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: 20/02/2017

To

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

Final Order No. A/70175-70180/2017-SM[BR] dated 13/02/2017

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/122/2011	**PASUPATI ACRYLON LTD.,** KASHIPUR ROAD, THAKURDWARA, DISTT. MORADABAD, (U.P.)
2	E/662/2008	**PASUPATI ACRYLON LTD.** KASHIPUR ROAD, THAKURDWARA, DISTT: MORADABAD (UP)
3	E/888/2010	**PASUPATI ACRYLON LTD.** Kashipur Road, Thakurdwara, Distt. Moradabad (UP)
4	E/2301/2011	**PASUPATI ACRYLON LTD** Kashipur Road, Thakurdwara, Distt- Moradabad.
5	E/2780/2009	**PASUPATI ACRYLON LTD.** KASHIPUR ROAD, THAKURDWARA,DISTT. MORADABAD (U.P.)
6	E/3885/2012	**Pasupati Acrylon Ltd** Kashipur Road, Thakurdwara, MORADABAWAD, UP

Name and Address of
Respondent

7 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok
ki Lat) Delhi Road, Meerut (UP)

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8 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok
ki Lat) Delhi Road, Meerut (UP)

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9 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok
ki Lat) Delhi Road, Meerut (UP)

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10 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok
ki Lat) Delhi Road, Meerut (UP)

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11 -C.C.E. MEERUT II
Opp. Saheed Park (Near Ashok
ki Lat) Delhi Road, Meerut (UP)

-

12 C.C.E. & S.T.-Meerut-ii
OPPOSITE SHAHEED
SMARAK,DELHI
ROAD,..BHANSALI
GROUND,
MEERUT,
UTTAR PRADESH-

--

Other Appellants and Respondents as per Annexure

Copy To
13Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-
211001

14 Bar Association, CESTAT, Allahabad

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

16 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

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

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

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

22 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

23 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

24 C.D.R. 25 Office Copy 26 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos.E/662/2008, 2780/2009, 888/2010, 122/2011, 2301/2011, 3885/2012-EX[SM]

Arising out of Order-in-Appeal Nos.02-CE/MRT-II/2008 dated 09.01.2008, 209-CE/MRT-II/2009 dated 30.07.2009, 77-CE/MRT-II/2010 dated 25.02.2010, 359-CE/MRT-II/2010 dated 29.10.2010, 380-CE/MRT-II/2011 dated 18.07.2011, 225-CE/MRT-II/2012 dated 29.10.2012 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Pasupati Acrylon Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-II

...RESPONDENT (S)

APPEARANCE

Shri Hrishikesh, Advocate for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT: 25.11.2016

FINAL ORDER NO.- 70175 - 70180/2017

Per Mr. Anil Choudhary :

The issues in these appeals by the appellant a manufacturer of Acrylic Fibre is – whether the appellants licensed Warehouse (Customs Bonded Warehouse) located within the appellant's factory would be considered as part of factory as defined under Section 2 (e) of Central Excise Act.

2(a). The brief facts of the case are that appellant is having separate license for their Customs Bonded Warehouse, which is located within the same premises where the factory of the appellant is located, for storage of non-duty paid material under Section 58 of the Customs Act, 1962.

(b) The appellants are manufacturing "Nitrogen Gas" in their factory premises for which they have Central Excise Registration and use the same in their Customs Bonded Warehouse for the purpose of unloading of tankers of non-duty paid imported raw material as well as for flushing out of the stored imported raw material, i.e. "Acrylonitrile Monomer" (ACN) from their Bonded Tanks (i.e. Non-Duty paid tanks) to Duty paid Tanks after payment of appropriate Customs Duty which is situated in their factory premises.

(c) Various SCNs were issued to Appellant, for the period January, 2006 to May, 2011, demanding Central Excise Duty on manufacture of Nitrogen gas, utilized by them in their Customs Bonded Warehouse, which culminated into passing of various OIOs and finally into passing of various OIAs whereby various demands alongwith interest and penalties were confirmed against the Appellant.

S. No	Appeal No.	OIA No.	OIO No.	SCN	Period	Duty Involved (Rs.)
1	E/662/2008	02-CE/MRT-II/2008 dated 09.01.2008	40(03/7) Dem/PAL/2007 dated 29.06.2007	C.No. VI (17)/03/Adj./PAL/2007 dated 18.01.07	Jan, 2006 to Dec, 2006	Rs. 17,673/-
2	E/2780/2009	209-CE/MRT-II/2009 dated 30.07.2009	501(68/07) Dem/PAL/2008 dated 22.10.2008	C.No. VI (17)/10/PAL/Adj./08/581 dated 31.01.2008	Jan, 2007 to Dec, 2007	Rs. 17,144/-
3	E/888/2010	77-CE/MRT-II/2010dated 25.02.10	87(04/09) Dem/PAL/2009 dated 30.09.2009	C.No. VI (17)/04/Adj./PAL/2009	Jan, 2008 to Nov, 2008	Rs. 27,939/-
4	E/122/2011	359-CE/MRT-II/2010dated 29.10.10	136(02/10) Dem/PAL/2010 dated 07.06.2010	C.No. VI (17)/322/Adj./PAL/HLD/09/03 dated 01/01/10	Dec, 2008 to Oct, 2009	Rs. 19,772/-
5	E/2301/2011	380-CE/MRT-II/2011dated 18.07.11	54(26/10) Dem/PAL/2011 dated 04.05.2011	C.No. VI (17)/350/Adj./Pashupati/Hid./10/5007 dated 14/10/10	Nov, 2009 to Aug, 2010	Rs. 15,851/-
6	E/3885/2012	225-CE/MRT-II/2012dated 29.10.12	166 (48/11) AC/HLD/2012 dated 21.08.2012	C No VI (17)/221/Adj./Pashupati/HLD/2011/2153 dated 13/07/11	Sept, 2010 to May, 2011	Rs. 18,057/-

