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: 28/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70801-70802/2017-EX[DB] dated 01/08/2017

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/2751/2009	**Controls & Switchgears Electric Ltd** C-58, Phase-ii, Noida (u.p.)
2	E/2752/2009	**Controls & Switchgears Electric Ltd** C-58, Phase-ii, Noida (u.p.)

	Name and Address of Respondent
3	C.C. & C.E. & S.T. Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
4	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

P. K. Sahu
D-247, IInd Floor, Defence colony,
New Delhi,
Delhi

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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, 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 Guard File

Asstt. Registrar

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

APPEAL No. E/2751 & 2752/2009-EX[DB]

(Arising out of Order-in-Appeal No. 167-170-CE/Noida/2009 dated 29/06/2009 passed by Commissioner of Central Excise & Service Tax (Appeals), Noida)

M/s Controls & Switchgears Electric Ltd. (Unit) (In Appeal No. E/2751/2009) &

Controls & Switchgears Electric Ltd. (100% EOU) (In Appeal No. E/2752/2009) **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri P. K. Sahu, Advocate, for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 01/08/2017

FINAL ORDER NO. 70801-70802/2017

Per: Anil G. Shakkarwar

The present two appeals are directed against common impugned Order-in-Appeal No. 167-170-CE/Noida/2009 dated 29/06/2009 passed by Commissioner of Central Excise & Service Tax (Appeals), Noida. Therefore, these are taken together for decision.

2. The appellant in Appeal No. E/2751/2009 was a Unit engaged in the manufacture of Electronic Parts. The appellant in Appeal No. E/2752/2009 also manufactured the same

goods but was having a 100% EOU status. The appellant in Appeal No. E/2751/2009 shall be called Appellant No. 1 and the appellant in Appeal No. E/2752/2009 shall be called Appellant No. 2 in this Final Order. Appellant No. 1 supplied inputs procured by them to Appellant No. 2 on receipt of CT-3 Certificate from Appellant No. 2 for the period from 14/12/2005 to 24/08/2006. CT-3 Certificate is a procedure provided under Notification No. 22/2003-CE dated 31/03/2013. The said Certificated enables a 100% EOU to procure indigenous goods as such without payment of Central Excise duty, On production of CT-3 Certificate issued by the authorities and submitted to the manufacturers of indigenous goods, Appellant No. 1 cleared inputs as such to Appellant No. 2 against CT-3 Certificate. Appellant No. 1 had availed Cenvat credit amounting to Rs.21,96,145/- on the inputs which were cleared under CT-3 Certificate to Appellant No. 2 from14/12/2005 to 24/08/2006. Further it appeared to Revenue that Appellant No. 1 was not entitled for availment of Cenvat credit of Rs.21,96,145/- on the said inputs and therefore, both the appellants were issued with a common Show Cause Notice dated 11/12/2006. It was proposed in the said Show Cause Notice to recover Cenvat credit of Rs.21,96,145/- from Appellant No. 1 under Rule 14 of Cenvat Credit Rules, 2004 and there were proposals to impose penalty on Appellant No. 1 & Appellant No. 2. The said Show Cause Notice was adjudicated through Order-in-Original No.

01/Additional Commissioner/Noida/2008 dated 31/01/2008. The Original Authority has held that had the Noticee No. 2 procured the goods directly from the factory of the manufacturer or warehouse then only as per the wordings of the said Notification No. 22/2003-CE dated 31/03/2013 they were eligible for receipt of indigenous goods without payment of Central Excise duty and that in the present case Noticee No. 1 was not manufacturer of the said inputs which were cleared under CT-3 Certificate therefore, the said inputs were not eligible to be cleared without reversal of Cenvat credit availed on the same under the cover of said Notification No. 22/2003-CE dated 31/03/2013. The Original Authority, therefore, disallowed the Cenvat credit of Rs.21,96,145/- to Noticee No. 1 and imposed equal penalty on Noticee No. 1. He, further, imposed penalty of Rs.2,00,000/- on Noticee No. 2. Aggrieved by the said order both the noticees preferred appeal before the Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 167-170-CE/Noida/2009 dated 29/06/2009 wherein the ld. Commissioner (Appeals) did not interfere with the confirmation of demand of Cenvat credit of Rs.21,96,145/- however, reduced the penalty on Appellant No. 1 from Rs. 21,96,145/- to Rs.4,00,000/-. Aggrieved by the said order both the appellants are before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that there are several pronouncements by this

Tribunal and Hon'ble High Courts wherein it has been held that the inputs on which Cenvat credit has been availed are considered as excisable goods manufactured and clearance of the same are placed at par with the clearance of excisable goods. He has relied on Final Order passed by this Tribunal in the case of Commissioner of Central Excise, Customs & Service Tax, Hyderabad-I *Versus* Matrix Laboratories Ltd. reported at 2015 (330) E.L.T. 523 (Tri. – Banglore) and submitted that at Para 5 of the said Final Order this Tribunal has observed that the Commissioner (Appeals) had relied upon the circular issued by the Board wherein it was clarified that inputs could be considered as excisable goods and clearance of the same can be place on par with clearance of excisable goods. It was further observed by this Tribunal that according to Rule 19(2) of Central Excise Rules any material can be cleared without payment of duty by a manufacturer for export and further observed that provisions of said Rule 19(2) of Central Excise Rules provided for clearance of goods without payment of duty irrespective of the fact that they were manufactured by the assessee or otherwise and that the said order of this Tribunal was affirmed by Hon'ble Andhra Pradesh & Telangana High Court as reported at 2016 (338) E.L.T. A75 (A.P.). The Hon'ble Andhra Pradesh & Telangana High Court while passing the said ruling relied on decision of Hon'ble High Court of Karnataka reported at 2011 (267) E.L.T. 160 (Karnataka).

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Appeal No. 167-170-CE/Noida/2009 dated 29/06/2009.

5. Having considered the rival contentions and on perusal of the facts on record, we find that issue involved in the present case is, whether the inputs on which Cenvat credit has been availed can be cleared without payment of duty against CT-3 Certificate under the exemption under Notification No. 22/2003-CE dated 31/03/2013. The contention of Revenue is that the wording of the said notification enables only a manufacturer to clear the goods without payment of duty to 100% EOU against the said notification. We find that this Tribunal in the above stated case of Matrix Laboratories Ltd. (supra) has very clearly observed that the inputs can be considered as excisable goods and the clearance of the same can be placed on par with clearance of excisable goods and also held that clearance of the said goods under Rule 19(2) of Central Excise Rules provided for clearance of goods without payment of duty irrespective of the fact that they were manufactured by the assessee or otherwise and such finding was affirmed by Hon'ble Andhra Pradesh & Telangana High Court. We, therefore, hold that inputs received in factory on which Cenvat credit has been availed can be cleared without payment of duty against CT-3 Certificated under the benefit of Notification No. 22/2003-CE dated 31/03/2013. We

therefore, set aside the impugned Order-in-Appeal and allow both the appeals. The appellants shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
05/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38 एम. जी. मार्ग, इलाहाबाद-211001
G. MARG, ALLAHABAD-211001