REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 12/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70665-70671/2016-EX[DB] dated 27/07/2016

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/1624/2007	**N G ENTERPRISES** 77/E-2,GANDHI GRAM KANPUR UP
2	E/1625/2007	**SOBHIT KHANDELWAL** C/O N G ENTERPRISES, 77/E-2,GANDHI GRAM KANPUR UP
3	E/2310/2008	**N.G.ENTERPRISES,** 77/E-2, GANDHI GRAM, KANPUR.
4	E/2516/2008	**SH SHOBHIT KHANDELWAL,AUTHORISED SIGNATORY** M/s N.G. Enterprises, 77/E-2, Gandhi Gram, Kanpur.

5 E/2938/2009 **N.G.ENTERPRISES**
77/E-2, Gandhi Gram,
Kanpur.

6 E/2939/2009 **SH SHOBHIT KHANDELWAL,AUTHORISED SIGNATORY**
M/s N.G. Enterprises,
77/E-2, Gandhi Gram, Kanpur.

7 E/2940/2009 **SMT NIKITA GUPTA,PROP**
N.G. Enterprises, 77/E-2,
Gandhi Gram, Kanpur.

Name and Address of Respondent

8 -C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur
208005.

Other Appellants and Respondents as per Annexure

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

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

10 PRAMOD KUMAR RAI & ATHENA LAW ASSOCIATES
808, L&T FLATS, (SHREE AWAS)
SEC-18-B, DWARKA, NEW DELHI-110078

11 Bar Association, CESTAT, Allahabad

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

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

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

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

16 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

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

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

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

22 C.D.R. 23 Office Copy 24 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

Appeal No. E/1624/2007-EX(DB), E/1625/2007-EX(DB), E/2310/2008-EX(DB), E/2516/2008-EX(DB), E/2938/2009-EX(DB), E/2939/2009-EX(DB), E/2940/2009-EX(DB)

Dated of Hearing/decision: 27/7/2016

[Arising out of Order-in-Original No. 06/COMMISSIONER/2007 dated 30.4.2007 passed by Commissioner of Central Excise, Kanpur, Order-in-Appeal Nos. 301, 302 & 303/CE/APPL/KNP/2008 dated 04.07.2008 passed by Commissioner (Appeals) Central Excise & Customs, Kanpur, Order-in-Appeal No. 174 to 176-CE/APPL/KNP/2009 dated 27/7/2009 passed by Commissioner (Appeals) Central Excise & Customs, Kanpur)]

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

N.G. Enterprises
Sh. Shobhit Khandelwal
N.G. Enterprises,
Sh. Shobhit Khandelwar, Authorised Signatory,
N.G. Enterprises,
Sh. Shobhit Khandelwal, Authorised Signatory,
Smt. Nikita Gupta, Prop. — Appellant

Vs.

C.C.E. Kanpur — Respondent

Appearance:
Present for the Appellant: Shri Puneet Agrawal, Advocate
Present for the Respondent: Shri H.M. Dixit (Assistant Commissioner) A.R.

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70665-70671/2016

Per: Anil G. Shakkarwar

The present seven appeals are being decided together since the issue involved in all of them is the same but for the different periods.

2. The brief facts of the case are that the appellant, M/s. N.G. Enterprises, Kanpur, a non-registered proprietorship firm were engaged in the manufacture of Footwears falling under Tariff sub-heading No. 64041910 of schedule to Central Excise Tariff Act, 1985. The appellants informed the department through their letter dated 25/09/2006, that they were engaged in the manufacture of Footwears having value below Rs.250/- per pair and were eligible to avail the benefit of Notification No. 6/2002-CE, dated 01-03-2002. Revenue conducted investigations and it appeared to Revenue that the appellant were misusing exemption provided under the exemption Notification No. 6/2002-CE, dated 01/03/2002 as amended by Notification No. 5/2006-CE, dated 01/03/2006 by way of interpreting the provisions wrongly and by availing the said Notification. The allegation in the show cause notice dated 13/12/2006 was that the goods manufactured by the appellant were to be assessed under Section 4 of Central Excise Act, 1944, and as provided under Chapter V of the Weights and Measures (Packaged Commodity) Rules, 1977, there was no statutory requirement to declare the retail sale price,

Section 4A of Central Excise Act, 1944 was not applicable to them. The said Show Cause Notice also required the appellant to show cause as to why Central Excise duty amount into Rs. 1,25,52,459/- should not be demanded under the provisions of Section 11A of the Central Excise Act, 1944. It was also proposed to impose penalty and charge interest. There was also a proposal to impose personal penalty on Shri Shobhit Khandelwal, Authorised Signatory of the firm.

