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: 06/02/2017

To

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

Final Order No. A/70142/2017-SM[BR] dated 20/01/2017

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/3926/2010	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Molex India (p) Ltd., Plot No 6a, Sadarmangala Industrial Area, Kadugodi , Bangalore-560067,,

Copy To
3Advocate(s) / Consultant(s):

**RAVI SHANKAR &
CHANDER KUMAR ADV
NO.504/210, 4TH FLOOR,
OXFORD TOWER,
139, OLD AIRPORT ROAD,
KODIHALLI,
BANGALORE**

560008

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/3926/2010-EX[SM]

(Arising out of Order-in-Appeal No. 285/CE/Appl/Noida/2010 dated 31.08.2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Commissioner of Central Excise & Service Tax, Noida **Appellant**

Vs.

M/s Molex India (P) Ltd. **Respondent**

Appearance:

Shri Rajesh Chander Kumar, Advocate. for Appellant
Shri Pawan Kumar Singh, Superintendent (AR). for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 20/01/2017

FINAL ORDER NO. 70142/2017

Per: Anil G. Shakkarwar

The present appeal is filed by Revenue against Order-in-Appeal No. 285/CE/Appl/Noida/2010 dated 31/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts of the case are that the respondents were engaged in the manufacture of the Connector Harness & Parts of Connector falling under chapter No. 85 & were availing Cenvat credit under Cenvat Credit Rules, 2004. As a result of closure of factory, M/s Molex India (P) Ltd., filed a claim for refund of unutilized Cenvat credit of Rs.34,44,899/-

lying in their credit account under Section 11B of the Central Excise Act, 1944. Through Order-in-Original No. R-23/AC/Div.-I/2010-11 dated 27/04/2010 the said claim for refund was rejected. Aggrieved by the said Order-in-Original respondent filed an appeal before the Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeal through Order-in-Appeal No. 285/CE/Appl/Noida/2010 dated 31/08/2010. The ld. Commissioner (Appeals) has relied upon ruling of Hon'ble High Court of Karnataka in the case of Union of India *Versus* Slovak India Trading Co. Pvt. Ltd. reported at 2006 (201) E.L.T. 559 (Karnataka) and ruling of Hon'ble Supreme Court through which SLP filed against said judgment of Hon'ble High Court of Karnataka was dismissed by the Apex Court as reported at 2008 (223) E.L.T. A170 (S.C.) set aside the said Order-in-Original No. R-23/AC/Div.-I/2010-11 dated 27/04/2010 and directed the Original Authority to allow claim for refund. Aggrieved by the said Order-in-Appeal dated 31/08/2010 Revenue has preferred appeal before this Tribunal.

3. In the grounds of appeal Revenue reproduced provisions of Rule 5 of Cenvat Credit Rules, 2002 further they reproduced provisions of Section 11B of the Central Excise Act, 1944 and argued that the said Section 11B of the Act does not allow refund of Cenvat credit in cash, except in cases where input or input service as such are exported or are used

in the manufacture of finished goods which are exported out of India. They, further, contended that accumulation of Cenvat credit in the case of respondent was not on account of export but for other reason. They, further, contended that in the case of Slovak India Trading Co. Pvt. Ltd. (Supra) this Tribunal has relied on certain case laws and all these case laws are different from the fact of the present case.

4. Heard the ld. D. R. has supported the grounds of appeal.

5. Heard the ld. Counsel for the respondent who has contended that it is an admitted fact in the Show Cause Notice that respondent factory is closed. He has further submitted that ruling of Hon'ble High Court of Karnataka in the case of Slovak India Trading Co. Pvt. Ltd. (Supra) was challenged by Union of India before Hon'ble Supreme Court of India and Hon'ble Supreme Court has dismissed the petition.

6. Having considered the rival contentions and on perusal of record, I find that in para 5 of the ruling of Hon'ble High Court of Karnataka in the case of Slovak India Trading Co. Pvt. Ltd. *Versus* Commissioner of Central Excise, Bangalore reported at 2006 (205) E.L.T. 956 (Tri. – Bangalore) has held that this Tribunal was justified is ordering refund of unutilized Cenvat credit lying ~~in~~ balance when the manufacturing unit was closed. The said finding by this Tribunal was ultimately affirmed by Hon'ble Supreme Court of India. The grounds of appeal by Revenue do not anywhere

contend that the ratio of the said case law in the case of Slovak India Trading Co. Pvt. Ltd., is not squarely applicable in the present case. Therefore, Revenue has not made out any case for inference in the impugned Order-in-Appeal.

7. In result, I do not interfere in the impugned Order-in-Appeal and the appeal filed by Revenue is dismissed. The respondent shall be entitled to consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
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