FAX : 0532-2400149 REGISTERED / AD

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

Dated: 20/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70264/2016-EX[DB] dated 09/06/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/294/2007	**ADVANCE VALVES PVT. LTD.** A-26, SECTOR-58, NOIDA.
		Name and Address of Respondent
2		-C.C.E, NOIDA OFFICE OF COMMISSIONER OF CUSTOMS,CENTRAL EXCISE AND SERVICE TAX, C-56/42, SECTOR-62, NOIDA - 201307

Copy To

3Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENSION,
LINK ROAD,NEW DELHI,

5 Bar Association, CESTAT, Delhi

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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., 106, 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/294/2007-EX(DB)

(Arising out of Order-in-Appeal No. 147/CE/APPL/NOIDA/06 dated 29/11/2006 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 Advance Valves Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

<u>Appearance:</u>

Shri Atul Gupta (Advocate) for Appellant
Shri V.R. Reddy, Assistant Commissioner (AR), for Respondent

<u>**CORAM:**</u>

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

Date of Hearing : 09/06/2016
Date of Decision : 09/06/2016

Final ORDER NO. 70264/2016

Per: Anil G. Shakkarwar

The present appeal is filed by M/s Advance Valves Pvt. Ltd. against Order-in-Appeal No. 147/CE/APPL/NOIDA/06 dated 29/11/2006 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The appellant were issued with show cause notice No. V(15) Adj/NOIDA/AVPL/81/04/21685 dated 09.12.2004 calling upon to show cause as to why an amount of Rs.8,44,602/- should not be recovered from them as provided by provisions of Rule 6(3)(b) of CENVAT credit Rules, 2002 since the said amount is equivalent to 8% of the value of the goods cleared at the nil rate of duty and common inputs were used for manufacture of dutiable and exempted goods without maintaining separate accounts.

3. Appellant through their letter dated 8th December, 2004 informed that they have reversed CENVAT credit of Rs.3,93,655/- and interest of Rs.32,751/- on 07.12.2004 and the credit reversed was equal to the CENVAT credit taken on inputs used in the goods cleared at nil rate of duty. They also enclosed a statement giving details of the same. Original authority has taken note of the said debit at para 3.6 of

the Order-in-Original dated 27.12.2005. The said show cause notice was adjudicated through Order-in-Original No. 21/Joint Commissioner/ Noida/2005 dated 27.12.2005. The original authority confirmed the demand of Rs.8,44,602/- and imposed penalty. The appellant preferred an appeal before Commissioner (Appeals) who decided the appeal through Order-in-Appeal No. 147/CE/APPL/NOIDA/06 dated 29.11.2006. The learned Commissioner (Appeals) has discussed the provisions of said Rules and held that there are no provisions of law allowing reversal of proportionate credit. He rejected the appeal.

4. Against the said Order-in-Appeal the appellant is before us. The learned counsel for appellant has argued that subsequently through the Finance Act, 2010 provisions were enacted wherein it was provided that if the attributable CENVAT credit is reversed then there is no need to pay amount equivalent to 8% of the value of the goods cleared at nil rate of duty.

5. Learned Counsel pleaded that it is provided in Section 72 of the Finance Act, 2010 and with the enactment of said provision which is having retrospective effect, the allegations in the show cause notice are not sustainable. Revenue has agreed with the contentions of the learned Counsel.

6. We have considered the contentions of the learned counsel and we find that with the enactment of Section 72 of the Finance Act, 2010 the present show cause notice does not sustain the amount reversed and the interest on the said amount reverse on 07.12.2004

satisfy the requirement of Section 72 ibid. We, therefore, allow the appeal. No Costs.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

akp