3. The said Show Cause Notice dated 13/12/2006 was adjudicated through impugned Order-in-Original No.6/Commissioner/2007, dated 30-04-2007. The said Order-in-Original dated 30/04/2007 is order impugned in Appeal Nos. E/1624/2007 and E/1625/2007. The period involved in this case is from 19th February, 2001 to 30th September 2006. The appellant contended before the Original Authority that in terms of the Notifications 3/2001-CE, 43/2001-CE, 6/2002-CE, 23/2004-CE, and 5/2006-CE claimed by them, for Footwears manufactured exemption was available provided following conditions were cumulatively satisfied by them:

(a) The Footwear manufactured by them should have fallen under Tariff heading 64.01 till 22-08-2006, and post 01-03-2006, it should have fallen under Chapter 64.

(b) The retail sale price of Footwear should not have exceeded Rs.125 per pair till 9/7/2004 and post 9/6/2004 Rs.250/- per pair. The said Notification had defined the retail sale price as maximum price at which the said goods are sold to be ultimate customers.

(c) Post 9/7/2004, it was required that the retail sale price was to be indelibly marked or embossed on the Footwear itself. They claimed to satisfy the above stated conditions and therefore, they were eligible for the said exemption. The Original Authority has held that the goods manufactured by the appellant were to be assessed under Section 4, and Section 4A was not applicable to them. He has also, further, held that the appellants were not statutorily required to print MRP on said goods and that the Footwears were not for retail sale since the same were sold in bulk to personnel as part of uniform. He further held that the footwears were supplied in wholesale and no retailing of the same was done and that the goods were not even sold but were freely distrusted and that in the absence of retail sale the benefit of said notifications was not available to the said goods and confirmed the demand and imposed equal penalty and imposed personal property on Shri Shobhit Khandelwal. Aggrieved by the said Order-in-Original dated 30/4/2007, the appellants are before us.

4. For the period from October, 2006 to March 2007, the appellants were issued with show cause notice on similar grounds through show cause notice dated 30/8/2007. The said show cause notice had a proposal of demanding Central Excise duty of Rs.38,04,084 with proposal for equal penalty. There was proposal to impose of personal penalty on Smt. Nikita Gupta and Shri Shobhit Khandelwal. The appellants contended on similar grounds as stated above. The said show cause notice was adjudicated through Order-in-Original No. 02/Additional Commissioner/2008 dated 12/2/2008. Through the said

Order-in-Original, the Original Authority has confirmed the demand and imposed penalty. Aggrieved by the said order appellants preferred appeal against the said Order-in-Original dated 12/2/2008 which was decided through Order-in-Appeal No. 301,302,303-CE/2008 dated 04.07.2008, wherein the ld. Commissioner (Appeals) has upheld the said Order-in-Original dated 12.2.2008, and rejected the appeals. The appellants have preferred appeal against said Order-in-Appeal dated 4/7/2008, before us which are bearing Appeal No. E/2310/2008 and E/2516/2008.

5. For the period from, April 2007 to September, 2007, similar show cause notice dated 21.02.2008 for demanding Central Excise Duty of Rs.24,71,477/- with proposal for personal property on Shri Shobhit Khandelwal and Smt. Nikita Gupta was issued. The said show cause notice was adjudicated through Order-in-Original No. 2/Joint Commissioner/2009 dated 15/3/2009 with similar findings. The appellant preferred appeal before Ld. Commissioner (Appeals), who decided the said appeal through Order-in-Appeal No. 174, 175, 176/CE dated 27.7.2009, through which the appeals were rejected. The appellants preferred appeals before us against said Order-in-Appeal dated 27.7.2009 bearing Appeal Nos. E/2938/2009, E/2939/2009 and E/2940/2009.

