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: 22/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/71529/2017-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/70859/2016	**Aashirwad Industries** 5/5,loni Road Indl. Area,site-ii,mohan Nagar GHAZIABAD UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal No.70859/16

Arising out of O/A No.GZB-EXCUS-000-APP-0004-16-17 dated 04.04.2016 passed by Commr. (Appeals) of Central Excise, Customs, Meerut II

M/s Aashirwad Industries

...APPELLANT(S)

VERSUS

Commr. of Central Excise & S.Tax, Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chhiber, Advocate for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 13. 11. 2017
DATE OF PRONOUNCEMENT : 20\11\2017

Final ORDER NO. 71529/2017

Per Mrs.Archana Wadhwa :

The appellant is engaged in the manufacture of excisable goods and were availing benefit of cenvat credit of service tax paid in respect of various services.

2. The dispute in the present appeal relates to the fact that the appellants have not maintained separate cenvatable account in respect of services used for providing taxable services as also exempted services. It is seen that the appellant was clearing certain inputs as such and the Revenue entertained a view that such an activity was a trading activity in which case the clearance of the inputs has to be held as exempted. Inasmuch as the appellants have maintained a common

cenvatable accounts, they have to pay a particular percentage of the value of the exempted goods in terms of the provisions of Rule 6 (3) of the Cenvat Credit Rules, 2004.

3. It is seen that during adjudication, the appellant contended that they have already reversed the proportionate credit involved in respect of exempted activities. However, the Commissioner (Appeals) observed that the appellant cannot evolve its own method and law and if the provision of law require to maintain separate account and if the same are not maintained of consequence of Rule 6 (3), cannot be brushed away by adopting a high bride method of its own creation. I find that the same issue is no more res-integra. If an assessee has reversed the cenvat credit attributable to the input services used for trading activity, the provisions of Rule 6 (3) would not be applicable. The issue has been decided by the Hon'ble Allahabad High Court in the case of Hello Minerals Water Pvt. Ltd. Vs. Union of India reported in 2004 (174) ELT 422 (All.). The said decision stands followed by the Tribunal in a number of cases including the one i.e. Face Ceramics Pvt. Ltd. Vs. Commr. of Central Excise, Rajkot reported in 2010 (249) ELT 119 (Tri.-Ahmd.) as also in the case of Mongal Textile Pvt. Ltd. Vs. Commr. of Central Excise, Ahmedabad reported in 2014 (311) ELT 707 (Tri.-Ahmd.).

4. However, it is required to be verified that the amount reversed by the assessee is correct or not. For the said purposes, the matter has been remanded.

5. There is another issue involved in the present appeal, which relates to the credit availed on in respect of copper strip which was

proposed by the appellant and cleared directly to the premises of their buyers located in SEZ area. On going through the impugned order, I find that the issue is not at all clear. The appellants have contended that the copper strips procured by them, were sent directly to the premises of their customers, which was used and cleared by them on payment of duty from their factory. The Commissioner (Appeals) has observed that such copper strips were cleared as such without payment of duty and were sent directly from the supplier's premises to the buyer's premises. As such, the claim of the appellant is contradictory.

6. I find that the facts are absolutely not clear either from the assessee side or from the Revenue's allegation. The use of the copper strips is required to be ascertained i.e. whether the assessee's factory or in the SEZ factory. If the copper strip stands utilized by the appellant in the manufacture of their final product, may be out of same intermediate product, the appellant would be entitled to the credit, even if the goods were first directly sent to the manufacturer of the intermediate product. Inasmuch as the facts are not clear, I deem it fit to set aside the impugned order and remand the matter to the original adjudicating authority.

7. In view of the foregoing, the appeal is allowed by way of remand.

(Pronounced in the open Court on 28/11/17)

प्रमाणित प्रति/Certified True Copy
08/12/17
सहायक पंजीकार/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

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm