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

Dated: 30/11/2017

To

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

Final Order No. A/71779/2017-SM[BR] dated 26/10/2017

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/2636/2007	TUFTWEN PETROCHEMICALS NEAR 37, KM STONE N.H.-24, DELHI HAPUR ROAD, VILL. LAKHJAN GHAZIABAD (UP)
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

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

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001

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/2636/2007-EX[SM]

(Arising out of Order-in-Appeal No. 163-CE/MRT-II/07 dated 27/07/2007 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Meerut-II)

M/s Tuftwen Petrochemicals **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Ms. Stuti Saggi (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/10/2017
Date of Decision : 26/10/2017

FINAL ORDER NO- 71779/2017.......

Per: Anil G. Shakkarwar

Present appeal is directed against Order-in-Appeal No. 163-CE/MRT-II/07 dated 27.07.2007 passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, Meerut-II.

2. Brief facts of the case are that the appellant i.e. M/s Tuftwan Petrochemicals Ltd. were engaged in the manufacture of prepared adhesives and organic composite solvents falling under Chapter headings 3506.00 and 3814.00 of the CETA, 1985 respectively. The appellant were also

availing Modvat/Cenvat credit of the duty paid on inputs received by them and used in or in relation to manufacture of their final products. Besides using inputs in the manufacture of their final product, the inputs were also cleared as such. On industrial solvents duty leviable was BED 16%. The appellants took Cenvat credit of only BED as no SED was leviable on their final product, though they were entitled to take credit of SED also. The appellant while clearing the inputs as such during the period from April 2001 to December 2001, reversed BED equivalent to the credit availed on such inputs, at the end of the month, however, they did not reverse any amount on account of SED assuming that they were not required to do so as they did not take any credit of SED. Since the Rule 3 of Cenvat Credit Rules, 2001 provides for payment of duty applicable at the rate effective on date of removal, under cover of invoice the appellant were asked, by the department, that SED was also to be paid. The appellants took whole of the credit on SED ~~as~~ paid on inputs paid, on 01.01.2002 and debited the SED amount from such credit. Since Rule 3(4) of Cenvat Credit Rules 2001 provides for payment of sum equal to the duty of excise which is leviable on such inputs/goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under Section 4 of the said Central Excise Act, 1944, the appellant was issued an notice to show cause dated

28.06.2002 demanding Central Excise Duty of Rs 35,64,951/- under Rule 57 AB (1)(b) and said Rule 3(4).

3. The show cause notice dated 28.06.2002 was adjudicated through Order-in-Original dated 30.10.2006. The appellant submitted before the Original Authority that they had cleared inputs as such on payment of appropriate amount before issue of show cause notice dated 28.06.2002. The Original Authority confirmed the demand amounting to Rs. 27,63,636/- under Section 11 A of Central Excise Act, 1944 read with Rule 57 AB (1)(b) of Central Excise Ruled. 1944 and Rule 3 (4) of Cenvat Credit Rules, 2001 read with Rule 4 of Central Excise Rules, 2001. Further the Original Authority appropriated amount of Rs. 14,33,860/- reversed in respect of months of removal and ordered recovery of balance amount. The Original Authority also imposed a penalty of Rs. 1 lakh on the appellant under Rule 13 of Cenvat Credit Rules, 2001. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). Commissioner (Appeals) has held that credit taken in January, 2002 could not be utilized for payment of duty in respect of clearances made during the period from April, 2001 to December, 2001 and in view of such finding he rejected the appeal. Aggrieved by the said order appellant is before this Tribunal.

4. Heard the learned counsel for the appellant. Learned counsel has submitted that Cenvat Credit of BED and SED

paid on the inputs was admissible to them for availment of Cenvat Credit when the inputs were cleared BED during the period from April, 2001 to December, 2001. Since they had availed only BED as Cenvat Credit they reversed entire credit availed and removed inputs as such and, therefore, there was no short reversal of credit availed while the inputs were removed as such. When the matter of short reversal of SED was brought to their notice by Revenue they availed Cenvat Credit of SED on 01.01.2002 which was admissible to them during the respective months from April, 2001 to December, 2001 and debited the same and, therefore, there was no short reversal of Cenvat Credit on removal of inputs as such.

5. Heard the learned AR who has supported the impugned Order-in-Appeal.

6. Having considered the rival contentions and on perusal of records I find that the learned Commissioner (Appeals) has dealt with aspect of payment of duty in respect of clearances made during the period from April, 2001 to December, 2001. However, I find from the proceedings that the issue was not related to payment of duty but the issue was related to reversal of Cenvat Credit on removal of inputs as such I, further, find that Cenvat Credit of SED availed by the appellant on 01.01.2002 was admissible to them during the relevant months from April, 2001 to December, 2001 whenever inputs were brought into the factory. Therefore,

debit of SED of Rs. 13,29,776/- after availing the same on 01.01.2002 has satisfied the requirement of Rule 57 AB of Central Excise Rules, 1944 and Rule 3 (4) of Cenvat Credit Rules, 2001. I, therefore, set aside the impugned Order-in-Appeal and modify the Order-in-Original to the extent of setting aside confirmation of demand of Central Excise Duty of Rs. 27,63,636/- and imposition of penalty of Rs. 1 lakh and do not interfere with the amount of 14,33,860/- reversed in respective months on the removal of inputs as such and reversal of Cenvat Credit availed on SED on 01.01.2002 and debit of the same. In above terms appeal is allowed.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ankit

सत्यापित प्रति/Certified True Copy
01/01/2018

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001