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: 10/11/2017

To

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

Final Order No. A/71326/2017-SM[BR] dated 03/11/2017

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/2273/2010	**JYOTI FABRICATORS,** 347/5, DADRI NAGAR, NAINI, ALLAHABAD.
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To
3Advocate(s) / Consultant(s):

S.S.Dabas (Advocate)
B-51(BASEMENT), SARVODAYA
ENCLAVE
NEAR MOTHER
INTERNATIONAL SCHOOL
NEW DELHI
DELHI

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. I

APPEAL No. E/2273/2010-EX[SM]

(Arising out of Order-in-Appeal No. 69/CE/ALLD/2010 dated 26/02/2010 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Jyoti Fabricators **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri S.S. Dabas, Advocate for Appellant

Shri Gyanendra Kumar Tripathi (AC) AR for Respondent

CORAM:

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

Date of Hearing : 03/11/2017

Date of Decision : 03/11/2017

FINAL ORDER NO...71326/2017..........

Per: Anil Choudhary

The issue in this appeal is whether show cause notice have been rightly issued on presumption of removal of scrap without payment of duty.

2. The brief facts as per the show cause notice dated 04 March, 2008 relating to the period 2003-2004 to 2005-2006 are as follows:-

"Whereas it appears that they have availed the credit of cenvat duty of Rs. 9,36,045/-, Rs. 14,63,627/- and Rs. 28,17,476/- during the financial year 2003-04, 2004-05 and

during 2005-06 on the receipt of 334.581 MT, 473.700 MT and 650.905 MT of inputs in the respective years, for consumption in the manufacture of the above mentioned product. The scrutiny of Daily production, RG23A, Balance Sheet and other financial records reveals that there has been a huge difference in Input-Output ratio. The party vide their letter dated 27.07.2006 have informed the Audit that during the manufacture, 1% melting loss occurs and 14% wastage (scrap) is allowable as per agreement with M/s Alstom Ltd., Naini (now M/s Areva T&D India Ltd.). But the scrutiny reveals that the 14% scrap is nowhere reflected, neither in Central Excise records nor in the financial records. The chart, Annexure "A" reveals that there is no corresponding production against the inputs 82.058 MT in the year 2003-04, 82.748 MT in the year 2004-05 and 134.832 MT in the year 2005-06. The records also do not show any removals of the inputs as such on payment of duty. Therefore, it appears that the same have been removed clandestinely without payment of duty in contravention of Rule 3(5) of the Cenvat Credit Rules, 2002/2004 by manipulating the RG 23A in as much as by using the same in the manufacture of the final products and thus evaded Cenvat duty including Education Cess of Rs. 10,68,861/-.

Whereas on being pointed out by audit the about the huge differences in input output ratio, they have informed the audit and Range Office vide their letter dated 11.12.2006, that *they were under impression that the Central Excise Duty was chargeable on the goods which were finished/ semi finished in nature and for that reason the duty on scrap was not paid. However, on knowing the fact they immediately deposited the duty amounting to Rs. 2,24,931/- thereon as per details given in their letter dated 11.12.2006. In support of payment of duties amounting to Rs. 2,24,931/-, they enclosed the copies of TR-6 No-8 dated 30.08.2006 and 7 dated 09.10.2006. In respect of payment of interest amounting to Rs. 41,134/-, they have enclosed the copies of TR-6 No. 11, 12 and 13 all dated 04.12.2006. On perusal of their letter dated 11.12.2006, it appears that they have calculated the figures of MS scrap @ 14% on the basis of their agreement with M/s Alstom Ltd. Naini now M/s Areva T&D India Ltd.). The scrutiny reveals that the quantity of 153.143 MT scrap so calculated for the purpose of the above payment, is nowhere recorded in the RG-1 register maintained by the party. Hence the calculation of generation of scrap @ 14% and the payment of duty thereon appears to be an afterthought and appears to have been done with intent to evade the duty which has been wrongly availed by them as Cenvat Credit. Suppression of facts and violation of rules with intent to evade duty should be brought out."*

3. Accordingly, the appellant was required to show cause as to why an amount of Rs. 10,52,405/- + Cess Rs. 16,456/- totaling Rs. 10,68,861/- be not disallowed and recovered from them along with interest and further penalty was proposed.

4. The SCN was adjudicated on contest and the proposed demand confirmed with interest. Further penalty was imposed of equal amount under Section 11 AC read with Rule 15(2) of CCR, 2004 alongwith further penalty of equal amount under Rule 15(1) of CCR 2004. Being aggrieved the appellant-assessee preferred appeal before learned Commissioner (Appeals) who vide the impugned order was pleased to uphold the Order-in-Original, save and except the modification that the penalty imposed under Rule 15(1) of CCR, 2004 was set aside.

5. Being aggrieved the appellant-assessee before this Tribunal.

6. Heard the parties.

7. Having considered the rival contentions I find that no case of clandestine removal is made out in the show cause notice. The whole show cause notice is presumptive. Accordingly, I find that the show cause notice is not maintainable. Accordingly, this appeal by the assessee is allowed and the impugned order is set aside.

(Dictated and pronounced in Court)

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

Ankit

प्रमाणित प्रति/Certified True Copy
30/11/17
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