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: 01/12/2017

To

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

Final Order No. A/71764/2017-SM[BR] dated 20/11/2017

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/2831/2011	**HI-TECH SYRINGS (P) LTD** Plot No BE-3, Sector 13, GIDA Gorakhpur.
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

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

J. M. Sharma
252, BASANT ENCLAVE,
(NEAR VASANT VIHAR),
New Delhi
Delhi
110057

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/2831/2011-EX[SM]

(Arising out of Order-in-Appeal No. 191/CE/APPL/ALLD/2011 dated 26/09/2011 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Hi-Tech Syringes (P) Ltd. **Appellant**

Vs.

Commissioner of Central Excise (Appeals), Allahabad **Respondent**

Appearance:

Absent on Call for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 20/11/2017
Date of Decision : 20/11/2017

FINAL ORDER NO: 71764/2017

Per: Archana Wadhwa

On matter being called neither anybody appeared nor is there any request for adjournment, in spite of the notice of hearing having been sent to the appellant well in advanced. Accordingly, I proceed to decide the appeal after hearing the Ld. A.R. appearing for the Revenue and after going through the impugned orders.

2. As per the facts on record the appellants are engaged in the manufacture of syringes and availed credit on barrel and plunger, which are inputs for their final product.

3. As per the Revenue the said barrel and plunger were not excisable items and as such no duty on the same should have been paid by the manufacturer. In such a scenario, the appellant was not entitled to avail the Cenvat Credit of duty paid by the said inputs manufacture.

4. Accordingly, proceedings were initiated against the appellant resulting in confirmation of demands.

5. At this stage I find that the issue is no more res-integra and stands settled by the majority of the decisions in the case of Asian Colour Coated Ispat Ltd. Vs Commissioner of Central Excise, Delhi-III reported at 2015 (317) ELT 538 (Tri.).

6. It stand held that the Credit duty of 'PAID' is available as Credit and not duty 'PAYABLE'. Inasmuch as the appellant have availed credit of duty paid by the inputs manufacturer, assessments cannot be reopened at the input recipient end and credit cannot be denied on the ground that the input manufacturer should not have paid the duty. As such I find no justification for confirmation of demand or imposition of penalties. The said confirmation is accordingly set aside.

7. It is further seen that the demand to the tune of Rs. 1,69,325/- stands confirmed against appellant on the allegations that the same has been availed as credit without having the duty paying documents as also without producing the invoices etc. Inasmuch as the said demand also stands rejected on the ground that the same stands in respect of the non-excisable inputs, the lower authorities have not examined the aspect of availability of documents. As such in respect to said demand, I remand the matter to lower authorities for examination of the said factual position.

8. Appeal is partly allowed and partly remanded as indicated above.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Ankit

प्रमाणित प्रति/Certified True Copy
03/01/2018

सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001