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: 07/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71122/2016-SM[BR] dated 18/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/545/2009	CCE NOIDA C-56/42, SECTOR-62, NOIDA-201307
		Name and Address of Respondent
2		SUPER PLASTRONICS PVT. LTD. B-30-31, SECTOR-81, PHASE-II, NOIDA.,,

Copy To

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

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

SINGLE MEMBER BENCH

Appeal No. E/545/2009-EX(DB)

Dated of Hearing/decision: 18/11/2016

[Arising out of Order-in-Appeal No.150-152-CE/Appl./Noida/2008 dated 28.11.2008 passed by Commissioner (Appeals), Central Excise, Noida]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

C.C.E. -Noida Appellant

Vs.

Super Plastronics Pvt. Ltd Respondent

Appearance:
Present for the Appellant: Shri Pawan Kumar Singh, Superintendent, AR
Present for the Respondent: Shri Hrishikesh, Advocate

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)

Final Order No. 71122/2016

Per: Anil Choudhary

Brief facts of the case are that Respondent - M/s. Super Plastronics Pvt. Ltd. (SPPL) were manufacturer of Colour Television Sets and were registered with Central Excise Department. SPPL had purchased Color Picture Tubes (C.P.T.) from Samtel Color Ltd., Hotline, BPL Display Devices Ltd. and J.C.T. Electronics Ltd., on the basis of duty paid on the said C.P.Ts. by said suppliers of C.P.T. SPPL were taking Cenvat Credit under relevant Cenvat Credit Rules. The suppliers of C.P.Ts. allowed discount post clearance and issued credit notes to SPPL, as a result, the assessable value of the inputs received was altered, at the end of the manufactures of the inputs. It appeared to Revenue that due to such alteration or reduction of assessable value of inputs at the end of the manufactures of inputs, Cenvat Credit availed by SPPL needs to be accordingly reduced. For recovery of such Cenvat Credit, which appeared to be inadmissible, show cause notice No. C No.V(15)Adj/Noida/Super Plastronics /35/06/2289 dated 13.2.2007 was issued to SPPL calling upon them to show cause as to why Cenvat Credit amounting to Rs.48,40,326/- should not be disallowed to them and recovered from them. There were also proposal for penalty and interest. The said show cause notice was also proposed imposition of penalty on Samtel Color Ltd, (J.C.T. Electronics Ltd.), Hotline C.P.T. Ltd., M/s. BPL Display Devices Ltd. and Samtel India Ltd.. The said show cause notice was adjudicated through Order-in-Original No. 08/Jt. Commr./Noida/2008 dated 16.4.2008. The appellant before the Original Authority has pleaded that there are large number of

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judgments in which it has been consistently held that an error in the assessment at the end of the manufacturer or suppliers of goods, will not effect the availability of credit to the receiver and that since the credit was admissible, the question of interest, penalty and penalty on co-noticees did not arise. The Original Authority has held that the case laws relied upon by the appellant were not squarely applicable in the present case in as much as in none of those decisions issue of impact of credit notes on the transaction value is involved. The Original Authority confirmed the demand, and imposed equal penalty and also imposed penalty on co-noticees, of different amounts.

2. Aggrieved by the said Order-in-Original, the assessee filed appeal before the Commissioner (Appeals), which was allowed. Aggrieved, Revenue is before this Tribunal. The grounds of appeals *inter-alia* include that in the light of provisions under Rules, 3, 4 & 9 of Cenvat Credit Rules, 2001, it is not the case of the Department that SPPL - respondent did not receive the inputs i.e. C.P.Ts., nor the duty was not paid on the inputs, nor the required documents were not available with them. The C.P.Ts. manufacturers have paid duty on C.P.Ts. on the basis of agreed upon prices prevailing at the time of clearance of the goods and duty so paid was availed as credit and there was no violation of any of the Rules of Cenvat Credit Rules.

3. The learned D.R. for the Revenue has argued that the circular No. 877/15/08-Cus is of date 17/11/2008 and there is no mention in

the circular that it has got retrospective effect, transactions in dispute is for the period April 2002 to March 2006.

4. The learned counsel for the respondent submitted a copy of circular No. 877/15/2008-CX dated 17.11.2008 issued by Central Board of Excise and Customs and argued that it has been clarified in the said circular that when credit notes are issued, the discount in such cases is given in respect of value of the inputs and not in respect of duty paid by the suppliers and the effect of reduction does not change the fact about the quantum of the duty paid, but may change the quantum of the duty payable. However, criteria for availment of Cenvat Credit is the duty paid and therefore, they have not violated any provisions of Cenvat Credit Rules as clarified by the said circular dated 17/11/2008 and prayed to dismiss the appeal.

5. I have taken into consideration the rival submissions. I hold that the circular issued by C.B.E.C. is by way of clarification of the existing provisions or Rules and therefore it is applicable for the entire period for which such Rules existed on statute. Therefore, we do not find any strength in the argument and grounds of the learned D.R. The copy of the said circular is reproduced hereunder:-

> ***"Clarification regarding reversal of Cenvat Credit in case of trade discount***
>
> *Representations have been received from trade and industry seeking clarification on the issue whether proportionate credit should be reversed in cases where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice, but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him.*
>
> *2. The issue has been examined. Since, the discount in such cases*

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are given in respect of the value of inputs and not in respect of the duty paid by the supplier, the effect of reduction of value of inputs may be that the duty required to be paid on the inputs was less than what has been actually paid by the inputs manufacturer. However, the fact remains that the inputs manufacturer had paid the higher duty. Rule 3 of Cenvat Credit Rules, 2004 allows credit of duty "paid" by the inputs manufacturer and not duty "payable" by the said manufacturer. There are many judgements of Hon'ble Tribunal in this regard which have confirmed this view.

3. In view of above, it is clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise. However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price.

6. It is very clear from the above circular that when subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him, the duty paid is admissible as Cenvat Credit. It is undisputed that the duty paid by the input manufacturers remained unaltered in the present case even after issue of credit notes. The circular squarely covers the issue involved. I, therefore, dismiss the appeal and uphold the impugned Order-in-Appeal with consequential relief, if any.

Appeal is dismissed.

(Dictated and pronounced in the open Court)

(Anil Choudhary)
MEMBER (Judicial)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy
22.12

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