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

Dated: 20/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70033/2016 dated 06/1/2016

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
	E/60707/2013	KHAMESHWAR ENTERPRISES F-1,B-C/222, RADHIKA KUNJ APARTMENTS, NEHRU NAGAR GHAZIABAD
	Name and Address of Respondent	CCE, GHAZIABAD CGO COMPLEX-II, KAMLA NEHRU NAGAR,GHAZIABAD.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

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, 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.60707/13

Arising out of OIA No.GZBEXCUS000APP-153-2013-14 dated 30/09/2013 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Ghaziabad.

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 Khameshwar Enterprises ...APPELLANT(S)

VERSUS

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

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri D. K. Deb, Asstt.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 06.01.2016

Final ORDER NO. 70033/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant, M/s Khameshwar Enterprises, is in appeal against Order-in-Appeal No.GZBEXCUS000APP-153-2013-14 dated 30/09/2013 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Ghaziabad, wherein it was held that the appellant is liable for penalty under Rule 25 (1)(d) of CER 2002 read with Sec.11 AC of the Act.

2. The brief facts are that the appellant is a registered dealer of MS & SS waste and scrap, MS sheets & S.S.Steel. The revenue came to know that the appellant is issuing Cenvat invoices without actual delivery of goods and thus, it is facilitating the availment of Cenvat credit to other manufacturer. It was found that vide invoices dated 2/1/2007, 4/1/07, 5/1/07 and 8/1/07, the appellant passed on the Cenvat credit amounting to Rs.1,66,565/- showing sale of 64.530 MT of MS Ingot to M/s Micro Semi Conductors Private Ltd. Meerut Road, Ghaziabad, a manufacturer of excisable goods. On investigation, it was found that MS Ingot is neither used, in relation to manufacture of excisable goods by Micro Semi Conductor Pvt. Ltd. nor in any case is usable in plant and machinery in their factory. Accordingly, SCN dated 2/1/2012 was issued directing the appellant to show cause as to why penalty be not imposed as it appeared that the appellant have facilitated Micro Semi Conductor Pvt. Ltd. in taking credit by issuing fake invoices, under Rule 25 of Central Excise Rules. The SCN was adjudicated and penalty was confirmed on the appellant of Rs.1,66,565/- under Rule 25 of CER read with Section 11 AC of the

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Act. Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals). The ld.Commissioner (Appeals), relying on the ruling of the Punjab and Hariyana High Court in the case of Vee. Kay Enterprises Vs. CCE : 2011 (266) ELT 436 (P & H) held that the appellant is liable to penalty under Rule 25 (1) (d) of CER read with Section 11 AC of the Act, thereby, upheld the penalty. Being aggrieved, the appellant is before this Tribunal.

3. The ld. Counsel for the appellants urges that for imposition of penalty under Rule 25, confiscation of goods is a condition precedent. The appellant have not removed any excisable goods and accordingly, the penalty which is in addition to confiscation, is not imposable. The ld. Counsel further points out that Rule 26 (2) CER, have been inserted with effect from 1/5/2007, hence, no penalty is imposable either in under Rules 26 or 25 and at best penalty may be imposable under rule 27 which provides maximum Rs.5000/-. The ld. Counsel also relies on the ruling of the Honourable Panjab & Hariana High Court in the case of CCE Vs. Mini Steel Traders : 2014 (309) ELT 404 (P & H) wherein the question before the High Court was whether the setting aside of the penalty by the Tribunal on the registered dealer who have facilitated either in taking further Cenvat credit by issuing invoices without actual supply of goods on the ground that sub rule 2 to Rule 26 of CER, was inserted only with effect from 1/5/2007, is legally correct. Answering the question against the revenue, the Hon'ble High Court agreed with the Tribunal, prior to 1/5/2007, penalty is not

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imposable under Rule 26 read with Sec.11AC for cenvatable invoices issued fraudulently without actual delivery of goods.

3. The ld. for revenue relies on the impugned order.

4. Having considered the rival contentions, I hold that no penalty is imposable under Rule 25 and as such the ld. Commissioner is in error in holding that penalty is imposable under Rule 25 (1) (d) of the CER, 2002 read with section 11 AC of the Act. Under the circumstances, the penalty imposed is modified and converted to penalty under Rule 27 of the Act and reduced penalty of Rs.5000/- is imposed on the appellant.

5. Thus, the appeal is allowed in part. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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