6. The grounds of appeal are that the appellant during the relevant period have satisfied the conditions of Notification such as 3/2/3001-CE dated 1/3/2001 as amended by Notification No. 43/2001-CE dated

21.9.2001, Notification No. 6/2002-CE dated 01.3.2002, Notification No. 23/2004-CE dated 09.7.2004 and Notification No. 5/2006-CE dated 01.3.2006, wherein the appellants manufactured and sold Footwear having retail sale price not exceeding Rs.125 per pair up to 8/7/2004 and Rs.250/- per pair after 9/7/2004 and that the goods were eligible for exemption of whole duty of the excise leviable thereon and they have satisfied all the conditions required for availing of benefit of exemption in said Notification. They have, further, contended that it is settled principle of interpretation that an exemption notification has to be directly construed and that too on the basis of the language used therein, that the findings of the department that they were required to be assessed under Section 4 and not Section 4A was travelling beyond the requirement of issue to be considered for examination of their eligibility for the benefit of said Notification. They further contended that there was no bar in a said Notification for supply of goods in bulk and that the only requirement for the availment of the benefit of the said Notification was that MRP of Rs.125/- and that of Rs. 250/- should not be exceeded. They contended that the only condition of the notification was that the retail sale price of the footwear did not exceed Rs.125/- per pair upto 08/07/2004 and from 09/07/2004 it did not exceed Rs.250/- per pair. Retail sale price was defined as maximum price at which excisable goods in the packed form may be sold to the ultimate customer and includes all taxes, and other expenses and price was sole consideration for sale. They contended that after 9/7/2004, the exemption limit was raised to Footwear where retail sale price was not exceeding Rs.250/-

per pair and also that there was a condition that the retail sale price was embossed on the Footwear through indelibly marking or embossing and they satisfied all the conditions.

7. The ld. Counsel for appellant contended that as stated in the grounds of appeal they have satisfied all the condition required for availing of benefit of said Notifications. He has taken us through the said Notifications and explanation about the sale retail price as stated in the said Notifications, the conditions of Notifications. He has prayed to allow the appeal. The ld. A.R. for Revenue has reiterated finding of the original authority and contended that the finding of the original authority and appellate authority in the impugned orders are tenable.

8. Having considered the rival contentions we find that in the said Notification, the condition required to be fulfilled was that the Footwear did not have a retail sale price exceeding Rs. 125/- per pair till 8/7/2004, and did not have retail sale price exceeding Rs. 250 per pair w.e.f. 9/7/2004 and that the retail sale price was defined in the said notification as the maximum price at which the excisable goods in the packaged form are sold to the ultimate customers and the price to be the sole consideration for such sale. We also find at Para 5 of show cause notice it is contended by Revenue that MRP was printed by M/s N.G. Enterprises on the goods itself intentionally to take the undue benefit of Notification just to evade Central Excise duty. In the Para subsequent to the same, it is stated that from the statements of Shri Vishal Gupta and Shri Pawan Chadha both dated 05/12/2006, it is

confirmed that they had received the said Footwear in wholesale bulk quantity and no MRP was printed on the Footwears received from M/s N.G. Enterprises and both the statements are relied upon documents for the issue of said show cause notice. We find that in two sub paras, there are contrary contentions by Revenue. We further, find the show cause notice has failed to established either the facts that the MRP more than requirement in the Notification was printed on Footwear or the retail sale price was not the sole consideration for sale or the goods were sold at the price higher than the retail sale price declared by them for the relevant period. It is clear from the submissions of the Counsel for appellant that the appellant has fulfilled all the conditions required for availing benefits of the notifications stated in foregoing paras. We, therefore, hold that the three show cause notices dealt with in seven appeals in hand are not sustainable. Therefore, we set aside all the impugned orders and allow all the appeals holding that for the period covered under the said show cause notices impugned goods were eligible for benefit of such Notification stated in the earlier paragraphs. We, therefore, allow all the seven appeals in hand. The appellants shall be entitled for consequential relief, if any.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy

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