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: 02/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70429-70430/2017-EX[DB] dated 25/04/2017

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/1288/2010	**BABA VISHWAKARMA ENGINEERING CO. (P) LTD.** C-201, B.S. ROAD, INDUSTRIAL AREA, GHAZIABAD (U.P.)
2	E/1289/2010	**SH. ANUPAM KAMBOJ, DIRECTOR OF** M/S BABA VISHWAKARMA ENGINEERING CO. (P) LTD. C-201, B.S. ROAD, INDUSTRIAL AREA, GHAZIABAD (U.P.)
		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

Copy To

5Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

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. I

APPEAL No. E/1288 & 1289/2010-EX[DB]

(Arising out of Order-in-Original 05/Commissioner/GZB/2009 dated 20/05/2009 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad.)

M/s Baba Vishwakarma Engineering Co. (P) Ltd.

Shri Anupam Kamboj, Director of Baba Vishwakarma Engineering Co. (P) Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri A. P. Mathur, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 25/04/2017

FINAL ORDER NO. 70423-70430/2017

Per: Anil Choudhary

The present appeals are filed by the appellant, M/s Baba Vishwakarma Engineering Co. (P) Ltd. & Shri Anupam Kamboj, Director of Baba Vishwakarma Engineering Co. (P) Ltd. against Order-in-Original No. 05/Commissioner/GZB/2009 dated 20/05/2009 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad.

2. Heard both the parties.

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3. The issue in these appeals is regarding applicability of Rule 8 (3A) of the Central Excise Rules, 2002. The Show Cause Notice dated 20th May, 2009, have been issued on the fact that for the period May, 2007 to December, 2007 the appellant-assessee had contravened the provisions of Rule 8 (3A) of the Central Excise Rules, 2002. For the said period, a separate Show Cause Notice No. 10/Commissioner/GZB/08 dated 25th July, 2008 was issued demanding Cenvat credit amounting to Rs.1,58,56,152/- utilised by the appellant unlawfully during the above said period of default in Cash/PLA along with interest. We find that the said issue stands settled vide Final Order of this Tribunal No. 52314-52315/2015-EX[DB] dated 24/07/2015, whereby it was held that so far the amount of Rs.1,58,56,152/- is concerned the proceedings under Rule 8 (3A) of the Central Excise Rules, 2002 are not sustainable. Accordingly, the appeal was allowed.

4. The present appeal also appears to be an offshoot of the said default as it refers the Show Cause Notice dated 20th July, 2008 and refers to the same facts. Further mentioned that for the month of January, 2008 it came to notice that duty payable Rs.4,60,588/-(Basic) + Rs.9,592/- (Education Cess) + Rs.4797/- (S. H. Ed. Cess), aggregating Rs.4,74,977/- was paid by the appellant through Cenvat whereas it was mandatory on the part of the appellant that the payment of duty for the month of January, 2008 should have been

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discharged in Cash and on consignment-wise, as provided under Rule 8 (3A) of the Central Excise Rules, 2002. Similar, observations are there for the month of February, 2008, March, 2008, April, 2008, May 2008, June, 2008 & July, 2008. It is observed that on scrutiny of ER-1 it came to notice that duty payable from PLA shown at Rs.9,74,355/- (Basic) + Rs.19,560/- (Education Cess) & + Rs.9,861/- (S. H. Ed. Cess) and duty payable from Cenvat account was shown at Rs.20,42,031/-. The amount shown as payable from PLA was not deposited by the appellant within 30 days from the due date. The said amount was deposited by the appellant through GAR-7 Challan at later date during the month of November & December, 2008 along with interest Rs. 42,110/-. Similarly for the month of September where amount shown as payable vide through PLA was Rs.8,07,435/- + Rs.16,181/- + Rs.1,803/- and duty payable from Cenvat credit account was shown at Rs.41,81,260/-, the amount through PLA was not deposited by the due date that is 5th October, 2008 and the said amount was deposited later on 20th January, 2009 along with interest.

5. So far the matter relating to July & September, 2008 is concerned, we find that the said issue have been settled by a Coordinate Bench of this Tribunal in GEI Industrial System Ltd. *Versus* Commissioner of Central Excise, being Final Order dated the 21/10/2016 reported at 2016-TIOL-3175-CESTAT-Delhi, wherein after considering the stay granted by

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Hon'ble Supreme Court in the case of Indsur Global Ltd. reported at 2014 (310) E.L.T. 833 (Gujarat) being stay order dated 24th September, 2015, this Tribunal distinguishing the same and relying on the ruling of the Apex Court in the case of Jayaswal Neco Ltd. reported at 2015 (322) E.L.T. 587(SC), wherein it has been interpreted the terms "pay excise duty for each consignment by debit to Account Current" held that it could not be said to be the only mode of payment of duty during this period. Payment through Cenvat credit is also a valid mode of payment. Accordingly, the appeal was allowed by this Tribunal setting aside the demand under Rule 8 (3A) of the Central Excise Rules, 2002.

6. We find that the issue herein is squarely covered by the ruling in the case of GEI Industrial System Ltd. (supra). Accordingly, we allow these appeals and set aside the impugned order.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
09/05/2017
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