FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 20/06/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70280-70281/2016-EX[DB] dated 01/06/2016

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/56885/2013 &E/55815/2014	**EVEREADY INDUSTRIES INDIA LTD** B-1/2, SECOTR-80, PHASE-II NOIDA,GAUTAM BUDH NAGAR UTTAR PRADESH 201305
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH- 201307

Copy To

3 Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENSION,
LINK ROAD,NEW DELHI,

6 Bar Association, CESTAT, ALLAHABAD
7 Director Publications, Customs, Excise. I.P. Estate, Delhi
8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, New Delhi-3
9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithiyaram Street, T. Nagar, Chennai-17
10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
11 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
15 The ICFAI society, 52, Nagarjuna Hill,Panjagutta Hyderabad.-500082
16 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF 19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

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

APPEAL No.E/56885/13 & 55815/14(DB)

(Arising out of Order-in-Appeal No. 374/CE/APPL/NOIDA/2012 dated 20/12/2012 & NOI/EXCUS/000/APPL/143/14 dated 25/07/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

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

Eveready Industries India Ltd **Appellant**

Vs.

Commissioner of Central Excise & S.T., Noida **Respondent**

Appearance:

Shri B.C. Narasimhan, Advocate
Shri Atul Gupta, Advocate for Appellant
Shri Ashok B. Kulgod, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 01/06/2016
Date of Decision : 01/06/2016

FINAL ORDER NO. 70280-70281/2016

Per: Anil G. Shakkarwar

These two appeals are filed by M/s Eveready Industries India Ltd, issue in both the appeals is same but for different periods. Appeal No. E/56885/13 is filed against Order-in-Appeal No. 374/CE/APPL/NOIDA/2012 dated 20/12/2012 & Apple No. E/55815/2014 (DB) is filed against Order-in-Appeal No. NOI/EXCUS/000/APPL/143/14 dated 25/07/2014.

2. Brief facts of the case are that the appellants are manufacturer of Dry Cell Batteries and availing CENVAT credit facility. During the course of manufacture of dry cell batteries defective dry cell batteries get manufactured on which no duty is paid. Therefore, it appeared to revenue that CENVAT credit going into manufacture of defective batteries on which duty is not paid is not admissible to the appellant. Through show cause notice No. V(15)Adj./Noida/Eveready/42/11 dated 26.04.2011 it was proposed that CENVAT credit amount to Rs.46,71,927/- involved in effective dry cell batteries cleared during the period from April, 2006 to February, 2011 is recoverable. The said show cause notice was adjudicated through Order-in-Original No. 06/ADDL. COMMISSIONER/NOIDA/2012-13 dated 07.06.2012 wherein the original authority held that any CBEC Circular based on the provisions of Rule 57D issued earlier have no relevance to the present case and confirmed the demand in the show cause notice and

other demand in the notice of Rs.6,78,201/- for subsequent period from March, 2011 to October, 2011 through show cause notice dated 11.01.2012 totaling to Rs.53,50,128/- and imposed equal penalty. Aggrieved by the said original order assessee preferred appeal before Commissioner (Appeals). Commissioner (Appeals) through Order-in-Appeal No. 374/CE/APPL/NOIDA/2012 dated 20/12/2012 decided the appeal and upheld the original order. Challenging the said Order-in-Appeal dated 20.12.2012 appellant is before us through appeal No.E/56885/13.

3. The issue remaining the same, similar show cause notice covering a period from April, 2012 to November, 2012 was issued wherein it was proposed to recover Rs.6,68,035/- involved as CENVAT credit gone into defective dry cell batteries through the show cause notice No. V(15)Adj./Noida/Eveready/169/12 dated 28.03.13. The said show cause notice was adjudicated through Order-in-Original No.15-16/ADDITIONAL COMMISSIONER/NOIDA/2013-14 dated 18/07/2013 which on similar set grounds confirmed the demand and imposed penalties. Appellant preferred appeal against the said order which was decided through Order-in-Appeal No. NOI/EXCUS/000/APPL/143/14 dated 25/07/2014 which is impugned order in appeal no. E/55185/14. In the Order-in-Appeal dated 25.07.2014, Commissioner (Appeals) upheld the order in original and rejected the appeal. Against the said two orders-in-appeal, Appellant is before us through two separate appeals. The contention of the appellant is that there are no provisions in CENVAT

credit Rules, 2004 to reverse CENVAT credit availed on inputs going into manufacturer of goods which get manufactured as defective or are wasteful goods. The Central Excise Rules, 1944 provided through rule 57 D that CENVAT credit availed on inputs going into waste is admissible. There is plethora of judgments wherein it is ruled that there is no authority of law for recovery of CENVAT credit availed on such inputs which ultimately go into waste or in the manufacturer of defective goods.

4. The Learned Counsel for the appellant reiterated their grounds of appeal and further argued that the criteria for admissibility of CENVAT credit ~~are~~ is that the inputs should be used in the manufacture. There are no allegations in the show cause notice that the inputs or input services were not duty paid or the input ~~services were a~~ or input services were not received in the factory or they were not used in the manufacture. The CBEC have issued circular in the past which is not withdrawn. He has further argued that even today CBEC manual on supplementary instruction under chapter 5 at para 3.7 clarifies as follows.

> "3.7 CENVAT credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or bye product. Similarly, CENVAT is not to be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that CENVAT credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly."

Therefore by not following CBEC instruction the orders-in-original and Orders-in-appeal have become bad in law and they may be set aside. The departmental representative has reiterated the contentions of Order-in-Appeal.

5. We have considered the rival contentions, we notice that even today CBEC instruction stand that CENVAT credit is admissible in respect of input contained in any of the waste, refuse or by product. We, therefore, hold that both the show case notices in present two appeals are unsustainable. Therefore, we set aside both the Orders-in-Appeal and both Orders-in-original. We allow both the appeals with consequential relief, if any. No Costs.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Anil Choudhary)
Member (Judicial)

ajp

सत्यापित प्रति / Certified True Copy
8.7.16
सहायक पंजीयक / Asstt. Registrar