FAX : 0532-2400149 REGISTERED / AD

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

Dated: 16/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70487-70488/2017-EX[DB] dated 08/05/2017

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/622/2010	HARDAYAL ENGG. WORKS PVT. LTD. S-5, 6 & 7 OF SOUTH SIDE OF G.T.ROAD, GHAZIABAD.
2	E/623/2010	SH. PRIT PAL SINGH, DIRECTOR OF M/S HARDAYAL ENGG. WORKS PVT. LTD. , S-5, 6 & 7 OF SOUTH SIDE OF G.T.ROAD, GHAZIABAD.
		Name and Address of Respondent
3		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
4		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Rakshit Verma
D-34, PATEL NAGAR-2,
GHAZIABAD,
UTTAR PRADESH
201001

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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 The 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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 1

APPEAL Nos.E/622-623/2010-EX[DB]

(Arising out of Order-in-Original No.53/COMMR./GZB/2009 dated 23/12/2009 passed by Commissioner of Central Excise & Customs, Ghaziabad)

M/s Hardayal Engg. Works Pvt. Ltd.,

Shri Prit Pal Singh, Director of **Appellants**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rakshit Verma, Advocate	for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR),	for Respondent

CORAM:

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

Date of Hearing	:	08/05/2017
Date of Decision	:	08/05/2017

FINAL ORDER NOs: 70487-70488/2017

Per: Anil G. Shakkarwar

The present two appeals are directed against Order-in-Original No.53/COMMR./GZB/2009 dated 23/12/2009 passed by Commissioner of Central Excise & Customs, Ghaziabad. Since both the appeals are arising out of the same Order-in-Original, therefore, they are taken together for decision.

2. The brief facts of the case are that M/s Hardayal Engineering Works Pvt. Ltd. (herein after referred to as 'party') were engaged in

the manufacture of Pulp Paper Machinery and Parts thereof falling under chapter 84. Further, officers of Central Excise visited the factory premises of the party on 15.03.2007 and scrutinized the records of availment on Cenvat credit. They recorded statement of Shri Girjesh Kumar Dwivedi working as Senior Engineer on 15.03.2007 and statement of Shri Prit Pal Singh, CEO of the party recorded on the same date. Mr. Dwivedi stated that they received enquiry from customers and then ~~they~~ sent drawing of the machines and after the drawing of machines was approved, they started fabrication of the machines in their workshop. They used CR coils for manufacture of M.G. Hood which are parts of the machinery and it was stated that one MG Hood approximately weight between 3 to 5 Tons. It appeared to revenue that party was utilizing more Cenvat credit than required and it appeared to Revenue that party was only procuring ~~processing~~ duty paying documents and was taking Cenvat credit without bringing ~~paying~~ the inputs into the factory. Therefore, party was issued with a show cause notice dated 29.10.2008 wherein it was stated that the calculations of Cenvat credit was made on the basis of Charted Engineer's certificate dated 28.03.2008 by taking consumption of C.R. Coils/Sheets on lower side for the period from 2003-04 to 2006-07. It was alleged that party had taken Cenvat credit in excess of their entitlement to the extent of Rs.53,25,383/- during the period from 2003-04 to 2006-07 without actual receipts of inputs and therefore the same was not admissible to them and therefore the same was proposed to be recovered. There was a proposal that Cenvat credit amounting to

Rs.57,52,649/- already deposited/debited may be appropriated. On contest the show cause notice was adjudicated through the impugned Order-in-Original wherein the demand was confirmed and the amount was appropriated and penalty was imposed on party. Further, personnel penalty of Rs. 10 Lakhs was imposed on Shri Prit Pal Singh, Director. Aggrieved by the said order, both the appellants are before this Tribunal.

3. The ground for present appeal is that the Department has done theoretical calculation for admissible Cenvat credit on the basis of Charted Engineer's Certificate and that the Department did not do actual verification of consumption of inputs for making said machines from the buyers and that bills of the inputs were available with the party and the same were seen by the officers during their visit and name, addresses of the supplier were available for verification of clearance of inputs by the suppliers, the same thing was not done. Since the entire demand was based on presumption and the demand itself was not sustainable.

4. Heard the learned Counsel for appellants. He has submitted that the demand was raised on the basis of presumptions. Further, the adjudicating authority has contended in his discussions and findings that since the amount involved in the demand was already deposited by the party, they have admitted the allegations and therefore, the demand was confirmed by the original authority. Learned Counsel

further contended that pre-deposit cannot be the basis for the confirmation of demand and the original authority should have come to a conclusion about the liability on the part of party on the basis of independent evidence.

5. Heard the learned D.R. who has supported the impugned Order-in-Original.

6. Having considered the rival contentions, we find that there is no basis for arriving at the quantity of inputs which is presumed to be excess of the so called appropriate quantity of inputs for manufacture. We also find that it is beyond the jurisdiction of adjudicating authority to decide as to what is the appropriate quantity of input required for manufacture of specified quantity of final product. It is, therefore, clear that the show cause notice is issued on the basis of presumption and therefore the said show cause notice is not sustainable. We therefore, set aside the impugned Order-in-Original and allow both the appeals. Needless to mention that consequential relief, in respect of duty already deposited shall be considered by the appropriate authority as a consequential relief.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

akp

प्रमाणित प्रति/Cerified True Copy
22/05/2017
सहायक पंजीकार/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