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

Dated: 05/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71085/2016-EX[DB] dated 28/11/2016

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/2012/2008	SURYA ROSHNI LTD., MORADABAD ROAD,KASHIPUR-244713 (UTTARAKHAND)
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

APPEAL No. E/2012/2008-EX[DB]

(Arising out of Order-in-Original No. 14/Commr/Meerut-II/2008 dated 09/06/2008 passed by Commissioner of Central Excise & Customs, Meerut-II)

M/s Surya Roshni Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Atul Gupta, Advocate, for Appellant
Shri T.K. Sidkar, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/11/2016
Date of Decision : 28/11/2016

FINAL ORDER NO. 71085/2016

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Surya Roshni Ltd., against Order-in-Original No. 14/Commr/Meerut-II/2008 dated 09/06/2008 passed by Commissioner of Central Excise & Customs, Meerut-II.

2. The brief facts of the case are that the appellants are engaged in the manufacture of general lighting services Bulbs, Fluorescent Tube Lights, High Pressure Sodium Vapour Lamps (HPSVL) & High Pressure Mercury Vapour Lamps (HPMVL) etc. falling under Heading No.8539 of the

first schedule to the Central Excise Tariff Act, 1985. They procured capital goods during the period from August, 2003 to December, 2005 and installed the same and used them for manufacture of excisable goods. It was claimed that the final installation of capital goods was undertaken on 17/12/2005 and the said capital goods were also used in the manufacture of dutiable goods. The appellants opted for the benefit of Notification No. 50/2003-CE with effect from 02/01/2006. The credit availed on said capital goods during the period from August, 2003 to December, 2005 was utilized towards payment of duty on goods manufactured and cleared by them till 01/01/2006. It appeared to Revenue that Cenvat credit availed on the capital goods was not admissible to the appellant in view of the fact that with effect from 02/01/2006, they were manufacturing exempted goods from the said capital goods. Therefore, appellants were issued with a Show Cause Notice dated 28/12/2006, wherein it was proposed to recover Cenvat Credit of Rs.1,33,93,777/- availed on capital goods procured during the period from August, 2003 to December, 2005 & used in the manufacture of the exempted goods with effect from 02/01/2006 under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944. The issue was adjudicated by Commissioner of Central Excise, Meerut-II through Order-in-Original No. 14/Commr/Meerut-II/2008 dated 09/06/2008. The appellant submitted before the Original

Authority that eligibility to capital goods credit is to be determined at the time when the goods were received by the manufacturer and in the present case at the time of receipt of capital goods the appellants were manufacturing dutiable goods and since the capital goods were used for manufacture of dutiable goods, subsequently, even if they are used for manufacture of exempted goods credit cannot be denied to the manufacturer. The ld. Commissioner did not appreciate the argument and disallow the Central Excise credit amounting to Rs.1,33,93,777/- under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 and imposed equal penalty. Aggrieved by the said order by Commissioner of Central Excise, Meerut-II i.e. Order-in-Original No. 14/Commr/Meerut-II/2008 dated 09/06/2008, the appellant preferred appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant who has submitted that the capital goods were received and installed & used for manufacture of dutiable goods. He also submitted that, the said Notification No. 50/2003-CE permits them to chose the date from which they shall avail the said exemption and that there is no restriction about credit being availed in respect of capital goods in that notification itself. He has further relied on the decision of the Larger Bench of this Tribunal in the case of Spenta International Ltd. *Versus* Commissioner of Central Excise, Thane reported at 2007

(216) E.L.T. 133 (Tri. – LB) and contended that the relevant time for considering the eligibility of credit is the date of receipt of capital goods into the factory.

4. The ld. D.R. reiterated the findings of the ld. Commissioner.

5. We have carefully considered the submissions made by both the sides. Admittedly, the capital goods were capable of being used even before installing the entire range of capital goods. It is undisputed fact that the capital goods were received when the appellant was paying Central Excise duty on the clearances and that the capital goods were used for the manufacture of excisable goods on which duty was paid. The appellant opted to avail the benefit of said Notification No. 50/2003-CE with effect from 02/01/2006. Before 02/01/2006, the said capital goods were used for manufacture of dutiable goods. We find that the ratio of decision of Larger Bench of this Tribunal in the case of Spenta International Ltd. *Versus* Commissioner of Central Excise, Thane reported at 2007 (216) E.L.T. 133 (Tri. – LB)is squarely applicable in the facts and circumstances of the present case. It was held by this Tribunal in the said case that the eligibility of Cenvat credit is to be determined with reference to the dutiability of the final product on the date of receipt of capital goods. We find that in the present case, the capital goods were received when the dutiable final products were being manufactured. Therefore, we hold that in the

present case Cenvat credit was admissible to the appellants. We, therefore, set aside the impugned order and allow the appeal with consequential reliefs to the appellant, if any, as per law.

(Dictated and pronounced in Court)

—Sd—
(Anil G. Shakkarwar)
Member (Technical)

—Sd—
(Justice Dr. Satish Chandra)
President

Ansari