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: 05/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71222-71224/2016-SM[BR] dated 29/12/2016

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/443/2009	**KUMAR ABHISHEK ENGINEERING CO. PVT. LTD.** TEACHERS COLONY, IN FRONT OF GANDHI NAGAR TRANSFORMER, DEOBAND, DISTT. SAHARANPUR (U.P.)
2	E/444/2009	**SH. DINESH SHARMA,** TEACHERS COLONY, IN FRONT OF GANDHI NAGAR TRANSFORMER, DEOBAND, DISTT. SAHARANPUR (U.P.)
3	E/2453/2009	**SHRI Y.K.PARASHAR,** R/O 5/53, SHIBBANPURA, GHAZIABAD (U.P.)
		Name and Address of Respondent
4		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

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

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

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

A. K. Mishra, Consultant,
B-261, North Ex Mall,
SECTOR-9, ROHINI,
Delhi
110085

8 **Piyush Kumar,Adv**
B-25, Lajpat Nagar - III,
New Delhi
Delhi

9 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

19 C.D.R.   20 Office Copy   21 Guard File

Asstt. Registrar

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

Appeal Nos. : E/443, 444 & 2453/2009-EX[SM]

Arising out of OIO No.34/COMMISSIONER/NOIDA/2008 dated 27.08.2008 passed by Commissioner, Central Excise, Noida.

1) Kumar Abhishek Engineering Co. Pvt. Ltd. (E/443/2009)
2) Sh. Dinesh Sharma (E/444/2009)
3) Sh. Y.K. Parasar (E/2453/2009)

...APPELLANTS

VERSUS

1) C.C.E. –Noida.
2) C.C.E. –Noida.
3) C.C.E. –Noida.

...RESPONDENTS

APPEARANCE

Shri Shri Gopal Verma, Proxy Counsel for the assessee-appellants.
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 29. 12. 2016

FINAL ORDER NO. 71222 – 71224/2016

Per Mr. Anil G. Shakkarwar :

The present three appeals are arising out of common Order-in-Original No. 34/COMMISSIONER/NOIDA/2008 dated 27.08.2008. Therefore, they are taken up together for decision.

2. The brief facts of the case are that, M/s. Minda Huf Ltd., Noida was issued with a show cause notice dated 12.02.2007 with allegations

that M/s. Minda Huf, Noida collected invoices from various persons who have registered with Central Excise Department but the said persons did not make any payment of Central Excise duty but issued the invoices and such invoices were used for availment of Cenvat credit by M/s. Minda Huf Ltd. Present three appellants were made co-noticee in the said show cause notice. The allegations against the present three appellants are that they issued fake Central Excise invoices to M/s. Minda Huf Ltd., Noida without making any payment of Central Excise duty and without clearance of goods. The appellants were called upon to show cause as to why penalty should not be impose upon them under Rule 26 of Central Excise Rules, 2002, Rule 13 of Cenvat Credit Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004. The matter was adjudicated through impugned Order-in-Original wherein Shri Y.K. Parashar was imposed with penalty of Rs. 61,9,304/-, M/.s Kumar Abhishek Engineering Co. Pvt. Ltd. was imposed with penalty of Rs. 17,9,530/- and Shri Dinesh Sharma was imposed with penalty of Rs. 27,44,168/- under Rule 13 of Cenvat Credit Rules, 2002, Rule 15 of Cenvat Credit Rules, 2004 and Rule 26 of Central Excise Rules, 2001/2002. Aggrieved by the said order the appellants are before this Tribunal.

3. The grounds of appeals indicate that the appellants are contesting on the provisions of Rule 26 of Central Excise Rules, 2001/2002. The appellants have contended that only the persons who is concern with such goods which are liable for confiscation can be liable to be imposed with penalty under said Rule 26 and that

the appellants did not deals with any such goods, therefore they are not liable for penalty under Rule 26 of the said Rules. They also contended that Rule 13 of Cenvat Credit Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004 are attracted only towards a person who takes/avails Cenvat credit in respect of duty paid on inputs or capital goods in contravention of the said Rules.

4. Heard the learned counsel for the appellants. He has reiterated the grounds of appeals and submitted various case laws wherein the pronouncements are in respect of applicability of Rule 26 of Central Excise Rules & Section 112 of Customs Act, 1962. The case laws cited by the appellants are as under :-

(i) Shiva Alloys Pvt. Ltd. Vs. Commr. C.Ex., Delhi-I decided through Final Order No. A/52427-52428/2015-SM[BR] dated 03.08.2015.

(ii) Duggar Fiber Pvt. Ltd. Vs. Commr, C.Ex., Delhi-I decided through Final Order No. A/51174-51175/2015-SM[BR] dated 07.04.2015.

(iii) Commrr, C.Ex., Aurangabad Vs. Ispat Industries Ltd. reported at 2010(261)E.LT. 1059 (Tri.-Mumbai)

(iv) Ispat Industries Ltd. Vs. Commr. C.Ex. & Cus., Aurangabad reported at 2008(226) E.L.T. 218 (Tri.-Mumbai).

(v) Kinship Agency Pvt. Ltd. Vs. Commr. Cus. (I) Nhava Sheva reported at 2016(334) E.L.T. 695 (Tri.-Mumbai)

(vi) Virender Bansal Vs. Commr, Cus. (ICD), New Delhi reported at 2015(317) E.L.T. 796(Tri.-Del.)

(vii) S.K. Colombowala Vs. Commr. Cus. (Import) Mumbai reported at 2007(220) E.L.T. 492 (Tri.-Mumbai).

4. Learned D.R. has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of records I observe that said Rule 13 of Cenvat Credit Rules, 2002 deals with various situations and one of the situation covered by the said Rules is that, "If a person contravenes any of the provision of said Cenvat Credit Rules, 2002 in respect of any inputs, then such person shall be liable to penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed". The records of the case indicates that admittedly the appellants have issued invoices without payment of duty and issue of invoice without payment of duty is contravention of provision of Cenvat Credit Rules. I also find that penalty under said Rule 13 of Cenvat Credit Rules is not dealt with in any of the case laws relied upon by the appellants. I, therefore, hold that appellants were liable to be imposed with penalty imposed in the impugned Order-in-Original. I, therefore, do not find any reason to interfere with the impugned Order-in-Original. As a result, all three appeals are dismissed.

(Pronounced and dictated in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

Patel/-

प्रमाणित प्रति / Certified True Copy
16.1.17
Registrar
सेवा कर
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001