FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 27/11/2017

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

Final Order No. A/71624/2017-SM[BR] dated 23/11/2017

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/70380/2017	**Wave Industries Pvt Ltd** Nagina Road, BIJNOR U.P.
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

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

AALOK ARORA
82-MISSION COMPOUND,
SAHARANPUR-247001

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/70380/2017-EX[SM]

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-I/364/2016-17 dated 01/03/2017 passed by Commissioner of Central Excise & Customs (Appeals-I), Meerut)

M/s Wave Industries Pvt. Ltd. **Appellant**

Vs

Commissioner of Central Excise & S.T., Meerut-I **Respondent**

Appearance:

Shri Aalok Arora, Advocate for Appellant
Shri Pradeep Kumar Dubey, Supdt (AR) for Respondent

CORAM:

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

Date of Hearing : 23/11/2017
Date of Decision : 23/11/2017

FINAL ORDER NO-71624/2017.....

Per: Mrs. Archana Wadhwa:

After hearing both the sides, I find that dispute in present appeal relates to availment of Cenvat credit on service tax paid by one M/s Global Weighing Technologies, on the ground that the same have been availed on the basis of photocopies which are not having full details.

2. Learned Advocate for the appellant has shown me the photocopies of invoices issued by M/s Global Weighing Technologies which stands verified by the Jurisdictional Central Excise Officers with the remarks 'Bill verified'. As such he submits that there is no dispute about the service tax payment, receipt of the services and their utilization and as such, denial of credit of Rs.12,360/- on this ground was not justified.

3. Apart examining the bill produced before me, I find that the fact of payment of service tax by the service provider stands verified by the Jurisdictional Central Excise Authorities and as such denial of the same on the technical ground that it was only the photocopy invoices which was produced, cannot be appreciated. Accordingly, I hold in favour of the assessee on the said ground.

4. Apart of the demand stands denied in respect of the security services received from one M/s Haier Security Services on the ground that invoices are not having details of the service tax paid or payable, as also of the Service Tax Registration Number of the service provider. It is seen that the appellant subsequently produced on record, the Service Tax Registration Number of the said service provider as also the details of payment of service tax by the said service provider. The same stands rejected

by Commissioner (Appeals) on the ground that the same was not made available at the time of adjudication proceedings.

The entire basis for following a particular procedure is to allow the substantial benefit, which are otherwise available to an assessee. If the assessee can proof by production of parallel evidences that service tax stands deposited by the service provider and they have received and utilized the said services, the substantial benefit should not have be denied on the Technical Procedural Violation. As such, I set aside this part of the order and remand the matter to Original Adjudicating Authority for verification of the subsequent details filed and produced by the assessee with the invoices issued by M/s Global Weighing Technologies. If the service tax stands paid by them, the appellant would be entitled to the benefit of credit of the same.

5. Further, a part of demand to the tune of Rs.8,845.00/- stands confirmed in respect of 90.40 Quintals of sugar lost during the reprocessing of 904 Quintals of sugar on the ground that appellant did not apply for remission of the same. Learned Advocate informs that the said loss was on account of processing loss of the sugar and in respect of the said processing

loss no duty can be demanded, inasmuch as the sugar did not come into existence at all. Apart from the above, he also submits that the loss of the sugar was not 90 Quintals but the same was around 39 Quintals.

I find this Tribunal in the case of Commissioner of Central Excise Vs M/s Kisan Sahkari Chini Mills Ltd. reported at 2013 (291) ELT 476 (Tri.-Del.) have held that the loss of sugar during processing of the same or during reprocessing cannot be considered as having being clandestinely removed without payment of duty. Inasmuch as in the present case the Revenue has not produced any evidence that the said processing loss was not actual and the appellant had removed such sugar from their factory without payment of duty, I find no reason to uphold the said confirmation of demand.

Inasmuch as I hold in favour of appellant on merits, their plea of limitation has not been adverted to and the appeal is partly allowed and partly remanded in the above manner.

(Dictated in Court)

प्रमाणित प्रति/Certified True Copy

15/12/2017

Sd/-

(Archana Wadhawa)
Member(Judicial)

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण/C.E.S.T.A.T.)

akp