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

Dated: 07/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70763-70764/2016-EX[DB] dated 29/08/2016

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/2345/2007 &E/2360/2007	TRIVENI GLASS LTD. IRADATGANJ, ALLAHABAD
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA EXTENTSION
LINK ROAD NEW DELHI-110014

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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 No:- 2

Appeal Nos. : E/2345/2007 & 2360/2007 -EX[DB]

Arising out of O/A No. 119-120/CE/ALLD/2007 dated 24.05.2007 passed by Commr. (Appeals) of Customs & Central Excise Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Triveni Glass Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Allahabad

...RESPONDENT(S)

APPEARANCE:

Shri B.L. Narasimhan,(Adv) & Shri Atul Gupta, for the Appellant(s)
Shri Rajeev Ranjan, Joint Commissioner,(AR), for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 29/08/2016

FINAL ORDER NO. 70763 - 70764/

Per Mr. Anil G. Shakkarwar :

These two appeals are arising out of a common Order-in-Appeal No. 119-120/CE/ALLD/2007 dated 24-05-2007, through which, two appeals arising out of Orders-in-Original dated 07-12-2006 and 03-01-2007, were decided.

2. The brief facts of the case are that, the appellants were manufacturing sheet glass falling under Chapter heading No. 70.02 of Schedule to Central Excise & Tariff Act 1985. On 22-01-1994, they started installation of machinery for manufacture of float glass falling under same Chapter heading No. 70.02 within the same factory. From May, 1995 onward they took Modvat Credit of duty paid on the capital goods received in their factory for installation of manufacture of float glass under Rule 57Q of Central Excise Rules, 1944. It appeared to Revenue that the capital goods were received in the factory for manufacture of float glass but the manufacture of float glass had not yet started. Therefore, till the manufacture of float glass does not start the Modvat Credit of duty paid on capital goods brought into factory for installation for manufacture of float glass was not admissible to the appellants. Therefore, through Show Cause Notice dated 28-11-1995 credit of Rs.91,66,380/- for the

period from May, 1995 to June, 1995 was proposed to be denied. For the subsequent period from June, 1995 to November, 1995 another Show Cause Notice dated 22-12-1995 was issued through which the credit of Rs.6,28,37,496/- was proposed to be denied. The subsequent Show Cause Notice dated 22-12-1995 had a proposal to demand of duty of Rs.1,76,10,163/- which was paid by utilizing alleged ineligible credit. Further, credit of Rs.98,08,679/- was proposed to be denied on the ground that name of the consignee showed the address of office. On 18-03-1997 a corrigendum was issued to the Show Cause Notice dated 28-11-1995 proposing to deny credit on the refractory material. The Show Cause Notice dated 22-12-1995 was adjudicated through Order-in-Original dated 21-03-1996 which was challenged before Commissioner (Appeals) and ld. Commissioner (Appeals) through his order dated 31-10-1996 remanded the matter back to the Original Authority. Revenue preferred appeal against said Order-in-Appeal dated 31-10-1996 before this tribunal. This Tribunal through Final Order No. A/21/98-NB [DB] 05-01-1998 ordered that the concerned jurisdictional Assistant Commissioner may exercise his jurisdictional powers subject to the wording of the Circular No. 277/111/1996 dated 02-12-1996 issued by C.B.E.C. if he is competent. The matter remanded was adjudicated through Order-in-Original No. 74-DEM/2006 dated 07-12-2006 by Original Authority. Through the said order the proposal to deny credit on the ground that the invoices showed address of head office was dropped. Further, the proposal to deny part of the credit on the ground that certain goods were not part of machinery was also dropped. Further, credit on capital goods of Rs.7,23,08,761/- related to Modvat credit of duty paid on the capital goods brought into factory for installation for manufacture of float glass was disallowed and the demand of duty of Rs.1,76,10,163 was confirmed. A penalty of Rs.5,25,00,000/- was imposed under Rule 173Q of Central Excise Rules, 1944. The Show Cause Notice dated 28-11-1995 was adjudicated through Order-in-Original No. 102-Dem/2006 dated 03-01-2007 by which proposal to deny Cenvat credit of Rs.87,98,027/- on the capital goods was confirmed and it was held that the said capital goods being used for manufacture of float glass which is not commencing production the credit was disallowed and held to be recoverable under Rule 57U of Central Excise Rules, 1944. A penalty of Rs. 50,00,000/- was imposed Both the Orders-in-Original dated 07-12-2006 & 03-04-2007 were challenged before Commissioner (Appeals). The ld. Commissioner (Appeals) through his impugned Order-in-Appeal dated 24-05-2007, upheld both the Orders-in-Original on the ground that the credit was inadmissible to the appellant for the reason that the manufacture of float glass had not started by the time the credit was taken ~~back~~ by the appellants.

3. Challenging in the said Order-in-Appeal dated 24-05-2007 present two appeals are filed on the grounds that (a) It is undisputed that capital goods were received into factory, (b) it is undisputed that central excise duty was paid on the said capital goods, (c) it is undisputed that they were utilized for the manufacture of final products, (d) The C.B.E.C. Circular No. 277/111/96-CX dated 02-12-1996 categorically specified that the restriction in said Rule 57Q was introduced only from 01-01-1996 that the credit is admissible only after installation/utilization of capital goods and in respect of factories in existence such credit is admissible immediately after the receipt of the goods and in view of such clarification the Modvat credit availed by them was admissible to them.

4. Heard the ld. Counsel of appellant. He has taken us through the said circular issued by C.B.E.C. dated 02-12-1996 wherein in the para 4 of the said circular it has been clarified that for capital goods procured and received into factory prior to 01-01-1996 credit of specified duty availed and utilized immediately will be admissible even if such goods were not actually brought into production of excisable goods on the date of such availment and utilization. He has relied on this Tribunal's decision and final order in the case of Commissioner of Central Excise, Nagpur *Versus* D.C.L. Polyester Lt. reported at 2001 (132) E.L.T. 333 (Tri. – Mumbai) & Hind Spinners Industries Growth Centre *Versus* Commissioner of Central Excise, Indore reported at1997 (96) E.L.T. 651 (Tribunal), wherein it was held that in the factories where production was already taking place Modvat credit under Rule 57Q of Central Excise Rules, 1944 as clarified by said C.B.E.C. circular dated 02-12-1996 was admissible if the capital goods were received in the factory before 01-01-1996 even if they are not installed/used for manufacture. Ld. DR has supported the impugned Order-in-Appeal.

5. We have taken rival contentions into consideration. We find that the present case is based only on the understanding of Revenue that the Modvat credit paid on capital goods brought into factory for manufacture of float glass was not admissible to assessee till such time the manufacture of float glass did not commenced. The said issue has been clarified by C.B.E.C. through said circular dated 02-12-1996. We find that the said circular is squarely applicable in the present case. We therefore set aside both the impugned Orders-in-Original and impugned Order-in-Appeal and allow both the appeals and hold that the appellants shall have the benefit of consequential reliefs, if any, in accordance with law.

(Pronounced in the open Court)

-Sd-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(Ansari)

प्रमाणित प्रति / Certified True Copy

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