3(a) Appellant submits that the Nitrogen gas manufactured and captively consumed in the manufacture of final products is exempt vide SI No. 19 of Notification No.3/2005-CE dated 24.02.2005.

3(b) The warehousing license granted to Appellant itself states that warehouse is situated within the factory premises of appellant (Pasupati Acrylon Ltd.). Further, the license stipulates that it has been granted for the manufacture of excisable goods of Chapter 55. As per definition of factory, under Section 2(e) of Central Excise Act

2(e) " Factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"

3(c) Thus, clearance of ACN from the bonded warehouse is nothing but an activity connected with production/manufacture of excisable goods.

3(d) Reliance is placed on following case laws-

CCE Vs. Biocon Ltd. 2014 (309) ELT 66 (Kar.)
Gas Authority of India Ltd. Vs. CCE, 2001 (135) ELT 475
Diamond Cements Vs. CCE 2004 (169) ELT 34
Dhampur Sugar Mills Ltd. Vs. CCE, Meerut 2001 (129) ELT 73
JK Synthetics Ltd. Vs. CCE 1991 (52) ELT 116 (Tribunal)
Orissa Sponge Iron Ltd. Vs. CCE 2014 (313) ELT 432

4 The learned AR for Revenue, relies on the impugned order. He further draws my attention to the license granted under section 58 of Customs Act for 'Customs Private Bonded Warehouse' dated 21.06.1996, wherein in the Annexure, condition No.1, it have been provided, the license is valid only for the premises as specified above and for the purposes as mentioned above and not for any other purpose and/or premises. He reiterates the contention of the Revenue that a Warehouse inside factory premises cannot be equated with factory, as defined under Section 2(e) of Central Excise Act. The Warehousing license issued under Section 58 of the

Customs Act is for the storage/deposit of imported goods without payment of duty. Whereas, the licence issued under Central Excise Act for the factory premises including the precincts thereof, for carrying out the manufacturing activity of excisable goods. The contention of the assessee is that the licensed Warehouse being an integral part of the factory premises, where the manufacturing activities take place, has to be treated as such and not otherwise, inasmuch as, the factory is defined under the Central Excise Act to mean any premises including the precincts thereof. Hence, Nitrogen gas manufactured in the factory and consumed in the warehouse is to be treated as captively consumed within the factory of production and, therefore, exempted from payment of duty. Rejecting the contention of the assessee, the Ld. Commissioner observed that the licence for bonded warehouse is primarily granted for deposit and storage of imported goods without payment of duty. Whereas a factory, licensed under the Central Excise Act, is for the purpose of carrying out the manufacturing activity of specified excisable goods. He further observed that in facts of this case, just because the portion licenced for the 'Customs Private Bonded Warehouse' is located within the factory premises, where the manufacturing activities are carried out, it would not become the factory or even the precincts thereof and/or arne not interchangeable. The premises licenced for warehouse has distinct activities and for a distinct purpose.

5. Having considered the rival contentions, I find from the words of the 'licence' for customs private bonded warehouse, is for deposit of dutiable goods, without payment of duty, namely "Acrylonitrile

Monomer" (ACN) (Organic Liquid Chemical) imported by or on behalf of the licensee for use in manufacture of their final products. Further, in the situation clause it is mentioned: - situated within the factory premises of Pasupati Acrylon Ltd. The licence further mentions - the license is granted to Pasupati Acrylon Ltd. for manufacture of excisable goods of Chapter-55(Acrylic Fibre/Tow/Tops/waste). Licence further states that it is not transferable to any person. Thus, it is evident that the licence for Private Bonded Warehouse is granted for the storage and exclusive use of the appellant-assessee. It is an admitted fact that the dutiable or excisable products of the appellant namely Acrylic Fibre cannot be manufactured without availability of the raw material being imported Acrylonitrile Nitrogen Monomer or ACN. Thus, I hold that the "Nitrogen Gas" utilized in drawing the raw materials from the Bonded Warehouse is a part of the manufacturing activity, integrally connected in the process of manufacture, and accordingly, I hold that they are entitled to exemption of duty under Notification No.3/2005 - CE being a captive consumption under the facts and circumstances. And, I also hold that the Customs Private Bonded Warehouse of the appellant is a part of the factory as defined under Section 2 (e) of Central Excise Act. Accordingly, all these appeals are allowed with consequential benefits.

(Dictated and Pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
22/02/17
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

Mishra