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: 04/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71210-71212/2016-SM[BR] dated 11/11/2016

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/814/2012	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002
2	E/966/2012	**Manohar Lal Hira Lal Ltd** 23, Naya Ganj, Ghaziabad(up)
3	E/55639/2014	**Commissioner of Customs-Ghaziabad** 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002

	Name and Address of Respondent
4	Manohar Lal Hira Lal Ltd 28 K.m. Delhi Meerut Road, Duhai, Ghaziabad,,

5 C.C.E. & S.T.-Ghaziabad
202...WING A C.G.O. COMPLEX-
II,KAMLA NEHRU NAGAR,
GHAZIABAD,
UTTAR PRADESH-201002

6 Manvendra Goyal Managing
Director
M/s Manoharlal Hira Lal Ltd, 28
Km Stone, Delhi- Meerut Road,
Vill-duhai,,,
GHAZIABAD
,UP

Other Appellants and Respondents as per Annexure

Copy To:

7 Advocate(s) / Consultant(s):

praveen sharma
KF-84, Kavi Nagar,
Ghaziabad,
Uttar Pradesh

8 Bar Association, CESTAT, Allahabad
9 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

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

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

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/814 & 966/2012-EX[SM] & E/55639/2014-EX[SM]

(Arising out of Order-in-Appeal No. 5 & 6-CE/GZB/2012 dated 23/01/2012 passed by Commissioner of Customs. Central Excise & Service Tax (Appeals), Ghaziabad)

Commissioner of Central Excise & Service Tax Ghaziabad **(In Appeal No. E/814/2012), Manohar Lal Hira Lal Ltd. (In Appeal No. E/966/2012) & Commissioner of Central Excise & Service Tax (In Appeal No. E/55639/2014)** **Appellant**

Vs.

Manohar Lal Hira Lal Ltd. (In Appeal No. E/814/2012), Commissioner of Central Excise & Service Tax (In Appeal No. E/966/2012) & Manvendra Goyal Managing Director (M/s Manohar Lal Hira Lal Ltd.) (In Appeal No. E/55639/2014) **Respondent**

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR), for Appellant
Shri Pravin Sharma, Advocate for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 11/11/2016

FINAL ORDER NO. 71219-71212/2016

Per: Anil G. Shakkarwar

Above stated three appeals are arising out of Order-in-Appeal No. 5 & 6-CE/GZB/2012 dated 23/01/2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad therefore, they are taken together for decision.

2. Brief facts of the case are that M/s Manohar Lal Hira Lal Ltd., were engaged in the manufacture of Steel Wire (coated with Zinc & Copper) classifiable under Chapter 72 of

the First Schedule to the Central Excise Tariff Act, 1985. They were availing cenvat facility. The manufacturing unit of M/s Manohar Lal Hira Lal Ltd. was visited by Officers of Central Excise on 16/11/2009. On the basis of investigation Show Cause Notice, dated 09/07/2010 was issued. The proposal in the said Show Cause Notice was for disallowance of Cenvat credit amounting to Rs.22,04,488/- and its recovery. Further there was a proposal to demand Central Excise duty amounting to Rs.6,61,269/- & Rs.1,61,438/- under Section 11A of Central Excise Act, 1944. Further there was a proposal to impose penalty on Manvendra Goyal, Managing Director (M/s Manohar Lal Hira Lal Ltd.), under Rule 26 of Central Excise Rules, 2002. Further there was a proposal to demand interest. The said Show Cause Notice was adjudicated through Order-in-Original No. 3/Additional Commissioner/GZB/2011 dated 28/09/2011. The Original Authority confirmed all proposals in the said Show Cause Notice and imposed equal penalty on M/s Manohar Lal Hira Lal Ltd. He ordered M/s Manohar Lal Hira Lal Ltd. to pay interest. Further, Original Authority imposed a penalty of Rs.1 lakh on Manvendra Goyal, Managing Director (M/s Manohar Lal Hira Lal Ltd.), under Rule 26 of Central Excise Rules, 2002. Aggrieved by the said Order-in-Original appellants preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 5 & 6-CE/GZB/2012 dated

