

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

Dated: 01/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70996/2016-EX[DB] dated 26/09/2016

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/477/2008	SHERVANI INDUSTRIAL SYNDICATE LTD. REGD. OFFICE NO. 332, SULEM SARAI, SHERWANI NAGAR, HARWARA, ALLAHABAD-211011
		Name and Address of Respondent
2		-C.C.E Allahabad 38, M.G. Marg, civil Lines, Allahabad

Copy To

3 Advocate(s) / Consultant(s):

**V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001**

4 Bai 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), Vaithiyaram 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 Kankardooma Court, Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File


 Asstt. Registrar

12/11/16
ISSUED ON

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

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

Appeal No. : E/477/2008-EX[DB]

Arising out of OIO No. MP(DEM-24/2007 & 29/2007) 37 & 38 OF 2007
dated 30.11.2007 passed by Commissioner Of Central Excise & Service
Tax, Allahabad.

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

Shervani Industrial Syndicate Ltd.

...APPELLANT

VERSUS

C.C.E., Allahabad

...RESPONDENT

APPEARANCE

Shri Atul Gupta, Advocate for the appellant
Shri Sumanta S. Chattopadhyay, Supdt., (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 : 26. 09. 2016

FINAL ORDER NO. 70996/2016



Per Mr. Anil G. Shakkarwar :

The present appeal is filed by M/s. Shervani Industrial Syndicate Ltd. challenging the Order-in-Original No. MP(DEM-24/2007 & 29/2007) 37 & 38 OF 2007 dated 30.11.2007 passed by the Commissioner, Central Excise & Service Tax, Allahabad.

2. The brief facts of the case are that the appellants were issued with show cause notices dated 23.02.2007 for denial of Cenvat credit of Rs.1,71,91,039/- availed for the period from April, 2002 to March, 2006 on dry cell batteries which were brought into their factory on payment of duty and were cleared alongwith the goods manufactured by them i.e. torch and the combined pack attracted MRP and was accordingly assessed under Section 4A of Central Excise Act, 1944 and duty was discharged on combined goods. It appeared to Revenue that dry cell batteries brought into factory are not used in relation to manufacture of their final product i.e. torch and, therefore, the Cenvat credit was not admissible to them. Another show cause notice for the period of April, 2006 to March, 2007 was issued on 27.04.2007 to them, wherein Cenvat credit amounting to Rs. 94,39,355/- was proposed to be denied. The said show cause notices referred to Rule 2k of Cenvat Credit Rules, 2004 wherein the definition of input is provided. Both the show cause notices were adjudicated together through impugned Order-in-Original dated 30.11.2007. The Original Authority has held that dry cell batteries are not required for the manufacture of torches and therefore they do not become eligible to be called inputs and as a result, they are not admissible as per Rule 3



of Cenvat Credit Rules, 2003/2004 for Cenvat credit of duty paid on such dry cell batteries. The Original Authority confirmed the demand of Rs. 1,71,91,039/- and Rs. 94,39,335/- and imposed equal penalty and ordered to pay interest.

3. Being aggrieved by said Order-in-Original dated 30.11.2007, the appellant is before this Tribunal. The grounds of appeal include following grounds :-

"a) Taking into account the definition of inputs during the period of dispute, the credit availed on the batteries which were accessories of torches and undisputedly cleared alongwith torches are eligible.

b) Batteries are accessories of torches hence they are eligible to be inputs.

c) Activity of packing dry cell batteries alongwith torches amounts to manufacture.

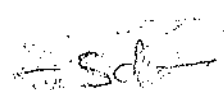
d) Value of batteries included in the price of torches and there is no allegation in the show cause notices that the value of batteries is not included in the combined pack."

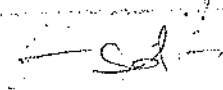
4. The learned counsel, appearing for the appellant, has taken us through the definition of "inputs", stated in the show cause. The definition of "inputs" includes the following words :- "accessories of final products cleared alongwith the final product" and urged that definition of inputs in Cenvat Credit Rules allows the accessories of the final products which are cleared alongwith final product to be eligible to be called inputs. He has also relied on final order passed by this Tribunal in the case of Eveready Industries India Ltd. v. CCE, Lucknow reported at 2005(184)ELT 90 (Tri.-Del.) wherein it was held that Modvat credit on dry cell batteries cleared alongwith torches, was admissible.

5. Learned A.R. has supported the Order-in-Original.

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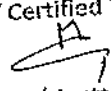
6. We have taken into consideration the rival contentions. We find that Original Authority has denied Cenvat credit on the basis of charge framed at para-5 of the show cause notice dated 22.03.2007. The ground for framing the charge was that dry cell batteries are not used in relation to manufacture of final product. It is undisputed that dry cell batteries are brought into factory and the same have suffered duty and dry cell batteries are cleared as accessories alongwith the goods manufactured by the appellant on payment of duty. We also find that the accessories of final product cleared alongwith the final products are eligible to be input as per definition of "input" provided by Rule 2k of Cenvat Credit Rules, 2004, stated at para-3 of the said show cause notice dated 22.03.2007. As per definition, the words used that "the accessories of final product cleared alongwith the final product", clearly indicate that accessories are not expected to be used in or in relation to the manufacture of the final product but they are only to be cleared alongwith final product. Therefore, the basis stated in the para-5 of the said show cause notice dated 22.03.2007, is not sustainable. We, therefore, hold that both the show cause notices impugned^{order} are not sustainable in law. We, therefore, allow the appeal with consequential relief, if any, after setting aside the impugned Order-in-Original.


(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy


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सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, अलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

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