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: 28/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70887/2016-SM[BR] dated 16/09/2016

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/754/2008	TRIVENI ENGG. & INDS. LTD. UNIT- DEOBAND,DISTT. SAHARANPUR.
		Name and Address of Respondent
2		-C.C.E. MEERUT I EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.

Copy To

3Advocate(s) / Consultant(s):

Rajesh Chhibber, CAS
ASSOCIATES
A-403, 414-415 SOMDUTT
CHAMBER-I, 5, BHIKAJI CAMA
PLACE,NEW DELHI,
110066

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

27/10/16

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/754/2008-EX[SM]

Arising out of Order-in-Appeal No.03 & 04-CE/MRT-I/2008 dated 16.01.2008 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-I.

For approval and signature:

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

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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 Triveni Engg. & Inds. Ltd.

...APPELLANT(S)

VERSUS

CCE, Meerut-I

...RESPONDENT (S)

APPEARANCE

Shri Deepak Saneja, Advocate for the Appellant (s)
Shri M.P. Damle, Assistant Commissioner, (A.R.) for the Revenue

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 16.09.2016

FINAL ORDER NO.- 70887/2016

Per Mr. Anil Choudhary :

The appellant, M/s Triveni Engineering & Industries Ltd., is in appeal against Order-in-Appeal No.03 & 04-CE/MRT-I/2008 dated 16.01.2008 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-I.

2. The brief facts are that the appellants are engaged in the manufacture of sugar and molasses falling under chapter heading No.1701.31, 1701.39 & 1703.10 respectively of the Central Excise Tariff Act, 1985. They are also availing facility of Cenvat credit of the duty paid on inputs and capital goods in terms of Rule-3 of the Cenvat Credit Rules, 2002.

On scrutiny of monthly ER-1 returns for the month of April 2005 to May, 2005, it has been observed that the party had wrongly taken and utilised cenvat credit on capital goods on the product namely M.S. Plate (7216.10/7219.10/7208.11/710.10), Angle/M.S. Angle (7216.10/7214.90), Girder (7216.10), H.R. Coils (7208.39) & Welding Electrodes (8311.00), respectively of the schedule to the Central Excise Tariff Act, 1985 volating the provisions of Rules-2 and 3 of the Cenvat Credit Rules 2004 in as much as :

The definition of "capital goods" as defined under Rule-2(a) of the Cenvat Credit Rules, 2004 is given hereunder: "all goods falling under chapter 82, 84, 85, 90 heading No.68.02 and sub-heading No.6801.10 of the first schedule to the Tariff Act.

(i) pollution control equipment

(ii) Components, spares and accessories of the goods specified at (I) and (II) above.

(iii) Moulds and dies;

(iv) Refractories and refractory materials

(v) Tubes and Pipes and fittings thereof and

(vi) Storage tank

Used in the factory of the manufacturer of the final products, but does not include any equipment appliance used in an office."

From the above, it appears that M.S. Plate (7216.10/7219.10/7208.11/710.10), Angle/M.S. Angle (7216.10/7214.90), Girder (7216.10), H.R. Coils (7208.39) & Welding Electrodes (8311.00) are not covered by the definition of capital goods as defined under Rule 2(a) of the Cenvat Credit Rules 2004. Therefore, Cenvat Credit is not admissible on the aforesaid goods.

3. Heard the parties.

4. I find that the issue for determination is whether the items, welding electrodes, M.S. Plates, Channels, Angles, H.R. Coils, Shapts, Bolds etc. are eligible for Cenvat Credit as capital goods or spares, components or accessories thereof as defined in Cenvat Credit Rules, 2004 or not. I find that the present issue is no longer res-integra and the same is settled by the rulings of this Tribunal in the appellant's own case i.e. CCE & S.T., Allahabad Vs. M/s Triveni Engineering & Indus. Ltd. reported at 2016-IOL-2315-CESTAT-ALL, wherein it has been held that

Welding electrodes etc., which are used for repair and miantenacne of plant and machinery, are part of manufacturing process and are eligible to modvat Credit and it is further held that the welding electrodes used by the appellants in repair and maintenance and fabrication of machinery parts are eligible inputs. I also find that as the present issue is interpretational, extended period of limitation, is not invocable. Following the ratio of the rulings of the Tribunal in the case of M/s Triveni Engg. Indus. Ltd. (supra), I set aside the impugned order and allow the appeal with consequential reliefs, if any.

(Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
25.10.16
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