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: 26/07/2017

To

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

Final Order No. A/70707/2017-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/52366/2015	**Apollo Metalex Pvt Ltd** A-2, Upside Industrial Area, Sikandrabad BULANDSHAHAR UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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/52366/2015-EX[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/002/APP/419/2014-15 dated 31/03/2015 passed by Commissioner of Central Excise & Service Tax (Appeals), Meerut-II at Noida)

M/s Apollo Metalex Pvt. Ltd. — **Appellant**

Vs.

Commissioner of Central Excise, Noida — **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, — 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...70707/2017......

Per: Anil G. Shakkarwar

The present appeal is filed by appellant - M/s Apollo Metalex Pvt. Ltd. against Order-in-Appeal No. NOI/EXCUS/002/APP/419/2014-15 dated 31/03/2015 passed by Commissioner of Central Excise & Service Tax (Appeals), Meerut-II at Noida.

2. The brief facts of the case are that the appellants were engaged in the manufacture of Pipes & Tubes falling under Chapter 73 of First Schedule to Central Excise Tariff Act, 1985. It appeared to Revenue that according to the Budget 2009-10 exclusion of Cement, Angles, Channels, Centrally

Twisted Deformed Bass (CTD) or Thermo Mechanically Treated Bar (TMT), etc. were excluded from definition of Rule 2(k) of the Cenvat Credit Rules, 2004. It was observed by Revenue that the appellant had availed Cenvat credit of Rs.1,32,861/- on items like Angles, H.R. Sheets, Shapes and Sections, Channels, H.R. Plates, etc. used for construction of factory shed and erection and support of the Plant & Machinery during the period from 2007-08 & 2008-09 and in view of the said amendment in the budget 2009-10, Cenvat credit was not admissible. Therefore, a Show Cause Notice dated 05/02/2013 was issued proposing to deny said Cenvat credit of Rs.1,32,861/- on said structural items like Angles, H.R. Sheets, Shapes and Sections, Channels, H.R. Plates, etc. On contest the Show Cause Notice was adjudicated through Order-in-Original No. 06/Assistant Commissioner/Division - V/Noida dated 27/08/2014. The Original Authority held that in view of Larger Bench decision in the case of Vandana Global Limited *Versus* Commissioner of Central Excise, Raipur reported at 2010 (253) E.L.T. 440 (Tri. – LB) Cenvat credit of the said amount was not admissible to the appellant. Therefore, demand was confirmed and equal penalty was imposed. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 31/03/2015. The Appellate Authority relied on the ruling of this Tribunal - Larger Bench in the case of Vandana Global Limited (supra) and held that the Order-in-Original was liable to be upheld and therefore, dismissed the appeal of the appellant in respect of said Cenvat credit of Rs.1,32,861/-. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that the Hon'ble High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Ltd. *Versus* Commissioner of Central Excise & Customs reported at 2015 (39) S.T.R. 726 (Gujarat) in Para 8 has ruled that amendment made in Cenvat Credit Rules, 2004 which came into force on 07/07/2009 was not clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature and therefore he has argued that after the ~~same~~ said ruling it is not appropriate to rely on the ruling of Larger Bench of this Tribunal in the case of Vandana Global Limited (supra) and therefore appeal may be allowed.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal dated 31/03/2015.

5. Having considered the rival contentions and after going through the record and the ruling of Hon'ble High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Ltd. (supra), I find that the Order-in-Appeal dated 31/03/2015 was decided relying on the decision of Larger Bench of this Tribunal in the case of Vandana Global Limited

(supra) is not sustainable. Therefore, I set aside that part of impugned Order-in-Appeal through which confirmation of demand of recovery of Cenvat credit amounting to Rs.1,32,861/- along with interest thereon and equal penalty was upheld by ld. Commissioner (Appeals) through the said Order-in-Appeal dated 31/03/2015. In above terms, the appeal is allowed and appellant shall be entitled for 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
23/08/17
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