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: 19/04/2017

To

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

Final Order No. A/70386/2017-SM[BR] dated 07/04/2017

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
:	E/55312/2014	**Good Luck Industries** A-51,ind.area,sikandrabad BULANDSHAHAR UTTAR PRADESH
		Name and Address of Respondent
:		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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. 1

APPEAL No.E/55312/2014-EX[SM]

(Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/118/14 dated 30/05/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Good Luck Industries — **Appellant**

Vs.

Commissioner of Customs, C.E. & S.T., Noida — **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 07/04/2017
Date of Decision : 07/04/2017

FINAL ORDER NO. 70386/2017

Per: Anil Choudhary

The present appeal is filed by the appellants-assessee against Order-in-Appeal No.NOI/EXCUS/000/APPL/118/14 dated 30/05/2014 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The issue in this appeal, filed by the appellant-assessee is that the appellant is a manufacturer of ERW Precision Steel Tubes, whether the entire show cause notice is time barred as pursuant to audit for the period March, 2010 to February, 2011, audit note/objections were issued to the appellant which were replied by

their reply dated 30/05/2011 and duly acknowledged by the range Superintendent in the first week of June, 2011.

3. Heard the parties.

4. I find that the audit objection was with respect to an amount of Rs.48,378/- towards inadmissible Cenvat credit on the raw materials utilised for manufacture of capital goods and also for use in the repair and maintenance of plant and machinery, other amount of Rs.2,39,827/- was objected to, as in admissible Cenvat credit with respect to clearances on consignment was paid by the appellant. Thereafter, show cause notice dated 07/11/2012 was issued alleging that the appellant have been availing Cenvat credit on items like angles, channels, sheets, shapes and section etc which appeared not to qualify for capital goods in the past period also, which had also been audited, and no objection raised earlier. The other allegation in the show cause notices is that the appellant appears to have suppressed the material facts from the revenue for taking Cenvat credit on fabrication and construction materials in the guise of capital goods with intent to avail wrongful and inadmissible Cenvat credit.

5. Having considered the rival contentions and on perusal of the facts on record, I find the show cause notice have been issued only by way of change of opinion, and after almost one and a half years, When the appellant assessee conveyed their categorical stand by their reply dated 30th May, 2011. In this view of the matter, I hold that the whole show cause notice relating to the period from 2008-09 to 2011-12 is unsustainable, being barred by limitation. So far merits are

concerned, I find from the RUD-10, which is part of the show cause notice, that the appellant had lead evidence that items like shape and section, HR plate, MS plate, angle, channel etc have been used in the fabrication of capital goods like the storage rack, drawback bench back plate, repair of drawback to replace bench plate, tank, etc. Some of the items in dispute have also been used as inputs in the manufacture of dutiable products. In this view of the matter, I find that there is no good case made out by revenue under the facts and circumstances.

6. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant will be entitled for consequent benefits, if any.

(Dictated in Court)

(Anil Choudhary)
MEMBER (Judicial)

akp

प्रमाणित प्रति/Certified True Copy
03/05/2017
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