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: 13/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70631/2017-SM[BR] dated 07/07/2017

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/51822/2015	**Graphix Mega Times Ltd** E-58, Sector-6 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

3 Advocate(s) / Consultant(s):

S. D. Gaur
SB-108, SHASTRI NAGAR,
GHAZIABAD,
UTTAR PRADESH

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/51822/2015-EX[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APP/248/2014-15 dated 28/11/2014 passed by Commissioner of Central Excise (Appeals), Meerut-II at Noida)

M/s Graphix Mega Times Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri S. D. Gaur, Consultant, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 07/07/2017

FINAL ORDER NO. 70631/2017

Per: Anil G. Shakkarwar

The present appeal filed by appellant - M/s Graphix Mega Times Ltd. is directed against Order-in-Appeal No. NOI/EXCUS/000/APP/248/2014-15 dated 28/11/2014 passed by Commissioner of Central Excise (Appeals), Meerut-II at Noida.

2. The brief facts of the case are that the appellants were engaged in the manufacture of Watch Case Assembly & Watch Parts. They were clearing the goods to M/s Timex Group India Ltd., Baddi. The defective goods were received back by the appellant for being remade. The appellant

received the rejected goods supplied by them under the invoice issued by buyer i.e. M/s Timex Group India Ltd., situated at Baddi, which was enjoying area based exemption. The appellant were taking Cenvat credit of duty originally paid on the goods returned. It appeared to Revenue that the said Cenvat credit was not admissible to appellant and therefore, a Show Cause Notice dated 28/02/2013 was issued to the appellant proposing to deny the Cenvat credit availed by them during the period from April, 2009 to March, 2012 on such returned goods. The issue was adjudicated through Order-in-Original No. 70/ADC/NOIDA/2013-14 dated 31/03/2014 wherein the Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through the impugned Order-in-Appeal dated 28/11/2014 through which the appeal was dismissed and Order-in-Original dated 31/03/2013 was upheld. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has contended that it is not in dispute that the returned goods were manufactured by the appellant and they were received back in the factory under the provisions of Rule 16 of Central Excise Rules, 2002 and since there was no requirement under said Rule 16 of Central Excise Rules, 2002 to bring the goods back along with the original invoices the same were not

brought back along with original invoices. However, to establish that the Cenvat credit availed on returned goods was originally paid they are prepared to obtain the original invoices from the buyers and submit them to the Original Authority for establishing that the goods which were returned had suffered duty that was taken as Cenvat credit by them on returned goods.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 28/11/2014.

5. Having considered the rival contentions and on perusal of the facts on record, I find that for denial of Cenvat credit, it is to be established that the inputs were not received in the factory and they did not suffer duty and they were not capable of being used in the manufacture of final product. I, further, find that said Rule 16 of Central Excise Rules, 2002 has created a fiction ~~and~~ that such returned goods are to be treated as inputs. Further, it is also essential to establish as to how much duty was paid on the returned goods so that irregular Cenvat credit in excess of duty actually paid on those inputs, would not be availed by the receiver of the goods. Therefore, I appreciate the contention of the consultant for the appellant that they shall produce the original invoices through which the duty was paid on the goods which were returned for being re-made. Therefore, I set aside the impugned Order-in-Original & Order-in-Appeal and remand the matter back to the file of Original Authority, and direct

the appellant to produce all the original invoices through which the duty was paid on the goods returned which are dealt with in the present Show Cause Notice within a period of 3 months from the date of receipt of the order. I direct the Original Authority to examine the issue in the light of such evidence which is now allowed to be presented before him and decide the case as per law. In above terms, appeal is allowed by way of remand.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति/Cerified True Copy
17/07/2017
सहायक पंजीकार/Assit. 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