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: 24/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70683/2016-SM[BR]** dated **12/08/2016**

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/770/2011	**ACCURATE CHEMICALS INDUSTRIES,** A-94, UPSIDC INDUSTRIAL AREA, SIKANDARABAD, DISTT. BULANDSHAHAR (U.P.)
		Name and Address of Respondent
2		C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3 Advocate(s) / Consultant(s):

RAJESH CHHIBBER, CAS ASSOCIATES
A-403, 414-415 SOMDUTT
CHAMBER-I, 5, BHIKAJI CAMA PLACE,
NEW DELHI,

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

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

Appeal No. : E/770/2011- EX [SM]

Arising out of O/A No. 371-372/CE/APPL/NOIDA/2010 dated 24.12.2010 passed by Commr. (Appeals) of Customs & Central Excise, Noida.

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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Accurate Chemicals Industries ...APPELLANT(S)

VERSUS

Commissioner of Central Excise,
Noida. ...RESPONDENT(S)

APPEARANCE:

Shri Rajesh Chibber, Advocate for the Appellant(s)
Shri D.K. Deb Assistant Commissioner (AR), for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 12. 08. 2016

Final ORDER NO. 70683/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

<u>Per Mr. Anil Choudhary :</u>

The appellant is in appeal against Order-in-Appeal dated 24-12-2010 passed by the Commissioner (Appeals) Customs & Central Excise, Noida whereby disallowance of Cenvat credit of Rs.36,06,534/- have been confirmed along with equal amount of penalty.

2. Heard the parties.

3. The brief facts of the case are that the appellant is a manufacturer of tanks etc. which are used in further manufacture of transformer. The appellant procures various inputs including, HR Coils & CR Coils. An SCN dated 03-09-2008 was issued for the period September, 2003 to June, 2006, alleging that the appellant have purchased inputs namely HR Coils & CR Coils etc. from registered dealer namely M/s. Rishav Trading Company & Others. Such dealers had purchased the HR Coils/CR Coils from M/s. Pasondia Steel Pvt. Limited, Ghaziabad. In investigation by Revenue in the affairs of the said Pasondia Steel Pvt. Limited, it was revealed that their electric connection was disconnected since November, 2002 and they have cleared the HR Coils & CR Coils received from SAIL as such, showing that they have converted the said goods and cleared the same on payment of duty. The Director of the said Pasondia Steel, Mr. Upendra Goyal had admitted in his statement under Section 14 that in absence of power connection there was no manufacture taking place and they had cleared their inputs as such. The Revenue drawing the presumption that the appellant has received only the invoices and not the goods, had issued the present Show

Cause notice without joining the said Pasondia Steel as a party in the SCN. The SCN was decided on contest and the proposed demand was confirmed along with penalty of equal amount.

4. The ld. Commissioner (Appeals) was also pleased to dismiss the appeal of the appellant company but was pleased to set aside the penalty imposed on the authorized person Mr. B. D. Sharma, recording a finding that he has not played any active role in availing in eligible Cenvat credit.

5. Being aggrieved the appellant preferred appeal before this Tribunal urging that it is not the case of Revenue that they have not received the materials along with the invoices. It is further an admitted fact that the appellant has manufactured their output namely tanks etc. which have been cleared on payment of duty. It is not also the case of Revenue that the appellant procured invoices from some other dealers and procured inputs from somewhere else. Further, the appellant has paid for the inputs through banking channel and as such the impugned demand is fit to be set aside. Further, the appellant has discharged their onus under the scheme of the Act and the Rules, by ensuring receipt of goods with the invoices, by paying through the banking channels and by ensuring the identity of the supplier. The ld. Counsel further relies on the ruling of this Tribunal, under similar facts and circumstances, wherein also, similarly SCN was issued to one V.K. Steels who had purchased the goods received from Rishav Trading and said Rishav Trading had acquired from Pasondia Steel Pvt. Ltd. It has been held that the assessee-manufacturer had procured the impugned goods from

registered dealer and the receipt of goods in their factory is not under doubt. The assessee had made payment through cheque/draft. Thus two parameters for availment of credit that is receipts of goods in the factory and payment to the suppliers of the goods are fulfilled. Further the assessee has taken due care by identifying the supplier while procuring the goods. Simply on the grounds that the goods were not the same that were manufactured by Pasondia Steel, the credit cannot be disallowed. This Tribunal in Final Order No. 50976 dated 05-03-2014 in Appeal No. E/2220/2011- EX[SM] has held accordingly in favour of the assessee and against the Revenue. Further, holding that the assessee have discharged their onus and no such adverse inference can~~not~~ be drawn against them. This order of the Tribunal was followed in the case of M/s. Jasper Engineering Pvt. Limited vs. Commissioner of Central Excise, Noida Appeal No. 40/2011-EX[SM] wherein also under similar facts and circumstances that the goods originated from Pasondia Steel, the appeal was allowed in favour of the assessee and against the Revenue.

6. The ld. A. R. for Revenue relies on the impugned order.

7. Having considered the rival contentions, I find that there is no case of any contumacious conduct, suppression of facts, with intent to evade payment of duty. Accordingly, I hold that the extended period of limitation is not applicable in the facts and circumstances of this case. Further, even on merits following the precedent decisions of this Tribunal, I hold that the appellant has discharged their onus before taking the Cenvat credit.

Accordingly, the impugned order is set aside relating to this appellant, and the appeal is allowed. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

(Ansari)

प्रमाणित प्रति / Certified True Copy

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