FAX : 0532-2400149

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

Dated: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71202/2016-EX[DB] dated 02/12/2016

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/3232/2009	**PARADISE PLASTICS ENTERPRISES LTD.** D-1, SITE-V,UPSIDC SURAJPUR INDL. AREA, KASNA GREATER Noida
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3Advocate(s) / Consultant(s):

SH V.L.KUMARAN,ADV
3/1A/3,(OPP AUTO SALES)
ABOVE THE OFFICE OF BLUE DART/DHL COURIER
COLVIN ROAD(LOHIA MARG)
ALLAHABAD-211001

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 121003 (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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>REGIONAL BENCH : ALLAHABAD</u>

<u>COURT-I</u>

Appeal No. E/3232/2009-EX[DB]

Arising out of Order-in-Appeal No. 238/CE/APPL/NOIDA/09 dated 31.08.2009 passed by Commissioner (Appeals), Customs & Central Excise, Noida.

Paradise Plastics Enterprises Ltd. ...APPELLANT

VERSUS

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

APPEARANCE

Shri Atul Gupta, Advocate for the Appellant.
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

CORAM:

HON'BLE MR. JUSTICE (Dr.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

<u>DATE OF HEARING</u> : 02. 12. 2016
<u>DATE OF PRONOUNCEMENT</u> : 29/12/2016
<u>FINAL ORDER NO.</u> 71202/2016

<u>Per Anil G. Shakkarwar :</u>

The present appeal is filed against the Order-in-Appeal No. 238/CE/APPL/NOIDA/09 dated 31.08.2009 passed by Commissioner (Appeals), Customs & Central Excise, Noida.

2. The appellants are engaged in the manufacture of plastic moulded parts of four wheelers, TV cabinets etc. They were clearing

goods manufactured by them on payment of appropriate duty of excise. They were availing the benefit of Cenvat credit. The manufacturing unit of the appellant was audited on 18.08.2006. The team auditing unit noticed that appellants were supplying parts to Maruti Udyog Ltd. who had supplied moulds and dies to the appellants to manufacture specific parts. The appellants were loading amortizations charges for computing assessable value of the parts supplied to original equipment but did not load such charges to the goods manufactured which were not supplied to original equipment but supplied as spares to be used subsequently. It appeared to Revenue that on account of said practice differential duty of Rs. 5,62,282/- was payable by appellant. The audit team also observed that appellant availed inadmissible Cenvat credit of Rs. 9,602/- on capital goods and Rs. 53,319/- on inputs service. Therefore, on 20.03.2008 appellant were issued with a show cause notice with proposal to demand excise duty of Rs. 4,54,933/- and appropriation of Rs. 5,35,499/-. Further, there was a proposal to demand service tax of Rs. 5,572/- and a proposal to disallowed Cenvat credit of Rs. 50,104/-. The said show cause notice was adjudicated through Order-in-Original No. 27/2008 dated 30.09.2008. The appellant contested before the Original Authority that the cost of amortization was loaded in the assessable value of the parts supplied to OEM and the entire cost of moulds was exhausted in such process and therefore there was no need to load assessable value of spares. They also contended that the extended period of limitation was not applicable in the present case. The Original Authority did not appreciate the arguments putforth and confirmed the demand and ordered recovery of Rs. 4,54,933/-, 5,572, 49,527/- and imposed penalty and appropriated the amount Rs.5,35,499/- already paid. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). Commissioner (Appeals) decided appeal through Order-in-Appeal No. 238/2009 dated 31.08.2009. The Commissioner (Appeals) upheld the impugned Order-in-Original but for the modification of the demand and penalty amount on credit of service tax paid on car maintenance. Aggrieved by the said Order-in-Appeal, the appellant preferred present appeal before this Tribunal.

3. The appellant contended in the grounds of appeal that he had been clearing the goods on payment of duty and was filing monthly ER-I Returns and Cenvat Returns and the same were assessed by the department and that the department was aware of the facts. They further contended that audit was conducted on 18.08.2006 and show cause notice was issued on 20.03.2008 and that the show cause notice was issued after more than 19 months after the date of conduct of audit. Therefore they contended that the show cause notice was not sustainable under the provisions of limitation.

4. Heard learned counsel for the appellant who has contended that in terms of the law pronounced by the Hon'ble High Court at Allahabad in the case of C.C.E. & S.T. vs. Triveni Engineering and Industries Ltd. reported at 2015(317) ELT 408 (All.) the show cause notice is bad in law. He further contended that in the said case law the show cause notice was issued after a gap of 22 months after the audit was conducted and show cause notice was issued by invoking proviso to Section 11A of Central Excise Act, 1944 and the Hon'ble High Court at

Allahabad has held that in that case show cause notice was not sustainable because there was no deliberate act of suppression of the fact. It was further held in the said case that without their being any intention to evade payment of tax omission cannot be a ground to invoke proviso to said Section 11A especially when the evasion came to the notice of the department when the audit was conducted 22 months before the date of issue of show cause notice.

4. Heard learned D.R. for the Revenue who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions, we find that ruling of the Hon'ble High Court at Allahabad in the said case of C.C.E. & S.T. vs. Triveni Engineering Industries Ltd. is squarely applicable in the present case. Therefore, we find force in the argument putforth by the learned counsel for the appellant. For the said reasons, the show cause notice in the instant case issued by invocation of proviso to Section 11A ibid is not sustainable in law. We, therefore, set aside the impugned Order-in-Original and Order-in-Appeal and allow the appeal with the consequential relief to the assessee as per law.

(Order pronounced on 28/12/2016.)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Justice Dr. Satish Chandra)
President

Patel/-

प्रमाणित प्रति / Certified True Copy
6.1.17
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