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: 20/11/2017

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

Final Order No. A/71414-71415/2017-SM[BR] dated 13/11/2017

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/1171/2010	CCE, MEERUT-I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
2	E/1218/2010	**NANGLAMAL SUGAR COMPLEX** Nanglamal, Meerut (UP)
		Name and Address of Respondent
3		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
4		NANGLAMAL SUGAR COMPLEX PVT. LTD. Nanglamal, Meerut.,,

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Ms. Stuti Saggi (Adv.)(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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal No.1218/10

Arising out of O/A No.205-CE/MRT-I/2010 dated 29.01.2010 passed by Commr. (Appeals) of Central Excise, Customs, Meerut I

M/s Nanglamal Sugar Complex Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Meerut I

RESPONDENT (S)

APPEARANCE

Ms. Stuti Saggi, Advocate for the Appellant (s)
Md. Altaf, Asstt. Commissioner (A.R.) for the Revenue

Ex.Appeal No.1171/10

Arising out of O/A No.205-CE/MRT-I/2010 dated 29.01.2010 passed by Commr. (Appeals) of Central Excise, Customs, Meerut I

Commr. of Central Excise, Meerut I

...APPELLANT(S)

VERSUS

M/s Nanglamal Sugar Complex Pvt. Ltd.

RESPONDENT (S)

APPEARANCE

Md. Altaf, Asstt. Commissioner (A.R.) for the Revenue
Ms. Stuti Saggi, Advocate for the Appellant (s)

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 13. 11. 2017

Final ORDER NO. 71414-71415/2017

Per Mrs.Archana Wadhwa :

In both the appeals, one filed by assessee and the other filed by the Revenue, are being disposed off by a common order, as they arise out of the same impugned order passed by the Commissioner (Appeals), vide which he has remanded the matter to the original adjudicating authority.

2. Revenue's appeal is on the sole ground that the Commissioner (Appeals) was not having to power to remand. Without going through the said legal issue, I find that admittedly the Tribunal has power to remand and the said matter is remanded to the original adjudicating authority for denovo adjudication.

3. As regards the Assessee's Appeal, it seen that the original adjudicating authority held in favour of the assessee as regards the assessee's eligibility to avail cenvat credit of service tax, based upon the invoices issued by the service provider. The said order of the original adjudicating authority stands set aside by the Commissioner (Appeals), on an appeal filed by the Revenue, who holds to the contrary the matter and has been remanded.

4. After hearing both sides, it is seen that the assessee was availing cenvat credit of service tax paid by the service provider. The said credit was availed by them based upon the particulars given in invoices. It is also noted that the service provider was registered and as such the assessee can be said to have fulfilled all the conditions of

Rule of 9 (3) of Cenvat Credit Rules, 2004 as regards knowing the status of the service provider.

5. However, subsequently, on investigation conducted by the Revenue, it was seen that service providers have not deposited the service tax with the exchequer though such deposit particulars stands given by them in the invoices. On the above basis, Revenue proposed to deny credit to the present appellant.

6. The only reason for the Revenue to deny the credit to the appellant, is that the service provider has not paid the service tax. However, it is not disputed that such credit was availed by the appellant on the basis of particulars given in the invoices. If the service provider has not deposited the tax with the Revenue, the grievance of the Revenue is to address the same at end of the service provider and not at the service recipient. Various High Courts have held that in such a scenario, the assessee cannot be expected to do the impossible and to verify as to whether the service provider has actually deposited the duty or not. Reference can be made to that effect to the Hon'ble Allahabad High Court decision in the case of CCEx. Vs. Juhi Alloys Ltd. : 2014 (302) ELT 487 (All.).

7. Inasmuch as, matter has been remanded by the Commissioner (Appeals), I make the same as open remand and direct the original adjudicating authority to re-decide the matter without taking into consideration any observations and findings of Commissioner (Appeals) and by considering law declared by the various High Courts,

in an identical situation, after giving an opportunity to the appellant to put forth their case.

8. Both the appeals are disposed of in the above manner.

Dictated and pronounced in the open Court

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
05/12/17

सहायक पंजीकार/Asstt. Registrar
38, M. G. MARG,ALLAHABAD-211001