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: 06/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71170/2017-SM[BR] dated 13/02/2017

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/63/2009	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Bigesto Foods Pvt. Ltd. Plot No. E-29, Site-b, Upside, Industrial Area, Surajpur, Greater Noida (U.P.)

Copy To

3Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-I,
Mayur Vihar,
Delhi
110091

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 Guard File

Asstt. Registrar

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

APPEAL No. E/63/2009-EX[DB]

(Arising out of Order-in-Appeal No. 107-108-CE/APPL/NOIDA/2008 dated 30/09/2008 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Commissioner of Central Excise, Noida **Appellant**

Vs.

M/s Bigesto Foods Pvt. Ltd. **Respondent**

Appearance:

Shri D. K. Deb, Assistant Commissioner, (AR), for Appellant
Shri R. Krishnan, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 13/02/2017

FINAL ORDER NO. 71170/2017

Per: Anil Choudhary

The issue in this appeal by Revenue is, whether under the admitted fact that after making purchases of inputs, the respondent-assessee will be benefitted to full credit after issue of credit notes/debit notes, resulting in reduction of the transaction value only and whether such reduction in transaction value alters the tax liability and or duty liability automatically under the provisions of the Central Excise Act and the Rules thereunder.

2. The admitted facts in the Show Cause Notice are that the respondent-assessee were engaged in the manufacturer of 'Colour Television and Chasis' falling under chapter heading

85 of the schedule to the Central Excise Tariff Act, 1985 and was availing Cenvat credit facility in respect of duty paid on 'inputs' and 'capital goods' received in the factory for use in or in relation to the manufacture of their final products. Pursuant to enquiry etc., the Revenue noticed that the respondent-assessee were taking credit of duty paid on the value as per invoices after receiving the inputs and that subsequently they were receiving credit notes from the suppliers of inputs. The credit notes were only for rate variation (rate difference) as well as for rebate/discount et cetera on the value of inputs received by them and they were not reversing the proportionate Cenvat credit. Accordingly it was noticed that for the period 01/04/2002 to 31/03/2006, the respondent-assessee had received an additional amount of Rs.2,55,63,175/- on account of such credit notes and it was observed that the respondent-assessee have not reversed the proportionate Cenvat credit of duty amount so involved in such credit notes. Accordingly, duty amount of Rs.41,16,461/-was demanded. The said amount was confirmed in the Order-in-Original. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who was pleased to allow the appeal holding that the issue is covered by ruling of this Tribunal in the case of Balaji Industries *Versus* Commissioner of Central Excise, Pondicherry, 2008 (228) E.L.T. 37 wherein under similar facts and circumstances of the case, Cenvat credit was taken for

the full amount as shown in the invoices covering the inputs received, whereas the transaction value only was subsequently reduced and the credit with respect to duty corresponding to value, in excess of reduced value, was assailed and disallowed with penalty. This Tribunal allowed the appeal and set aside the impugned order holding that 'the settled law on the point is that Modvat/Cenvat credit of duty paid by the input manufacturer/supplier, evidenced by the relevant invoices, is admissible to the manufacturer of the final product. The said view was also reaffirmed in the decision of the Tribunal being 2007 (217) E.L.T. 148, 2006 (206) E.L.T. 852, 2007 (212) E.L.T. 369 & 2007 (210) E.L.T. 38, etc.

3. Being aggrieved the Revenue is in appeal, on the ground that duty as leviable and payable under the provisions of Section 3 of the Central Excise Act, 1944, only can be taken as credit under the provisions of Rule 3 of the Cenvat Credit Rules, 2004. Duty, as defined in Rule 2(e) of the Central Excise Rules, 2002 means "duty payable" under Section 3 of the Central Excise Act, 1944. Though the amount of duty is also an amount but all amounts cannot be said to be duty for the reason that "duty" is defined under the Act and all amounts, which might have been paid, as duty, will not qualify under the definition of "duty". For any amount, which has been paid as 'duty' but is paid in excess of duty leviable under the law, the refund procedures under Section 11B of

the Central Excise Act, 1944 are applicable. It is further urged that Commissioner (Appeals) have erred in not considering the fact that in the instant case the transaction value has been altered on account of allowing discounts through credit notes to the respondent, hence the duty was required to be levied on the altered price and the excess Cenvat credit taken on this account was rightly demanded vide the Order-in-Original.

4. Heard the learned counsel for the respondent who has supported the Order-in-Appeal.

5. Upon hearing the parties and considering the rival contentions, I find that this ground of Revenue has got no sanctity in law as there is no such provision in the scheme of the Central Excise Act and the Rules thereunder that on subsequent alteration of transaction value, there results an automatic adjustment in the duty payable. Upon being asked if there is any provision in the Act and Rules, the ld. A. R. was unable to point out any such provision in the Act and Rules. Accordingly, I hold that this is a frivolous appeal filed by Revenue. Accordingly, the appeal filed by Revenue is dismissed. The respondent shall be entitled to consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

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

प्रमाणित प्रति/Certified True Copy
16/10/17

सहायक पंजीयक/Asstt. Registrar
सीमा शुल्क, 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

Ansari