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

Dated: 20/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70836-70837/2016-SM[BR] dated 17/08/2016

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/57599/2013	**JAYCO ELECTRICALS** 163,164 &174 ,175,RAJVANSH VIHAR,SARAI QAZI,GARH ROAD MEERUT,UP
2	E/57600/2013	**JAYCO ELECTRICALS** 163,164 & 174,175 RAJVANSH VIHAR, SARAI QAZI GARH ROAD, MEERUT, UP

Name and Address of Respondent

3 C.C.E. & S.T.-Meerut-i
EXCISE CHOWK...UNIVERSITY
ROAD,MANGAL PANDEY NAGAR, MEERUT,
UTTAR PRADESH-250005

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Other Appellants and Respondents as per Annexure

Copy To

4Advocate(s) / Consultant(s):

R. C. Jain & Associates,Adv
C-125, METRO PLAZA,
DELHI ROAD,MEERUT,up

5Bar Association, CESTAT, Allahabad
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
14 Th ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

Appeal Nos. E/57599 & 57600/2013-EX[SM]

Arising out of Order-in-Appeal Nos. 11 & 12-CE/M-I/2013 dated 31.01.2013 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Meerut-I.

For approval and signature:

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

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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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Jayco Electricals ...APPELLANT

VERSUS

C.C.E. & S.T.-Meerut-I ...RESPONDENT

APPEARANCE

Request for adjournment by the Appellant
Shri V.R. Reddy (Asstt. Commr.) A.r. for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 17. 08. 2016

FINAL ORDER NO. 70036 and 70037/2016

Per Mr. Anil Choudhary :

The issue in this appeal is whether the appellant have taken Cenvat credit rightly of Rs.1,76,812/- on inputs namely new insulating oil (transformer oil) under the fact that the invoice was addressed to its head office and not to the factory address.

2. The brief facts are that, the appellant are manufacturer of transformers and also engaged in repairing of the transformers, purchased new insulating oil vide invoice No.00827 dated 14/7/2008 and took Cenvat credit of Rs.1,76,812/-. During the course of audit by Revenue in January, 2010, the taking of the said credit was objected to, and, the appellant reversed the credit. The objection of the audit was that the invoice of the said input was not addressed to the factory address, but the same was addressed to the head office of the appellant. However, the appellant *suo-moto* took credit after a few days of the said amount, without seeking any prior permission from the competent authority. However, they gave intimation to the revenue authority. Accordingly, Revenue issued show cause notice objecting to the taking of *suo-moto* re-credit proposing to recover the said amount under Section 11A read with Section 11AB vide a show cause notice dated 04/03/2011. The appellant did not file any reply to the SCN, the same was confirmed vide order in original along with equal amount of penalty under Rule 15 of CCR, 2004. Both, Revenue and the assessee preferred appeal before Commissioner (Appeals).

The assessee appealed for setting aside the demand and penalty whereas the Revenue appealed for charging of interest under Section 11 AB, which has been erroneously not charged in the adjudication order. Vide orders of even date both the appeals were decided vide separate orders. The Commissioner (Appeals) was pleased to dismiss the appeal of the assessee observing that the goods were received in the head office of the appellant and the appellants failed to produce any evidence regarding delivery/transportation of goods to the factory. Allowing the Revenue appeal's, he upheld the demand of interest. Being aggrieved, the appellant-assessee has filed these two appeals against the two separate orders passed the Commissioner (Appeals).

3. The Counsel for the appellant Mr. Ankur Jain have filed prayer for adjournment on the ground that they have not received the notice for hearing but could know the date of hearing from the cause list. I reject the said time prayer and take up the appeals for hearing. Heard learned A.R. for Revenue and perused the records.

4. Having considered the grounds of appeal and rival submissions, I find that it is not in dispute that the appellant have not received the inputs–transformer oil, the credit of which has been disputed. The learned Commissioner (Appeals) have also accepted the receipt of the input, but have only observed that it appears that the input have been received in the head office and not in the factory. There is no allegation of the revenue that the head office is a separate manufacturing unit. Accordingly I hold that the appellant is entitled to

Cenvat credit of Rs.1,76,812/- under the facts and circumstances. Accordingly, both the appeals stand allowed and the impugned orders are set aside. The appellant will be entitled to consequential benefits in accordance with law.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
26.10
सहायक रजिस्ट्रार / 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