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

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70983-70984/2016-EX[DB] dated 04/07/2016

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/31& 32/2010	MONTAGE ENTERPRISES PVT. LTD. C-20-22, SECTOR-57, NOIDA.
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH K.K.ANAND,ADV
A-103, DEFENCE COLONY
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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121006 (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

27/10/16

ISSUED ON

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/31 & 32/2010(DB)

(Arising out of Order-in-Appeal No. 280-81-CE/APPL/NOIDA/09 dated 30/09/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s. Montage Enterprises Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri K.K. Anand, Advocate for Appellant
Shri Chatru Singh, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 04/07/2016
Date of Decision : 04/07/2016

Final ORDER NO.70983-70984/2016

Per: Anil Choudhary

The issue in this appeal by the manufacturing assessee is whether they are liable to pay, by way of reversal, the amount of Cenvat credit taken at the time of acquisition of the capital assets which has been admittedly cleared subsequently after a period of user, and paid the duty on the transaction value. Further, issue involved is whether extended period of limitation is invokable under the facts and circumstances.

2. The brief facts of the case are that the appellant is in the manufacture of Printed plastic Laminated Films, Pouches etc. The case of revenue is that during the course of audit, it was noticed that the appellant had made short payment of duty to the tune of Rs.26,48,083/- on clearance of capital goods namely 'Printing Cylinders' cleared to their own unit at Malanpur, under the Cenvat credit Rules, 2004. The appellant had on being objected by the revenue debited the entire duty of Rs.26,48,083/- in the RG-23 A Part II dated 18/12/06, but did not agree to pay interest amounting to Rs.4,80,609/- involved thereon. Accordingly, SCN dated 01/02/08 was issued relating to capital assets cleared during the period prior to December, 2006. It is further alleged in the SCN that this fact of short payment of duty was noted by revenue at the time of audit, as such the appellant have suppressed the facts with intention to evade payment of

duty. Therefore, extended period of limitation under Section 11A of the Central Excise Act read with Rule 14 of CCR, 2004 was invoked. Further, interest and penalty was also proposed. The SCN was adjudicated vide common Order-in-Original dated 25/02/09 upholding the proposed demand of Rs.26,48,065/- along with another demand of Rs.5,71,200/- proposed vide SCN dated 12/02/2009 under similar facts and circumstances. Equal amount of penalty was also imposed totaling Rs.32,19,265/- under Rule 15 of CCR read with Section 11AC of the Act.

3. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who vide the common impugned order confirmed the demand of duty. However, he was pleased to set aside the penalty observing that the issue is covered in favour of revenue by the Larger Bench's Ruling of this Tribunal in the case of Modernova Plastyles Pvt. Ltd. vs. CCE, Raigad 2008 (232) E.L.T. 29(Tri.-LB). Being aggrieved the appellant is before this Tribunal.

4. The learned Counsel for appellant has urged that the issue is no longer res-integra. Under similar facts & circumstances wherein other assessee have also cleared capital assets after a period of user the Hon'able Bombay High Court in the case of Commissioner of Central Excise, Pune vs. Cummins India Ltd. 2009 (234) E.L.T. A-120(Bom), the Hon'ble Punjab and Haryana High Court in the case of Commissioner of Central Excise, Chandigarh vs. Raghav Alloys Ltd. 2011 (268) E.L.T. 161)(P & H) and the Hon'ble Delhi High Court in the case of Harsh International (Kenny) private Ltd. Vs.

Commissioner 2012 (21) E.L.T. 714, held that there is no dispute that the assessee have removed or cleared capital assets after a period of user and accordingly the ld. Commissioner (Appeals) erred in holding that the removal of capital assets is removal as such. The ld. Counsel further urges that in view of the law as pronounced by the Hon'ble High Courts no amount of duty or Cenvat credit was reversible by the appellant. Admittedly the appellant had paid by way of reversal of duty on the transaction value. The ld. Counsel further urges that the amount of duty deposited by the appellant pursuant to audit objection, is prima-facie illegal, and the appellant is entitled to refund of the same.

5. The learned A.R. for revenue relies on the impugned order.

6. Having considered the rival contentions, we find that the ruling of this Tribunal in the case of Modernova Plastyles Pvt. Ltd. is dated 10/10/08 whereas the Rulings of the Hon'ble High Courts referred to above by the appellant have been pronounced subsequently. We further take notice of the Law as applicable during the period and the provision for payment of duty on transaction value on removable of capital assets had been brought on statute with effect from 16/05/05 wherein Sub Rule (5A) provided that if the capital goods are cleared as waste and scrap, manufacturer shall pay an amount equal to the duty leviable on transaction value. The provisions relating to proportionate depreciation come vide notification with effect from 13/11/2007. We also find that Hon'ble Madras High Court in the case of Commissioner of Central Excise, Coimbatore Vs. Lakshmi

Machine Works Ltd. held, where the capital assets is removed after a period of user it does not amount to removal as such, reported at 2015 (321) E.L.T. 577. Under the facts of circumstances, we find that the issue in this appeal is squarely covered by the Ruling of Hon'ble High Courts, discussed hereinabove, squarely in favour of the appellant. Accordingly, we hold that the removal of capital assets by the appellant in the present appeal is not removal as such and accordingly, we hold that no duty was required to be paid by way of reversal, as demanded by the revenue, being the amount in dispute. We hold that the appellant will be entitled to refund of the amounts deposited being Rs.26,48,083/- and Rs.5,71,200/-. We further clarify that the appellant paid the duty paid suo moto on the transaction value. The impugned demand, interest and penalties are set aside. The appeal stands allowed with consequential benefits, if any.

(Dictated in Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

सत्यापित प्रति / Certified True Copy
26.10.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / C.E.S.T.A.T.
35, एम. जी. मार्ग, इलाहाबाद-211001
35, M. G. MARG, ALLAHABAD-211001