23/01/2012. The ld. Commissioner (Appeals) has held that the appellants were entitled for credit of Rs.49,672/- involved on the items namely M.S. Plates & Hot Strips Mill Plates. The ld. Commissioner (Appeals) also held that disallowance of Cenvat credit of Rs.18,01,245/- of 114.58 MT & 67.358 MT on Zinc was not sustainable and the same was set aside therefore out of the proposal for denial of Cenvat credit of Rs.22,04,488/-, the ld. Commissioner (Appeals) has set aside denial of Cenvat credit of Rs.18,01,245/-. Further out of demand of Central Excise duty of Rs.6,61,269/-, the ld. Commissioner (Appeals) set aside the demand of Rs.3,13,794/- and did not interfere with balance demand of Rs.3,47,575/-. He upheld the confirmation of demand of Rs.1,61,438/- which was raised on account of alleged shortage of stock of finished goods. Aggrieved by the said order M/s Manohar Lal Hira Lal Ltd. preferred appeal against confirmation of demand and penalties. Revenue have also filed appeal against dropping of demand and setting aside of personal penalty on Manvendra Goyal, Managing Director, before this Tribunal.

3. Heard ld. Counsel for the appellant who has submitted that out of the proposal for disallowance of Cenvat credit of Rs. 22,04,488/-, the ld. Commissioner (Appeals) did not interfere with disallowance of Cenvat credit of Rs.1,48,431/- & Rs.1,87,056/- and that the said credits were availed on the inputs and there were no allegations in the said Show Cause

Cause Notice that the inputs were non-duty paid or they were not received in the factory or they were not issued for production, and that therefore, confirmation of demand for disallowance of said credit is not sustainable. He further contended that out of the demand of Central Excise duty of Rs.6,61,269/-, ld. Commissioner (Appeals) did not interfere with confirmation of demand of Rs.3,47,575/-, which was on account of the alleged shortage in the stock of Copper coated wire and that the fact is that the said goods had not so far reached at RG-1 stage and therefor they were not required to be entered into RG-1 and therefore, the ~~appeared~~ apparent shortage was due to work in progress and hence demand was not sustainable. Further, in respect of demand of Rs.1,61,438/- on account of shortage of High Carbon Wire, he has contended that actual weighment was not done and it was worked out on eye estimation and therefore, the demand was presumptive. He, further, contended that the relief given by ld. Commissioner (Appeals) was based on examination of evidence and same is sustainable and therefore appeal filed by Revenue may be dismissed.

4. The ld. D.R. has supported the grounds of appeal and contended that Revenue appeals may be allowed.

5. Having considered the rival contentions and on perusal of records I find that in respect of recovery of Cenvat credit of Rs.1,87,056/- & Rs.1,48,431/-, I accept the arguments putforth by counsel for M/s Manohar Lal Hira Lal Ltd. that

there were no allegations in the said Show Cause Notice that the inputs were non-duty paid that the inputs were not received in the factory that the inputs were not issued for production. It is settled law that if there are no allegations about duty paid nature of inputs, inputs having received in factory and issued for production, Cenvat credit cannot be denied. I, therefore, set aside that part of impugned Order-in-Appeal through which disallowance of Cenvat credit of Rs.1,87,056/- & Rs.1,48,431/- was upheld. Further, I also accept the arguments putforth by counsel for M/s Manohar Lal Hira Lal Ltd. that demand of Central Excise duty of Rs.3,47,575/- was worked out on the goods which had not reached RG-1 stage. Therefore, I set aside that part of the order of Commissioner (Appeals) through which confirmation of demand of Rs.3,47,575/- was upheld. Further, I also accept the arguments putforth by counsel for M/s Manohar Lal Hira Lal Ltd. that the demand of duty on shortage of Carbon Wire was based on eye-estimation of the stock and hold that that part of the Show Cause Notice was presumptive in nature and therefore not sustainable. To sum up, I allow the appeal filed M/s Manohar Lal Hira Lal Ltd. and dismiss the both appeals filed by Revenue.

(Dictated and pronounced in Court)

2016

(Anil G. Shakkarwar)
Member (Technical)

Ansari

प्रमाणित प्रति / Certified True Copy
16.1.17
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