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

Dated: 09/08/2017

To

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

Final Order No. A/70765/2017-SM[BR] dated 21/07/2017

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/CROSS/38/2009	E/2653/2008	CCE, GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
			Name and Address of Respondent
2			SHARDA FORGING & STAMPING (P) LTD. PLOT NO. 64, SITE IV, INDUSTRIAL AREA, SAHIBABAD, GHAZIABAD.,,

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

Sukhbir Singh Dabas(Adv.)
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, 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
CROSS Application.: E/CROSS/38/2009
APPEAL No.: E/2653/2008-EX[SM]

(Arising out of Order-in-Appeal No.: 189-CE/GZB/2008 dated 26/09/2008 passed by Additional Commissioner, Central Excise, Ghaziabad)

Commissioner of Central Excise, Ghaziabad **Appellant**

Vs.

Sharda Forging & Stamping (P) Ltd. **Respondent**

Appearance:

Shri Pawan Kumar Singh (Superintendent) AR for Appellant
Shri Sukhbir Singh Dabas (Advocate) for Respondent

CORAM:

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

Date of Hearing : 21/07/2017
Date of Decision : 21/07/2017

FINAL ORDER NO.-70765/2017.......

Per: Anil Choudhary

The Revenue is in appeal against the Order-in-Appeal 189/CE/GZB/2008 dated 26/09/2008 passed by the Commissioner (appeals), Meerut-I, wherein on the issue that the appellant was taking Cenvat credit on furnace oil (fuel), which was used in manufacture of both dutiable and non-dutiable goods and thus alleged that the respondent have contravened the provisions of Rule 6(3)(b) of CCR, 2004 inasmuch as they had utilized the said cenvatable input (furnace oil) in the manufacture of both the dutiable and exempt goods (agricultural implements) but have not paid amount equal to 10% of the total price of such exempted or non-dutiable goods. The period in dispute was May, 2005 to August, 2007 read in terms of Rule 6(3)(b) demand was worked out at Rs. 15, 64, 071/-.

2. The SCN was adjudicated vide Order-in-Original dated 01/01/2008, whereby the proposed demand was confirmed under Rule 14 of CCR 2004 with interest and equal amount of penalty was imposed under Rule 15 of CCR 2004. Further, taking notice that the assessee deposited/debited Rs. 1,71,454/- and interest Rs. 58,036/- the same was appropriated.

3. Being aggrieved the respondent assessee filed appeal before Learned Commissioner (appeals) who vide the impugned order was pleased to allow the appeal. Being aggrieved the Revenue in this appeal before the Tribunal on the ground that earlier there was an exception provided in Rule 6(2) of CCR, wherein in respect of fuel used as input a manufacturer or provider of output services was not required to maintain separate accounts and as such was not required to reverse any amount towards removal of duty free goods. But, subsequent to 16th of May, 2005 vide Notification No. 27/2005-CE (NT). The words - "except inputs intended to be used as fuel" were omitted in the said Rule 6(2). Thus Rule 6(2) became applicable to fuel also. Under the admitted facts that the respondent assessee have not maintain separate accounts in respect of fuel for the period in question, the

demand was rightly raised under Rule 6(3)(c) percentage of the value of goods removed duty-free.

4. The Learned, advocate for the respondent assessee states that the issue is no longer res Integra and it is squarely covered in their favour in their own case vide Final Order No. 50335/2015 in Appeal No. E/60047/2013–EX[SM] being order dated 05/02/2015. This Tribunal have recorded the following findings in the aforementioned order: –

"In this case, a short issue to be decided by me is whether proportionate reversal of Cenvat credit attributable to furnace oil is sufficient in compliance of Rule 6(3) of the said Rules or the appellant is required to pay duty equal to the 10% of sale price of the exempted final products or not. Both lower authorities have not disputed that the appellant has reversed the Cenvat credit attributable to furnace oil used in the manufacture of exempted final products. Therefore relying on the decision of Hon'ble Gujarat High Court in the case of Rituraj Holdings Pvt. Ltd. (Supra) wherein it has been held that if the assessee reversed proportionate Cenvat credit attributable to final exempted product, in this case the assessee has complied with Rule 6(3) of the Rules, is not required to pay duty equal to 10% of sale price of the exempted final products.

During the course of argument, Learned AR raised objection that the Commissioner (Appeals) has observed that while reversal of Cenvat credit, the appellant has taken the sale percentage of exempted goods i.e. agricultural implements as basis of calculation of proportionate credit, which is not correct and thereafter he denied the whole credit. The contention of the Learned AR is not acceptable at all as in the show cause notice only charge against the appellant is that they have contravened the provisions of Rule 6(3) and in their defence the respondent has stated that they are reversing proportionate Cenvat credit. If at all there is difference, the Commissioner (Appeals) could quantify the demand which he failed to do so, demanding duty from the appellant. It is not correct. Therefore, I set aside the impugned order and allow the appeal of the appellant with consequential relief."

5. I find that the issue is squarely covered also in view of the findings in the appellants own case. Accordingly, the appeal filed by Revenue is dismissed. The respondent assessee shall be entitled to consequential benefits in accordance with law. Cross objections/Application also stands disposed.

(Dictated & Pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
14/08/17
सहायक रजिस्ट्रार/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