FAX : 0532-2400149

REGISTERED / AD

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

Dated: 20/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70277-70278/2016-EX[DB] dated 26/05/2016

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/798/2006	**RAISANI INDS.LTD.** 123/374, FAZAL GANJ, KANPUR, U.P.
2	E/799/2006	**SH.VIPUAL AGARWAL** 123/374, FAZALGANJ, KANPUR (UP)

Name and Address of Respondent

3 -C.C.E. KANPUR
117/7, SARVODAYA NAGAR,
KANPUR 208005.

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

SH A.P.MATHUR,ADV
167, TAGORE TOWN
ALLAHABAD

5. SH ABHISHEK JAJU,ADV
472, DELHI APARTMENTS
PLOT NO 15-C, SECTOR-22
DWARKA, NEW DELHI-77

6 Bar Association, CESTAT, ALLAHABAD

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

15 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

16 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.E/798-99/06(DB)

(Arising out of Order-in-Original No. 05/Commr./MP/2005 dated 12/12/2005 passed by Commissioner of Central Excise & Customs, Kanpur)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

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

M/s Risausi Industries Limited,

Shri Vipul Agarwal — **Appellants**

Vs.

Commissioner of Central Excise, Kanpur — **Respondent**

Appearance:

Shri A.P. Mathur, Advocate
Shri Abhishek Jaju, Advocate — for Appellants
Shri A.K. Goswami, Additional Commissioner (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 11/05/2016
Date of Decision : -------------- 24/05/2016

Final ORDER NO. 70277-70278/2016

Per: Anil G. Shakkarwar

These two appeals were initially disposed through final order No. 560-61/06-CE dated 12.07.06. Subsequently, through miscellaneous Order No. 59068-59069/2013 dated 27/08/13, both the appeals were restored.

2. Brief facts of the case are that appellants were engaged in the manufacture Pumps, Hammers, Knives, etc and were availing Cenvat facility. Appellants were issued a show cause notice dated 02/12/2004 proposing to deny Cenvat credit of Rs. 53,37;815/- on rubber used by them in their factory alleging that the rubber used was in excess of quantity required by them. Another proposal in the show cause notice was for disallowing Cenvat credit of Rs.1,47,648/- on the inputs found to be short in the factory of appellants. The third proposal in the show cause notice was for recovery of Cenvat credit amounting to Rs. 2,04,683/- on steel inputs. Further, there was proposal for imposition of penalty on both the appellants. The said show cause notice was decided through impugned Order-in-Original dated 12/12/2005 wherein Cenvat credit amounting to Rs.53,37,815/- availed on rubber was disallowed holding that the appellants has procured more inputs than required by them and therefore, the said credit was liable to be

denied to them. Further, Cenvat credit of Rs.1,47,648/- and Cenvat credit of Rs.2,04,683/- were disallowed. The appellants were imposed with penalty of Rs.56,90,146/- on the assessee and personal penalty of Rs. 5 Lakhs on Managing Director. Challenging the above said order, the appellants are before this Tribunal. Learned Advocate on behalf of the appellants argued that they are challenging the denial of Cenvat credit of Rs.53,37,815/- interest on the same, penalty of equal amount and personal penalty imposed on Managing Director. He has argued that there is no allegation in the show cause notice that the said input i.e. rubber was not procured by the appellants and that there is no allegation in the show cause notice that the input rubber so procured did not suffer Central Excise duty and that there is no allegation in the show cause notice that the rubber procured was not used in the manufacture of final products. He further argued that there is no allegation in the show caused notice that input was cleared as such clandestinely. The only allegation is that the wastage of input was more than expectation of the adjudicating authority and therefore, Cenvat credit was denied by original authority. He further argued that formerly Rule 57D of Central Excise Rules, 1944 provided that Cenvat credit shall not be denied on any quantity of input going into waste. There is no provision of the law which authorizes Central Excise authorities to decide what is the optimum quantity of input to be procured for manufacture of unit quantity of final product. Therefore, the adjudicating authority did not have authority of law to decide what was excess quantity of input used or procured. Learned

Departmental Representative reiterated the contents of the impugned order.

3. We have carefully taken into consideration the rival submissions. We find that the entire case of Revenue is based on their own presumption that excess quantity of input were procured by appellant. We find that it is now settled that if following three conditions are satisfied then Cenvat credit cannot be denied. The conditions are that that the inputs have suffered Central Excise duty, inputs have entered the factory premises and inputs are used in the manufacture of final products that they are not cleared as such. We do not find any allegation in the show cause notice that the appellants had not procured the inputs nor that the inputs had not suffered Central Excise duty nor that the input were cleared as such by the appellant. In fact there is no investigation in respect of above stated aspects as reflected in the impugned order.

4. We hold that the adjudicating authority was not empowered by law to decide optimum quantity of input admissible to be procured for manufacture of unit quantity of final product and therefore, law did not empower the adjudicating authority to decide how much is the excess quantity of inputs procured by the appellant. We hold that Cenvat credit amounting to Rs.53,37,815/- availed on rubber by the appellant is admissible to them. Therefore, we set aside the impugned order to the extent of denial of Cenvat credit amounting to Rs.53,37,815/-, interest thereon and penalty imposed under section 11AC of Central Excise Act, 1944 equal to the said amount. We

further reduce the personal penalty imposed on Shri Vipul Agrawal to Rs. 20,000/-. We hold that the appellants shall be entitled for consequential relief. We dispose of the above stated two appeals in the above terms. No costs.

(Order pronounced in Court on 26/05/2016)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Anil Choudhary)
Member (Judicial)

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प्रमाणित प्रति / Certified True Copy
8.7.16
सहायक पंजीयक / 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