FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 06/12/2017

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

Final Order No. A/71876-71877/2017-EX[DB] dated 30/11/2017

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/861/2010	**ATUL ENGINEERING UDYOG,** NUNHAI , AGRA.
2	E/862/2010	**SHRI RAM SARAN MITTAL, PARTNER OF** M/S ATUL ENGINEERING UDYOG, NUNHAI , AGRA.
		Name and Address of Respondent
3		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
4		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

**Ms. Stuti Saggi,
(Advocate)(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001**

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise, I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL No. E/861-862/2010-EX[DB]

(Arising out of Order-in-Appeal No. 46-47-CE/APPL/KNP/2010 dated 25/01/2010 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s Atul Engineering Udyog (In Appeal No. E/861/2010) &

Ram Saran Mittal, Partner (In Appeal No. E/862/2010) **Appellant**

Vs.

Commissioner of Customs & Central Excise, Kanpur **Respondent**

Appearance:

Ms. Stuti Saggi, Advocate, for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 30/11/2017

FINAL ORDER NO. 71876 - 71877/2017

Per: Archana Wadhwa

After hearing both the sides, we note that the amount of Rs.10,54,227/- has been confirmed against the appellant, by denying the credit availed in respect of capital goods while observing that the revised return for claim of depreciation was filed after the visit of the officers of the Department to the factory of the appellants and after they have pointed out their entitlement to claim depreciation as well as Modvat credit together.

2. After considering the submissions of both the sides, we take into consideration the order passed by the Bombay High Court in the matter of Commissioner of Central Excise, Nagpur *Versus* Maharashtra Elecrosmelt Ltd. reported in 2008 (224) ELT 391 (Bombay); the Tribunal in the matter of Commissioner of Central Excise, Comibatore *Versus* Ennar Spinning Mills reported in 2009 (246) ELT 263; Commissioner of Central Excise, Comibatore *Versus* Jaya Mills Ltd. reported in 2009 (238) ELT 189 & Shri Ghanshyam Auto Parts Ltd. *Versus* Commissioner of Central Excise, Aurangabad reported in 2004 (178) ELT 163, where it stands held that subsequent withdrawal of depreciation claim will result in assessee's entitlement to Cenvat credit in respect of capital goods.

Revenue is not disputing the fact that the appellants have subsequently filed a revised return before the Income Tax Authorities, where claim of depreciation has been withdrawn by them. As such, by applying the ratio of the above decisions, we hold that there was no justification for denial of the credit in respect of the said capital goods, the same is accordingly allowed.

Further we note that an amount of Rs.2,44,440/- relates to the inspection charges which according to the Department were wrongly excluded from the assessable value while it is the contention of the appellant that the said amount was paid by the Railways for their own inspection, to the inspecting agency, and is not concerned with the clearance of the goods manufactured by the appellants and supplied to Railways and the same does not form part of the transaction value.

3. We find that there is no dispute about the fact that inspection fee is being paid by the Railways to the inspection agency, who has inspected the goods before their clearance, on behalf of the Railways. The said amount is not being paid by the Railways to the assessee and by no stretch of imagination, be held as a part of the assessable value. For the above findings, we find the support from the decisions of the Tribunal. As such, no reasons to uphold the said part of the impugned order.

4. In a nutshell, the impugned order confirming demands and imposing penalties upon both the appellants are set aside and both the appeals are allowed with consequential relief to the appellants.

(Dictated & Pronounced in Court)

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

Sd/-
(Archana Wadhawa)
Member (Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
05/01/18
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