REGISTERED / AD

FAX : 011-26108426

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

Dated: **13/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. **A/1355/2012-EX|DB|** dated **27/11/2012**</u>

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(EXCISE Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	E/493/2005	**THE GYAN CIRKITRONICS PVT.LTD.** Plot No-6,B,Malviya Nagar Aish Bagh Lucknow
		Name and Address of Respondent
2		**C.C. LUCKNOW** 5th and 11th floor, Kendriya Bhawan, Sector -H, Aliganh, Lucknow 226024.

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Copy To
3<u>Advocate(s) / Consultant(s)</u>:

Kapil Vaish
B-51, 95,
Butler Plaza, Civil Lines,
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4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(EXCISE Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 27.11.2012

Central Excise Appeal No.493 of 2005

Arising out of the order in appeal No.363-CE/2004 dated 29.10.2004 passed by Commissioner (Appeals), Central Excise , Lucknow.

For Approval and Signature:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

The Gyan Cirkitronics (P) Ltd. .. Appellant

Vs.

C.C.E., Lukcnow .. Respondent

Present Shri Kapil Vaish, Consultant for the Appellant
Present Shri A.K. Jain, A.R (Jt.CDR) for the respondent

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Final Order No.A/1355/2012-EX(BR)

Per Rakesh Kumar(Oral):

The facts leading to this appeal are as under:

1.1 The appellant are manufacturer of printed circuit boards (PCBs). They had importec copper clad laminated sheets at concessional rate under exemption Notification No.13/97-Cus dated 1.3.97 which was available subject to use of the imported material for manufacture of printed circuit boards. The appellant had imported 1800 sheets under Bill of Entry No.308 dated 7.2.98 and 2000 sheets under Bill of Entry No.397 dated 11.2.98 on payment of duty at concessional rate bringing the goods to the factory, they had availed cenvat credit of the additional customs duty. The jurisdictional officer of Central Excise visited the factory of the appellant and checked the end-use register maintained by them and it was found that they have not accounted 710 sheets. The appellant could not explain regarding use of 710 sheets. Show cause notice was issued for differential customs duty amounting to Rs.30,770/- on the sheets and also for denying the modvat credit amounting to Rs.50,169/- of additional customs duty availed by the appellant in respect of these sheets. Show cause notice was adjudicated by the Additional Commissioner vide order in original dated 14.3.2001 by which he dropped the proceeding initiated against the appellant. However, the order was reviewed by the Commissioner. On review appeal being filed, the Commissioner (Appeals) vide order in appeal dated 29.4.2001 allowed the Department's appeal and confirmed the duty demand of Rs.30,770/- and Modvat credit demand of Rs.50,169/-. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both sides.

3. Shri Kapil Vaish, ld. Consultant for the appellant, has contended that the impugned order has been passed ignoring the relevant facts. Ld. Authorised Representative pleaded that perusal of the show cause notice would show that it is not the case of the Department that 710 copper clad laminated sheets were clandestinely removed from the factory of the appellant. He contended that no investigation regarding use of those laminated sheets have been conducted and the Commissioner (Appeals) had ignored the RG-23A Part I register and Form-IV register of the

appellant wherein consumption of the aforesaid copper clad laminated sheets were duly recorded. It is further contended that the relevant records were seized during investigation which are still in possession of the Department and, therefore, the appellant is not in a position to establish actual user of those copper clad copper laminated sheets. Thus it is argued that the impugned order is liable to be set aside.

4. Shri A.K. Jain, ld. Jt.CDR on the contrary has argued in support of the impugned order. He has contended that the appellant was operating under exemption Notification No.13/97-Cus and, therefore, it was obligatory on his part to maintain end-use register which he did not maintain. Since the appellant did not fulfil the condition of the above Notification, he would not be eligible for duty exemption in respect of import of copper laminated sheets when end-use is not accounted for. It is further submitted that the plea of RUD or copies of RUD not being supplied to the appellant, is an after-thought and it would be seen that neither before the original adjudicating authority nor before Appellate authority nor in the grounds of appeal this plea has been taken. Ld. Jt.CDR , therefore, pleaded that there is no infirmity in the impugned order.

5. We have considered the submissions made by both the sides and perused the records. The basis of duty demand and the modvat credit demand in this case is that though in terms of the condition of Notification, the appellant were required to maintain account regarding end-use of the material imported at concessional rate, the end-use register was not properly maintained and that entries in end-use register did not explain the user of 710 imported copper clad laminated sheets. Since the appellant have availed concessional rate under Notification No.13/97-Cus and this exemption is subject to end-use condition, the burden is on the appellant to prove that imported material was used for the intended purpose. Since in this case, the records do not show that

imported material was used for the intended purpose, we are thus of the view that concessional rate of duty in respect of 710 imported copper clad laminated sheets has been correctly denied as it cannot be said that the same were used for the intended purpose. For the same reason we are of the view that the cenvat credit of the additional customs duty availed in respect of those laminated sheets has been correctly denied. Thus, we do not find any infirmity in the impugned order. The appeal is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/