It was further contended that the said inputs were used in manufacture of tools and dies (Intermediate product) within the factory which in turn were used in the manufacture of final product being auto parts. It was further contended that although they were entitled to take hundred percent Cenvat credit, but by mistake they have taken only 50% credit. The SCN was adjudicated vide order in ori dated 28/11/13 by which the proposed credit was disallowed and had liable to be recovered along with interest under rule 14 of CCR and further equal amount of penalty was imposed under rule 15 of CCR read with section 11 AC of the Act.

4 Being aggrieved the appellant preferred appeal before the ld. Commissioner (Appeals) who was pleased to dismiss the appeal holding that the extended period of limitation is attracted as the appellant never specifically disclosed the use of inputs in fabrication of capital goods. Further the appellant never specified the items for which they have availed the Cenvat credit. It was further held that making entries in the Fixed Assets Register, disclosing the fabrication of tools and dies in the balance sheet, etc. is not sufficient disclosure under the Central Excise law.

5. Being aggrieved the appellant is before this Tribunal in appeal. The ld. Counsel for the appellant urges that it is admitted case of the revenue

that the inputs in question have been utilised in fabrication of tools/dies. Further it is pointed out that tools and dies including moulds are capital goods as defined in rule 2(A)(iv) of the Cenvat credit rules. He further urges that the ld. Commissioner have erred in not appreciating the definition of capital goods as given in the Cenvat credit Rules, leading to an erroneous conclusion. Accordingly prays for allowing the appeal.

6. The ld. AR for the revenue relies on the impugned order. He further states that in view of lack of proper disclosure made to the revenue, extended period is rightly invoked.

7. Having considered the rival contentions I find that it is an admitted fact that the appellant have utilised the inputs in question falling under chapter 72 of the CET Act in the fabrication of tools and dies which have been further utilised in the main factory for manufacture of goods which have been cleared on payment of duty. Further I find that moulds and dies, have~~n't~~ been defined as capital goods in Rule 2(A)(iv) of the Cenvat credit rules 2004. Accordingly I allow the appeal with consequential benefits if any. The impugned order is set aside.

(Pronounced in the open Court)

mm

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
21.1.16
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