

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

Dated: 16/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71136/2016-SMIBRI dated 09/12/2016

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	Name and Address of Respondent
1	E/530/2008	CCE ALLAHABAD 38, MG MARG, CIVIL LINES, ALLAHABAD	
2		ANKUR UDYOG LTD. NAKHA NO.2, GORAKHPUR, (U.P.).	

Copy To

3 Advocate(s) / Consultant(s): SH SITA RAM, CONST
3, TEJ BAHADUR SAPRU ROAD
CIVIL LINES, ALLAHABAD

- 4 Bar Association, CESTAT, Allahabad
- 5 Director Publications, Customs, Excise, I.P. Estate, Delhi
- 6 M/s Centex Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
- 7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram Street, T. Nagar, Chennai-17
- 8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohrak 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. (gkmanagementindia.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,
REGIONAL BENCH : ALLAHABAD**

Appeal No.E/530/2008-EX(SM)

Arising out of Order-in-Appeal No.205/CE/ALLD/2007 dated 20.12.2007
passed by Commissioner (Appeals) of Central Excise, Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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

Commissioner of Central Excise, Allahabad

..APPELLANT(S)

VERSUS

M/s Ankur Udyog Ltd.

...RESPONDENT (S)

APPEARANCE

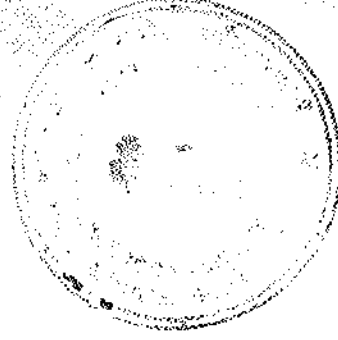
Shri Rajeev Ranjan, Joint Commr. (AR) for the Department (s)
Shri Sita Ram, Consultant for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT: 09.12.2016

FINAL ORDER NO.: 71136/2016



Per Mr. Anil Choudhary :

The issue in this appeal is, whether the Ld. Commissioner (Appeal) rightly remanded the matter back to the adjudicating authority, in the light of his observations that the respondents are engaged in manufacture of T.V. Yarn and Polyester Yarn (C.E.T.H. No.5509.50 and 5509.21) had filed a refund claim of Rs.4,87,745.00/- against Cenvat Credit involved in 165710 Kgs. Of furnace oil consumed in manufacture of 257500 Kgs. Of their product exported to various Countries, i.e., Turkey, Sudan, Brazil and Iran under Bond No.09/2004 dated 17.05.2004 and 12/2004 dated 09.07.2004 through M/s Euro Vistta (India) Limited, 505 Embassy Centre, Nariman Point, Mumbai on the strength of ARE-2 under the provisions laid down in Notification No.05/2006-CE (nt) dated 14.03.2006. The claim was found legal by the Adjudicating Authority and accordingly the same was sanctioned by him vide impugned Order-in-Original dated 23.05.2007.

2. The Ld. Commissioner (Appeals) have recorded the finding that in the instant case, the certificate given by the respondent-assessee to the Central Excise officers, on various ARE-2, revealed that at the time of export of goods, no Cenvat Credit on any goods used in connection with manufacture of such goods was taken, which is contrary to the assessee's contention and the grounds of the refund claim. In the Order-in-Original, there is no observation about above and also about the respondents contention that the Genset was used exclusively for manufacture of export goods on account of electricity disturbance, faced by them. This submission needs to be examined specifically when they were manufacturing the goods for home

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consumption also in clearing them both on payment of duty and without payment of duty. As per Revenue, respondents-assessee are clearing the goods under notification No.30/04-CE and there was no reason to avail Cenvat Credit whereas assessee's contention is that, they are clearing goods also under Notification 29/04-CE on payment of duty. Accordingly, the Ld. Commissioner (Appeals) remanded with a direction to the Adjudicating Authority to give clear finding about the use of Genset and thereby on furnace oil, whether it was solely for manufacture of export goods and under what circumstances/particulars, the Cenvat Credit taken on furnace oil by the respondent-assessee have not been mentioned in the concerned ARE-2 and thereafter, a fresh speaking order be passed.

3. Heard the parties and considered the grounds of appeal.

4. I find that there is no illegality or impropriety in the impugned order. The learned Commissioner (Appeals) have rightly taken notice of the disputed questions of fact and have rightly pointed out that further examination is required and accordingly have rightly remanded to the Adjudicating Authority. In this view of the matter, there is no merit in this appeal and the same is dismissed. The respondent-assessee is directed to appear before the concerned Adjudicating Authority and seek opportunity of hearing and cooperate with the authority by producing relevant evidences, as may be directed by the said authority.

5. Thus, the appeal is dismissed.

(Dictated and Pronounced in the open Court)


(Anil Choudhary)
MEMBER (Judicial)

Mishra

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