

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**  
**SINGLE MEMBER APPEAL BRANCH**

Appeal No. ST/527 /2010 -SM[BR]

Date 30/07/2010

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

To :  
C.C.E. MEERUT I

EXCISE CHOWK, OPPOSITE CHOUDHARY CHARAN  
SINGH UNIVERSITY MANGAL PANDAY NAGAR,  
MEERUT - 250005.

C.C.E. MEERUT I

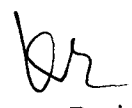
Appellant

Vs

Respondent

M/S SANJAY ENGG. & FAB PVT. LTD.

I am directed to transmit herewith a certified copy of Final order No. 856 / 2010 -SM[BR] dated 20.7.2010  
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

M/S SANJAY ENGG. & FAB PVT. LTD.

190-F, INDL. AREA, MEERUT ROAD, MUZAFFARNAGAR.

2. Adv. / Consult

NONE;-----

3 S.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise, I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

11 Easy Service Tax Online Dot Com Pvt.Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New  
Delhi - 110070

14 Office Copy

15 Guard file

  
Assistant Registrar  
(SM Appeal Branch)

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

**Date of Hearing/Decision: 20.07.2010**

**Service Tax Appeal No. ST/527/10-SM**

[Arising out of Order-in-Appeal No.165/CE/MRT-I/09 dated 24.12.09 passed by the Commissioner(Appeals), Meerut ].

Commissioner, Customs & Central Excise, Meerut ...Appellant

Vs.

M/s.Sanjay Engg. & Fab (P) Ltd. ... Respondent

Present for the Appellant :Shri.I. Baig, SDR  
Present for the Respondent :None

**Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER**

*Final* **ORDER NO. 856/2010 SM (Br)** **DATED: 20.07.2010**

**PER: D.N.PANDA**

None present for the respondent. Ld. DR assists the Bench stating that there was a breach of law made by the respondent due to non-payment of service tax liability in cash since adjustment through cenvat credit is not permissible. When the first adjustment was taken, there was limited balance standing to the credit of cenvat account in the accounts for which there was abnormal delay in discharge of the due to the Government from Cenvat Credit. Therefore, the first appellate order is erroneous in respect of grant of

relief of the adjustment of service tax due through Cenvat Credit.

2. Heard the Id. DR. The First Appellate Order does not show that the Cenvat Credit was not permissible to the respondent. If Cenvat Credit exists and not questionable, debiting of the same for discharge of tax liability may not be impermissible under the law. Once the Cenvat Credit is debited, the amount standing to the credit of the said account is also exhausted. Thus, the appellant is prevented to use the credit further. Therefore, there is no difficulty to grant adjustment from Cenvat Credit amount. The first appellate order therefore does not appear to have suffered from any legal infirmity. Accordingly, revenue's appeal is dismissed.

[Dictated & Pronounced in the open Court].

**(D.N.PANDA)**  
**JUDICIAL MEMBER**

Anita