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: 07/09/2016

To

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

Final Order No. **A/70772-70783/2016-EX[DB]** dated **16/08/2016**

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/161/2008 | **HOTLINE CPT LTD**<br>241, OKHLA INDUSTRIAL ESTATE, PHASE - III, NEW DELHI |
| 2 | E/162/2008 | **SHRI ANKUR GOYAL, ASSISTANT MANAGER [COMMERCIAL], HOTLINE CPT LTD.**<br>241, OKHLA INDUSTRIAL AREA NOIDA |
| 3 | E/212/2008 | **BPL DISPLAY DEVICES LTD**<br>C/o Official Liquidator, 9th Floor, Satyam Palace, Civil Lines, Allahabad -211001 |
| 4 | E/248/2008 | **SH. S. RAGHAVAN, EX SENIOR MANAGER (F & A)**<br>C/o Official Liquidator, 9th Floor, Satyam Palace, Civil Lines, Allahabad -211001 |
| 5 | E/3267/2007 | **DIXON TECHNOLOGIES (INDIA ) PVT. LTD.**<br>LTD. B-14 & 15, PHASE-II, NOIDA |

6 E/3269/2007 **SAMTEL COLOR LIMITED**
VILLAGE CHHAPRAULA
,BULANDSHAHAR ROAD,
GHAZIABAD-201009

7 E/3270/2007 **JCT ELECTRONICS LTD.**
NH. NO. 8, VILLAGE KANDARI,
TALUKA : KARJAN, DISTT,
VADODARA

8 E/3271/2007 **ARUN B LALL, CEO**
M/S DISXON TECHNOLOGIES
(INDIA) P. LTD. B-14 & 15, PHASE-
II, NOIDA

9 E/3272/2007 **MR. SANJAY JASWANI,**
**ASSOCIATE VP**
M/S DISXON TECHNOLOGIES
(INDIA) P. LTD. B-14 & 15, PHASE-II,
NOIDA

10 E/3273/2007 **MR. NIKHIL RAZDAN,**
**PURCHASE HEAD**
M/S DISXON TECHNOLOGIES
(INDIA) P. LTD. B-14 & 15, PHASE-
II, NOIDA

11 E/3274/2007 **SH. M.S.GARG, MANAGER**
**(STORE)**
M/S SAMTAL COLOR LTD,
VILLAGE CHHAPRAULA,
BULANDSHAHAR ROAD,
GHAZIABAD-201009

12 E/3275/2007 **SH. PANKAJ MATHUR , EX MANAGER**
M/S JCT ELECTRONICS,
LTD.THAPER
HOUSE,124,JANPATH, NEW
DELHI

Name and Address of Respondent

13 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-
201307

--

Other Appellants and Respondents as per Annexure

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

SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI

15 Rajnath N. Shukla
55A/18B/2, MINTO ROAD, BEHIND
BOYS HIGH SCHOOL NEAR
ACUPRESSURE CLINIC
ALLAHABAD-211001

16 Bar Association, CESTAT, Allahabad

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

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

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

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

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

22 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

23 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

24 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

25 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

26 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

27 C.D.R. 28 Office Copy 29 Guard File

Asstt. Registrar

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

**Ex. Appeal Nos. E/3267, 3269, 3270, 3271, 3272, 3273, 3274, 3275/2007-EX[DB] & Appeal Nos. E/161,162,212, 248/2008-EX[DB]**

Arising out of Order-in-Original No.39/Commissioner/Noida/2007 dated 18.10.2007 passed by Commissioner, Central Excise, Noida.

**For approval and signature:**

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

---

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

---

Dixon Technologies (India) Pvt. Ltd.
Samtel Color Limited.
JCT Electronics Ltd.
Mr. Arun B. Lall.
Sh. Sanjay Jaswani.
Mr. Nikhil Razdan, Purchase Head.
Sh. M.S. Garg, Manager (Store).
Sh. Pankaj Mathur.
M/s. Hotline CPT Ltd.
Mr. Ankur Goel.
M/s. BPL Display Devices Ltd.
Sh. S. Raghavan.

...APPELLANTS

VERSUS

C.C.E., Noida ...RESPONDENT

APPEARANCE

S/Shri Atul Gupta, Shri Hrishikesh, Advocates for the Appeal Nos. E/3267, 3269 to 3275/2007-EX[DB] & Appeal Nos. E/161,162/2008-EX[DB] and Sri Rajnath N. Shukla, Advocate for Appeal Nos. E/212, 248/2008-EX[DB] as counsel for the Appellants.

Shri V.R. Reddy (Asstt. Commr.), (A.R.) for the Department

**CORAM:**

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

DATE OF HEARING & PRONOUNCEMENT : 16. 08. 2016
Final ORDER NO. 70772 – 70783/2016

**Per Mr. Anil G. Shakkarwar :**

These are twelve appeals where the investigations were carried out together and a combined Show Cause Notice details of which shall be available in subsequent paragraphs was issued.

