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: 19/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70988-70989/2016-SM[BR] dated 14/10/2016

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/391/2008	PAHARPUR PLASTICS (A DIVISION OF PAHARPUR COOLING TOWERS LTD.) PLOT NO. 10, INDUSTRIAL AREA, SITE-IV, SAHIBABAD, GHAZIABAD
2	E/392/2008	SH. S.K.SINGAL. PAHARPUR PLASTICS (A DDIVISION OF PAHARPUR COOLING TOWERS LTD.)PLOT NO. 10,INDUSTRIAL AREA, SITE-IV,SAHIBABAD,GHAZIABAD.

	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 -

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

PIYUSH AGRAWAL,ADV
PREM VILLA, 171/B-2, OPP DURGA
PUJA PARK, ALLAHABAD

6 Bar Association, CESTAT, Allahabad

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

O/c

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

Received
Adv copy recd
dt. 26/10/2016.

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 AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No.E/391 & 392/2008-EX[SM]

Arising out of Order-in-Appeal Nos.115 & 116-CE/GZB/2007 dated 31.10.2007 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ghaziabad.

For approval and signature:

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 Paharpur Plastics
Shri S.K. Singal

...APPELLANT(S)

VERSUS

C.C.E., Ghaziabad

...RESPONDENT (S)

APPEARANCE:

Shri Arvind Sikaria, Advocate for the Appellant (s)
Shri S. N. Gohil, Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 14.10.2016

FINAL ORDER NO.- 70988 – 70989/ 2016

Per Mr. Anil G. Shakkarwar:

This appeal is filed by the appellants, M/s Paharpur Plastics and Shri S.K. Singal, against the Order-in-Appeal Nos.115 & 116-CE/GZB/2007 dated 31.10.2007 passed by Commissioner (Appeals).

2. The brief facts of the case are that the Hon'ble Settlement Commission through its order dated 14.07.2003 held that allowing of credit of Countervailing Duty, it is for the jurisdictional Commissioner of Central Excise to decide the question of giving Modvat benefit as per Law. The appellants had paid said Countervailing Duty subsequent to the import of the goods during the process of settlement of case before the Hon'ble Settlement Commission. The appellants submitted application dated 19.08.2003 to Commissioner of Central Excise, Ghaziabad to allow credit of Cenvat of the duty of Rs.18,86,445/- paid as Countervailing Duty and in pursuance of directions of Settlement Commission. The appellant did not receive any communication on the said application from Commissioner and appellants took Cenvat Credit of the said amount on 29.01.2004 in their Cenvat account. The appellants were issued with a show cause notice dated 09.02.2005, proposing to deny the said credit. The matter was decided through Order-in-Original No.05/ADC/GZB/2006 dated 31.01.2007, wherein at Para 5.8, the Original Authority has discussed about the application dated 19.08.2003 and subsequently disallowed the credit and imposed personal penalty

of Rs.1 lakh on Shri S.K. Singal. Both the parties preferred appeal before the Ld. Commissioner (Appeals). The Ld. Commissioner through Order-in-Appeal No.115 and 116-CE/GZB/2007 dated 31.10.207, rejected both the appeals.

2. Aggrieved by the said Order-in-Appeal dated 31.10.2007, the appellants are before this Tribunal.

3. Heard the learned counsel who has submitted that application for allowing Cenvat Credit was made before the Commissioner of Central Excise, Ghaziabad on 19.08.2003 and since said application was not decided by Ld. Commissioner and since otherwise Cenvat Credit was admissible, they have taken the said credit.

4. Heard the Ld. DR who has submitted that as per direction of Hon'ble Settlement Commission, the appellants should have taken credit if allowed by Commissioner.

5. Having considered rival contentions, I find that the Ld. Commissioner of Central Excise, Ghazibad did not give any decision on the said application dated 19.08.2003. I, therefore, set aside the impugned Order-in-Original and Order-in Appeal and remand the matter to Commissioner of Central Excise, Ghazinbad with the direction to decide the said application dated 19.08.2003 within a period of three weeks from the date of submission of copy of this order to his office. If the appellant wishes to make any further representation before the Commissioner of Central Excise,

Ghaziabad in respect of said application dated 19.08.2003, they shall submit such representation within two weeks of the date on which they receive copy of this order. In the above terms, the appeals are disposed by way of remand.

(Dictated and Pronounced in the open Court)

Sd/-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Mishra

प्रमाणित प्रति / Certified True Copy

26.10.16

सहायक रजिस्ट्रार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
33, एम. जी. मार्ग, इलाहाबाद-211001
33, M. G. Marg, ALLAHABAD-211001