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: 21/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70207/2017-SM[BR] dated 17/02/2017

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/51416/2015	**Deewan Reclaim Rubber** Plot No. A-3, Meerut Road Industrial Area GHAZIABAD UP 201003
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3Advocate(s) / Consultant(s):

R C Verma,Advocate
D-34,Patel nagar-2,Ghaziabad,U.P-201001

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

Ex. Appeal No.51416/2015

Arising out of OIA No.GZB/EXCUS/000/APP/227/14-15 dated 28/11/2014 passed by the Commissioner (Appeals), Central Excise, Customs, Meerut.

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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M/s Deewan Reclaim Rubber ...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Ghaziabad RESPONDENT (S)

APPEARANCE

Shri Rakshit Verma, Adv. for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 31.08.2016

FINAL- ORDER NO.- 70207/2017

Per Mr. Anil Choudhary :

The Appellant, M/s Deewan Reclaim Rubber, is in Appeal against Order-in-AppealNo.GZB/EXCUS/000/APP/227/14-15 dated 28/11/2014 passed by the Commissioner (Appeals), Central Excise, Customs, Meerut II (Noida Zone).

2. The issues in this appeal filed by the appellant assessee are as follows :

(i) Whether the appellant is entitled to Cenvat credit of Rs.89,854/- availed on receipt of inputs in the factory, wherein on the invoices address of Head Office is mentioned ;

(ii) Whether the Central Excise duty is excisable on sale of scrap generated in course of processing used and worn out tyres ;

(iii) Whether the Cenvat credit of Rs.85,667/- on capital goods was rightly taken and the balance 50% was to be taken in the subsequent year.

3. Heard the parties.

4. So far as the 1st issue is concerned regarding taking of Cenvat credit on improper invoices for an amount of Rs.89,854/-, I find that the same is in respect of five invoices for purchase of rubber processing oil, which is an input of the appellant. Further, the appellants have produced the evidences, which shows that the

goods were received in the factory at Ghaziabad as is evident from the goods received note, and the weighment slips at Ghaziabad. Further, it is the admitted case of the Revenue that the appellants have got only one manufacturing unit and head office at Meerut. Under such facts and circumstances, it is held that the appellant is entitled to take Cenvat credit of Rs.89,854/-.

5. So far as the duty demanded on removal of iron and brass scrap, which are generated in course of manufacture of reclaim rubber, on perusal of the report from the adjudicating authority, it is evident that in the course of dismantling/cutting of old tyres, used by the appellant as inputs, the iron/wires are separated from old tyres, which have been cleared without payment of duty. The duty have been demanded by the Revenue in view of the amendment in the year, 2008, wherein the explanation was added in Clause (d) of Section 2 of the Central Excise Act, 1994, which provides that for the purpose of that Clause, "goods" include any article, material or substance, which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. Further, the CBEC vide its Circular No.904/24/2009-CX dated 08.10.2009, clarified that the waste which arises during the course of manufacture and is capable of being sold for a consideration would be excisable goods and chargeable to excise duty. I find that the issue is no longer res-integra and the said Explanations have been considered by the Hon'ble Supreme Court

in the case of DSCL Vs. Union of India, wherein it has been held that waste and scrap generated in course of manufacture, although the same may be cleared for value or consideration, but the same are not exigible to Central Excise duty. Accordingly, I set aside the demand of Rs.6,97,120/-.

6. So far as the 3rd issue is concerned, the same is regarding disallowance of Cenvat credit being 50% of the eligible credit, which was required to be taken in the subsequent year, but was taken in the 1st year itself. As per the SCN, the appellant during the course of investigation/audit, had reversed an amount of Rs.74,863/- by way of depositing the duty vide e-payment challan dated 05.04.2012 along with interest of Rs.11,347/- for the year, 2010 and Rs.6886/- being interest for the year, 2011. The ld. Counsel for the appellant has stated that the reason for taking of credit before it was due, was due to over sight and no mala-fide was on the part of the appellant. The credit was anyway available after few months in the next financial year. Accordingly, only the liability for interest survives, no penalty is excisable on the appellant. Moreover, the reversal of substantial amount of Rs.74,833/- out of Rs.85,667/- also shows that the appellant became aware of the mistake, on being so pointed out by the Revenue. Considering the facts and circumstances and the credit being so available after few months, I set aside the demand of Rs.85667/- . Further, the interest is held payable and the same is confirmed. Further, the

amount of penalty imposed under Rule 15 of Cenvat Credit Rules, 2004, of Rs. 85,667/- is reduced to Rs.10,000/-.

7. The appeal is allowed in part as indicated above.

(Dictated and pronounced in the open Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
23/03/2017
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