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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1078 / 2011 –SM[BR] & E / STAY/1339 /2011-SM[BR] **Date 21/12/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S NATIONAL ENGINEERING INDUSTRIES LTD
KHATIPURA ROAD, JAIPUR.

M/S NATIONAL ENGINEERING INDUSTRIES LTD Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.897/2011-SM[BR]&S/855/2011** dated 13.12.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult **SHRI BIPIN GARG ADV.**
B-1/1289-A,VASANT KUNJ NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
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 -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

E/Stay/1339 of 2011-SM in & Central Excise appeal No. 1078/2011-SM

[Arising out of Order-in-Appeal No. 105 & 107(KDV)CE/JPR-I/2011 dated 18.3.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur].

Date of Hearing/decision: 13th December, 2011

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. National Engg. Industries Ltd., Appellant

Vs.

CCE, Jaipur-I Respondent

Present for the Appellant : Shri Mayank Garg, Advocate
Present for the Respondent : Shri P.K. Sharma, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member

FINAL ORDER NO. 897/2011 SM (BR) + S-855/2011-SM (BR)

Per D.N. Panda:

Learned Counsel submits that mobile phones are used for the purpose of facilitating manufacturing transactions/activities. Without any evidence being brought on record recovery of Cenvat credit of Rs. 37,748/- was proposed by show cause notice. So also levy of penalty and interest was proposed. Both the authorities below without considering the basis of allegation and even in absence of any evidence against the appellant disallowed Cenvat credit followed by penalty and interest.

2. Learned D.R. on the other hand, states that proper order has been passed.

3. Heard both sides and perused the record.

4. The matter in controversy being confined to as above, waiving requirement of pre-deposit appeal is disposed by this common order. Perusal of show cause notice nowhere throws light as to the basis how the Audit came to the conclusion about disallowance of Cenvat credit on use of mobile phone. It is settled principle of Law of Evidence that no one can be dealt with under law without any cogent evidence. In absence of the elements of charge, ~~i.e.~~ that lacks basis for which the appeal succeeds.

5. In the result, both stay application as well as appeal are disposed allowing the appeal.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

RK