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: 02/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70018/2018-SM[BR] dated 01/01/2018

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/70006/2016	**Ambica Polytubes** 13/22a,nunhai AGRA UP
		Name and Address of Respondent
2		C.C.E. & S.T-Agra COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX113/4, SANJAY PLACE, AGRA U.P.-282002

Copy To

3Advocate(s) / Consultant(s):

A.K.JAIN CONSULTANT
(RETIRED SUPERINTENDENT)
R/O 69-B, TAGORE NAGAR,
DAYAL BAGH, AGRA (U.P.)

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/70006/2016-EX[SM]

(Arising out of Order-in-Appeal No. 328-CE/APPL-AGRA/LKO/2015 dated 20/08/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Ambica Polytubes		**Appellant**
Vs.		
Commissioner of Central Excise, Agra		**Respondent**

Appearance:

Shri A. K. Jain, (Consultant),	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 : 10/11/2017

FINAL ORDER NO.70018/2018...........

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Appeal No. 328-CE/APPL-AGRA/LKO/2015 dated 20/08/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the appellants were engaged in the manufacture and clearances of goods falling under Chapter 39 of Schedule to Central Excise Tariff Act, 1985 and were availing facility of Cenvat credit during the Financial Years 2012-13 & 2013-14. They availed Cenvat credit of Rs.4,07,696/- paid towards Education Cess &

Secondary and Higher Education Cess paid on CVD. It appeared to Revenue that in terms of Notification No. 13/2012 & 14/2012-Cus both dated 17/03/2012, the said both cesses on CVD were exempted. It appeared to Revenue that since the said cesses were not required to be paid but they were paid the said Cenvat credit of the same was not admissible to them. Therefore, a Show Cause Notice was issued on 11/09/2014. It was proposed to reverse Cenvat credit of Rs.4,07,696/-. On contest the said Show Cause Notice was adjudicated through Order-in-Original No. 35-CEX/DMDDC/2015 dated 28/02/2015, 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 said appeal through impugned Order-in-Appeal dated 20/08/2015, wherein ld. Commissioner (Appeals) upheld the Order-in-Original dated 28/02/2015 and rejected the appeal. Aggrieved by the said order, appellant preferred appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that Clause (vii) of Sub-rule (1) of Rule 3 of Cenvat Credit Rules, 2004 provides that the additional duty leviable under Section 3 of the Customs Tariff Act equivalent to the duty of Excise specified under Clauses (i), (ii), (iii), (iv), (v), (vi) & (via). He has further submitted that Clause (vi) & (via) relates to Education Cess & Secondary & Higher Education

Cess paid and contended that that if Education Cess & Secondary & Higher Education Cess are paid on duty leviable under said Section 3 of Customs Tariff Act which is also called CVD then as provided under Rule 3 of Cenvat Credit Rules, 2004 the Cenvat Credit of the same cannot be denied. He has further relied upon ruling by Hon'ble High Court of Punjab & Haryana in the case of V. G. Steel Industry *Versus* Commissioner of Central Excise reported at 2011 (271) E.L.T. 508 (P&H), wherein it was held that even if the duty has been paid in excess Cenvat credit of duty paid is admissible unless the Excise duty paid has been refunded.

4. Heard the ld. A. R. for Revenue who has supported the impugned Order-in-Appeal dated 20/08/2015.

5. Having considered the rival contentions and on perusal of the facts on record, I find that there are plethora of decisions which have held that the recipient of inputs cannot do the re-assessment of the goods at the end of input manufacturer. Further as held in the above stated case that even if the amount of duty is paid excess on the inputs unless it is refunded the recipient of such inputs is entitled to the entire Cenvat credit of duty paid. Following the said ruling by Hon'ble High Court of Punjab & Haryana in the case of V. G. Steel Industry *Versus* Commissioner of Central Excise (supra), I hold that the appellant was entitled to the Cenvat credit of Rs.4,07,696/- involved in the present proceedings. I, therefore, set aside the impugned Order-in-Appeal dated

20/08/2015 and as a consequence the Order-in-Original dated 28/02/2015 does not survive in law. In above terms, I allow the appeal. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Ansari

प्रमाणित प्रतिलिपि/Certified True Copy
01/02/18
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001