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: 20/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71140/2016-EX[DB] dated 01/12/2016

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/MISC/70409/2016	E/70782/2016	**Gaurang Products P Ltd** 10-south Side Of Gt Road, Bsr Ind. Area GHAZIABAD UP

Name and Address of Respondent

2 C.C.E. & S.T.-Ghaziabad
202...WING A C.G.O. COMPLEX-II,KAMLA
NEHRU NAGAR,
GHAZIABAD,
UTTAR PRADESH-201002

..

Copy To
3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

..

4 Additional Party's Name & Address :

5 Bar 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 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

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

COURT-I

E/misc/70409/2016

Appeal No. E/70782/2016-EX[DB]

Arising out of OIO No. 40/Comm./GZB/CEX/15-16 dated 30.03.2016 passed by Commissioner, Central Excise & Service Tax, Ghaziabad.

Gaurang Products P. Ltd. ...APPELLANT

VERSUS

C.C.E. & S.T., Ghaziabad ...RESPONDENT

APPEARANCE

Shri Rajesh Chhibber, Advocate for the Appellant.
Shri Rajeev Ranjan, Joint. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. JUSTICE (Dr.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 01. 12. 2016
DATE OF PRONOUNCEMENT : 08/12/2016
FINAL ORDER NO. 71140/2016

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Anil G. Shakkarwar :

The misc. application for early hearing is allowed and as was intimated through cause list the matter was taken up for final hearing.

2. The present appeal is filed against the Order-in-Original No. 40/Comm./GZB/CEX/15-16 dated 30.03.2016.

3. The brief facts of the case are that the appellant is engaged in manufacture of Pipes & Tubes out of HR Coils and availing facility of Cenvat credit. The appellants were using HR coils as inputs for manufacture of their final product. The appellants were also removing inputs as such and whenever they removed inputs as such they were reversing the Cenvat credit availed on said inputs. In certain cases,the assessee purchased and sold the goods without bringing the same into their factory. Through Circular No. 943/04/2011-CX dated 29.04.2011 CBEC clarified that Trading is an exempted service. It appeared to Revenue that clearance of inputs on which Cenvat credit was availed amounted to trading and it was an exempted service. Therefore, it appeared to Revenue that on such quantity of inputs removed, as such and on such quantity of goods purchased and sold without bring the same into the factory amount under Rule 6(3) of Cenvat Credit Rules was recoverable. Therefore, appellants were issued with a show cause notice dated 09.02.2015 with the proposal to recover Rs. 87,23,816/-. The said show cause notice was adjudicated through OIO No. 40/Comm./GZB/CEX/15-16 dated 30.03.2016. The appellants submitted before the Original Authority that Hon'ble Punjab & Haryana High Court in the case of Punjab Steels reported at 2010(260) E.L.T. 521 (P&H) has held that removal of inputs as such cannot be treated as trading activity. They further submitted before the Original Authority that Hon'ble Allahabad High Court in the case of Triveni Engineering Industries reported at 2015(317) E.L.T. 408 (All.) has held that if the show cause notice is issued say after 22 months after audit was conducted then provision related to invocation of extended period

for demand of duty are not invokable. The Original Authority did not appreciate the arguments put forth before it and confirmed the demand of Rs. 87,23,816 and impose equal penalty. Aggrieved by the said order, appellant is before this Tribunal.

4. The grounds of appeal *inter-alia* include that as held by Hon'ble Punjab & Haryana High Court in the case of Punjab Steels reported at 2010(260) E.L.T. 521 (P&H), the removal of inputs as such cannot be treated as trading activity. In the grounds of appeal they have further submitted that they have deposited an amount of Rs. 14,519/- which was credit proportionate to the activities dealt with in the show cause notice. Further, they contended that the goods which were traded without bringing into the factory cannot be treated for demand of amount under Rule 6(3) of Cenvat Credit Rules, since there was no question of using any common inputs services received at factory in respect of such goods.

5. Heard Shri Rajesh Chhibber, learned counsel for the appellant who has contended that audit was conducted on 20.06.2012 and subsequently show cause notice was issued on 09.02.2015 by invoking the proviso to Sub section 1 of Section 11A of Central Excise Act, 1944 making allegations of suppression. He has further submitted that Hon'ble Allahabad High Court has held in the said case of C.C.E. & S.T. vs. Triveni Engineering & Industries Ltd. that show cause notice issued after a gap of 22 months after an audit was conducted by invoking extended period is not sustainable and that if show cause notice does not indicate that there was a deliberate act of suppression of fact and that mere act of omission by the assessee without their being any

intention to evade payment of tax cannot be ground to invoke proviso to Section 11A of the Act specially when evasion came to notice of the department when the audit was conducted. He has further argued that impugned show cause notice is issued by invoking proviso for extended period and therefore, the show cause notice is not sustainable.

6. Learned D.R. has supported the impugned order.

7. Having considered the rival contentions, we find that the audit was conducted on 20.06.2012 and show cause notice was issued after more than 30 months by invoking proviso to Sub section 1 of Section 11A of Central Excise Act, 1944. We find that the ruling of Hon'ble Allahabad High Court in the above stated case of Triveni Engineering & Industries Ltd. is squarely applicable in the present case. We, therefore, hold that the impugned show cause notice is not sustainable. As a result, the impugned Order-in-Original is not sustainable. Therefore, the impugned Order-in-Original is set aside.

8. In view of above, we allow the appeal filed by the appellant. The appellant shall be entitled for consequential relief as per law. Misc. Application no. 70609/2016 stands disposed.

(Order pronounced on 08/12/2016)

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

-Sd-
(Justice Dr. Satish Chandra)
President

Patel/-

प्रमाणित प्रति / Certified True Copy
23.12
सहायक पंजीकार / Asst. 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