2. Brief facts of the case are that M/s. Dixon Technologies (India) Pvt. Ltd. (D.T.I.P.L.) were manufacturer of electronics and electrical goods such as color television sets, D.V.D. players etc. and were registered with Central Excise Department. D.T. I.P.L. had purchased color picture tubes (C.P.T.) from Samtel Color Ltd., Hotline, BPL Display Devices Ltd. and J.C.T. Electronics Ltd. On the basis of duty paid on the said C.P.Ts. by said suppliers of C.P.T. D.T.I.P.L. were taking Cenvat Credit under relevant Cenvat Credit Rules. The suppliers

of C.P.Ts. issued credit notes to D.T.I.P.L., as a result the assessable value of the inputs received used to alter at the end of the manufactures of the inputs. It appeared to Revenue that due to such alteration of assessable value of inputs at the end of the manufactures of inputs, Cenvat Credit availed by D.T.I.P.L. needs to be accordingly reduced. For recovery of such Cenvat Credit, which appeared to be inadmissible, show cause notice C No.V(15)Adj/Noida/Dixon/52/06/12923 dated 26.06.2006 was issued to D.T.I.P.L. calling upon then to show cause as to why Cenvat Credit amounting to Rs. 52,61,518/- should not be disallowed to them and recovered from them. There were other proposal of penalty and interest. The said show cause notice was also proposed imposition of penalty on Sri Atul B.Lal, Sri Sanjay Jaswani, Sri Nikhil Raajdan, Samtel ~~Sankeit~~ Color Ltd., J.C.T. Electronics Ltd., Sri M.S. Garg, Sri Pankaj Mathur, Hotline C.P.T. Ltd., Sri Ankur Goel, M/s. BPL Display Devices Ltd. and Sri S. Raghvan. The said show cause notice was adjudicated through the impugned Order-in-Original No. 39/Commr./Noida/07 dated 18.10.2007. The appellant before the Original Authority has pleaded that there are large number of judgments in which it has been consistently held that an error in the assessment at the end of the manufacturer or suppliers of goods will not effect the availability of credit to the receiver and that since the credit was admissible, the question of interest, penalty and penalty on co-noticees did not arise. The Original Authority has held that the case laws relied upon by the appellant were not squarely applicable in the present case inasmuch as in none of those decisions issue of impact of credit notes on the transaction value is involved. The Original Authority confirmed the demand, imposed penalty and also imposed penalty on co-notices.

3. Aggrieved by the said impugned Order-in-Original, the appellants are before this Tribunal. The grounds of appeals *inter-alia* including that in the light of provisions under Rules, 3 4 & 9 of Cenvat Credit Rules, 2001, it is not the case of the Department that D.T.I.P.L. did not received the inputs i.e. C.P.Ts., nor the duty was not paid on the inputs, nor the required documents were not available with them. The C.P.Ts. manufacturers have paid duty on C.P.Ts. on the basis of agreed upon prices prevailing at the time of clearance of the goods and duty so paid was availed as credit and there was no violation of any of the Rules of Cenvat Credit Rules. They have also relied on large number of decisions.

4. The learned counsel for the appellants submitted a copy of circular No. 877/15/2008-CX dated 17.11.2008 issued by Central Board of Excise and Customs and argued that it has been clarified in the said circular that when credit notes are issued, the discount in such cases is given in respect of value of the inputs and not in respect of duty paid by the suppliers and the effect of reduction does not change the fact about the quantum of the duty paid, but may change the quantum of the duty payable. However, criteria for availment of Cenvat Credit is the duty paid and therefore, they have not violated

any provisions of Cenvat Credit Rules as clarified by the said circular dated 17/11/2008 and prayed to allow the appeals.

5. The learned D.R. for the Revenue has argued that the circular is of dated 17/11/2008 and there is no mention in the circular that it has got retrospective effect and the impugned order is dated 18/10/2007.

6. We have taken into consideration the rival submissions. We hold that any circular issued by C.B.C. is a clarification on the existing provisions of Rules and therefore it is applicable for the entire period for which such Rules and *para materia* Rules existed on statute. Therefore, we do not find any strength in the argument of the learned D.R The copy of the said circular is reproduced hereunder:-

> ***"Clarification regarding reversal of Cenvat Credit in case of trade discount***
>
> *Representations have been received from trade and industry seeking clarification on the issue whether proportionate credit should be reversed in cases where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice, but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him.*
>
> *2. The issue has been examined. Since, the discount in such cases are given in respect of the value of inputs and not in respect of the duty paid by the supplier, the effect of reduction of value of inputs may be that the duty required to be paid on the inputs was less than what has been actually paid by the inputs manufacturer. However, the fact remains that the inputs manufacturer had paid the higher duty. Rule 3 of Cenvat Credit Rules, 2004 allows credit of duty "paid" by the inputs manufacturer and not duty "payable" by the said manufacturer. There are many judgements of Hon'ble Tribunal in this regard which have confirmed this view.*
>
> *3. In view of above, it is clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise. However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit. It may however be*

*confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price.*

It is very clear from the above circular that when subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him, the duty paid is admissible as Cenvat Credit. It is undisputed that the duty paid by the input manufacturers remained unaltered in the present case even after issue of credit notes. The circular squarely covers the issue involved. We, therefore, allow all the appeals and set aside the impugned Order-in-Original with consequential relief, if any.

(Order was dictated in the open Court)

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

Sd/-
**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

*Patel/-*

प्रमाणित प्रति / Certified True Copy
3/10/16 SPS
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