REGISTERED / AD

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

Dated: 28/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70883/2016-EX[DB] dated 07/06/2016

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/1881/2007	FEDDERS LLOYD CO. LTD. D-4, PHASE II, NOIDA
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, SECTOR-62, NOIDA-201307 -

Copy To

3 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI.

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 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. ~~16 Office Copy~~ ~~17 Guard File~~

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No.E/1881/2007[DB]

Arising out of Order-in-Appeal No.28/CE/APPL/Noida/2007 dated 30.03.2007 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

For approval and signature:

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

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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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M/s Fedders Lloyd Corporation Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida

...RESPONDENT (S)

APPEARANCE:

Shri Atul Gupta, Advocates for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 07.06.2016

FINAL ORDER NO.- F/O-70883/2016

Per Mr. Anil G. Shakkarwar:

The present appeal is preferred against Order-in-Appeal No.28/CE/APPL/NOIDA/07 dated 30.03.2007.

2. The brief facts of the case are that the appellants were manufacturers of Air Conditioners and its parts and availed Cenvat facility and were registered with the department. During the period from 26.07.2002 to 31.12.2002, the appellant cleared Air Conditioners and Chillers of value of Rs.41,81,831/- to defense organizations at Nil rate of duty under Notification No.64/95-CE dated 01.03.1995. It appeared to Revenue that the said goods were cleared at Nil rate of duty and they were manufactured out of the inputs on which Cenvat Credit was availed and the appellant did not maintain separate accounts for dutiable and exempted final products and, therefore, the appellants were liable to pay amount equal to 8% of value of goods cleared by them without payment of duty. Therefore, a show-cause-notice dated 15.04.2005 was issued to appellant by invoking proviso to Sub-Section (1) of Section 11A of Central Excise Act, 1944 read with Rule 12 of Cenvat Credit Rules, 2002, demanding an amount of Rs.3,34,546.48/-. In the meantime, the appellant reversed Rs.1,91,389/- through various entries dated 21.07.2002, 31.08.2002, 31.10.2002 and 05.01.2003, treating the said amount as attributable Cenvat Credit availed on the inputs that have gone into the manufacture of said exempted goods. The Original Authority through Order-in-Original

No.17/AC/N-IV/06 dated 12.12.2006, held that the appellant suppressed the fact of non-maintaining separate accounts of inputs and confirmed the demand and imposed equal penalty. The appellant preferred an appeal before Ld. Commissioner (Appeal) who decided the appeal through Order-in-Appeal No.28/CE/APPL/NOIDA/07 dated 30.03.2007, wherein the Ld. Commissioner (Appeal) agreed with the original authority and rejected the appeal. Aggrieved by the said Order-in-Appeal dated 30.03.2007, the appellant is before this Tribunal.

4. The grounds of appeal are as follows:

(a) The appellants have reversed the credit attributable to inputs used in the manufacture of exempted goods.

(b) The demand is barred by limitation.

(c) The appellant contended that he submitted all the relevant information in their RT-12 returns and elaborated that whenever they made payment of Cenvat Credit on inputs used in the manufacture of exempted goods, in the RT-12 returns as RG-23A part II ~~a-to~~ register and PLA register, they clearly mentioned that amount has been paid on reversal of Cenvat Credit of inputs used in the manufacture of exempted goods and there are large number of Ruling by various appellate fora that reversal of Cenvat Credit amounts to non-availment of Cenvat Credit. Further, the amounts were reversed during the period from

21.07.2002 to 05.01.2003 and the show cause notice was issued on 15.04.2005, which is beyond the normal period of limitation.

5. Heard the Ld. Counsel. He has submitted that attributable Cenvat Credit was reversed time to time and said intimation was recorded in RT-12 and nothing was hidden from the department. Further, there are large number of Ruling by appellate fora holding that reversal of Cenvat Credit amounts to non-availment of Cenvat Credit and since the Cenvat Credit was not availed, the question of recovery of 8% amount does not arise. Further, the show-cause-notice was barred by limitation. He has further submitted that Section 72 of Finance Act, 2010 has provided a provision to be made applicable retrospectively, covering the situation in the present case.

6. The Ld. DR for Revenue has supported the impugned Order-in-Original and Order-in-Appeal.

7. We have taken into consideration the rival contentions. The grounds of appeal very clearly established that the show cause notice is hit by limitation. Therefore, we hold that the impugned show cause notice is not sustainable. Therefore, we set aside both the Order-in-Original and Order-in-Appeal. The appeal is allowed in above terms.

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

सत्यापित प्रति / Certified True Copy
25.1.2016
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001