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: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71187/2016-SM[BR] dated 16/12/2016

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/50072/2015	VOIR INDIA ELECTRONICS PVT LTD D-117-118, GNEPIP SITE-V SUGAJ PUR INDUSTRIAL AREA KASNA GREATER NOIDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

Ravinder Singh, Consultant
12/76, IST FLOOR,
TILAK NAGAR,
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 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

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

Appeal No. : E/50072/2015-EX[SM]

Arising out of OIA No. NOI/EXCUS/000/APPL/159/2014-15 dated 19.09.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida.

Voir India Electronics Pvt. Ltd. ...APPELLANT

VERSUS

C.C. & C.E. & S.T.-Noida ...RESPONDENT

APPEARANCE

Shri Ravinder Singh, Consultant for the appellant.
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 16. 12. 2016

FINAL ORDER NO. 71187/2016

Per Mr. Anil G. Shakkarwar :

The present appeal is against the Order-in-Appeal No. NOI/EXCUS/000/APPL/159/2014-15 dated 19.09.2014.

2. The brief facts of the case are that the appellants are manufacturers of Plastic Molded Items. The officers of Central Excise Department inspected the manufacturing unit of the appellant on 28.06.2012, their registered office, residence of M.D. and other registered office on the same day. During the search conducted at factory they found certain raw materials and certain semi finished goods and finished goods which were not accounted

for in the books of account. On the reasonable belief that they were liable for confiscation, the said goods valued at Rs. 70,11,835/- were seized through "Panchnama" dated 28.06.2012. Subsequently, the said goods were provisionally released to the appellant on execution of required bond supported by bank guarantee for Rs. 17,53,000/-. The said goods were released on 16.07.2012. It was alleged in the show cause notice that the last entry in the daily stock account register was recorded on 07.06.2012 and thereafter it appeared to Revenue that the seized and provisionally released goods were not accounted for in the daily stock account register and hence were prepared for clandestine removal. Therefore, the appellants were issued with show cause notice dated 24.12.2012 with a proposal to confiscate the said goods valued at Rs. 70,11,835/- under Rule 25 of the Central Excise Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004. Further there were other proposal for penalty and imposition of redemption fine in the said show cause notice. The appellant contested the show cause notice before the Original Authority. The appellant contended before the Original Authority that certain goods seized were purchased from other manufacturing unit and they were received under proper invoices, and, therefore there was no contravention of any rules requiring confiscation of the said goods. They further contended that the some of the goods were semi finished and they were not still complete and not reached the stage where they were required to be entered in daily stock account register and therefore they were not liable for confiscation. They further contended that they had not taken any Cenvat Credit on any of the inputs and therefore the question of invocation of Rule 15 of Cenvat Credit Rules did not arrive. The Original Authority could not appreciate the argument put forth and adjudicated the matter through Order-in-Original No. 52/ADC/NOIDA/2013-14 dated 13.02.2014 and ordered for confiscation of the said goods valued at Rs. 70,11,835/- under Rule 25 of the Central Excise Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004. He imposed the penalty of Rs. 2,50,000/- under said Rule 25 and another penalty of Rs. 6,00,000/- under Rule 15 of Cenvat Credit Rules, 2004. He imposed fine of Rs. 10 lakhs in lieu of confiscation. He further ordered for encashment of bank guarantee for Rs. 17,53,000/-. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). They put forth same argument before the Commissioner (Appeals). In addition, they contended that the encashment of bank guarantee was not liable for realization of amounts and also contended that penalties were not liable for imposition in respect of penalty under Rule 15 of Cenvat Credit Rules, 2004. They contended that there was no allegation in the show cause notice that the appellant had availed and utilized any Cenvat Credit wrongly in respect of inputs in question and argued that said Rule 15 is liable to be set aside. Learned Commissioner (Appeals) decided the appeal through Order-in-Appeal No. NOI/EXCUS/000/APPL/159/2014-15 dated 19.09.2014. Through the said Order-in-Appeal, the learned

Commissioner (Appeals) upheld the Order-in-Original and rejected the appeal. Aggrieved by the said order, the appellant is before this Tribunal.

3. Shri Ravinder Singh, Consultant argued on behalf of appellant. He contended that the show cause notice was issued by invocation by Rule 25 of Central Excise Rules, 2002 and Rule 15 of Cenvat Credit Rules, 2004. He further contended that there was no allegation in the show cause notice of any irregularity in respect of availment of Cenvat Credit, therefore, they were not liable for imposition of any penalty under Rule 15 of Cenvat Credit Rules, 2004. He further contended that the provisions of Rule 25 of Central Excise Rules, 2002 are subject to the provisions of Section 11AC of Central Excise Act, 1944 and that there was no allegation in the show cause notice about evasion of duty, therefore, invocation of Rule 25 of the Central Excise Rules, 2002 is not sustainable. Therefore, show cause notice itself does not survive. In support of his argument he has relied on ruling by Hon'ble High Court at Delhi in the case of ***Commissioner of C.Ex., Delhi-II vs Ganpati Rollings Pvt. Ltd.*** reported at ***2016(338) E.L.T. 587 (Del.).***

4. Learned D.R. has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records and on going through the ruling by Hon'ble High Court of Delhi in the case of ***Commissioner of C.Ex., Delhi-II vs Ganpati Rollings Pvt. Ltd.*** reported at ***2016(338) E.L.T. 587 (Del.)*** stated above I find that the impugned show cause notice is issued

without any demand of duty. Since there was no demand of duty, invocation of Section 11AC of Central Excise Act, 1944 did not arise. Hon'ble Delhi High Court in the said ruling has held that in the appeal before the said Hon'ble High Court Delhi, the impugned order was passed by this Tribunal which allowed the appeal filed by the appellant wherein the impugned order was Order-in-Original dated 27.03.2009 passed by Commissioner, Central Excise imposing penalties on the assessee and requiring the assessee to pay redemption fine. In the said case there was proposal for imposition of penalty under Rule 25 of Central Excise Rules, 2002 and there was no proposal for demand of duty and there was no invocation of said Section 11AC. This Tribunal had found that if Section 11AC was not invoked then Rule 25 of Central Excise Rules, 2002 was not invokable. The said finding of this Tribunal was affirmed by Hon'ble High Court Delhi in the said case. I find that the said ruling is squarely applicable in the present case. Therefore, I hold that the impugned show cause notice is not sustainable. As a result, I set aside the impugned Order-in-Original and Order-in-Appeal and direct the Original Authority to refund the amount realized through encashment of bank guarantee in the above terms. The appeal is allowed with consequential relief as per law.

(Pronounced and dictated in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

प्रमाणित प्रति / Certified True Copy
6.1.17
Patel/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