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: 26/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70528/2016-EX[DB]** dated **05/07/2016**

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/2233/2007	CCE LUCKNOW 7-A, ASHOK MARG, LUCKNOW.
		Name and Address of Respondent
2		KANODIA POLYCHEM (P) LTD. C-3 & 4, INDS. ESTATE, BINDKI ROAD, FATEHPUR, U.P.,

Copy To

3 Advocate(s) / Consultant(s): SH AMIT AWASTHI,ADV
FLAT NO H-1, FIRST FLOOR
RADHEY APARTMENT,7/116-A
SWAROOP NAGAR, KANPUR-208002

4 Bar Association, CESTAT, Allahabad

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 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

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

Ex. Appeal No.2233/07

Arising out of O/A No.185-187-CE/LKO/2006 dated 28.12.2006 passed by Commr. (Appeals) of Central Excise, Customs, Lucknow.

For approval and signature:

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

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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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Commissioner of Central Excise, Lucknow ...APPELLANT(S)

VERSUS

M/s Kanodia Polychem (P) Ltd. RESPONDENT (S)

APPEARANCE

Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department
Shri A. K. Dixit, Advocate, for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 05.07.2016

Final ORDER NO. 70528/2016

Per Mr. Anil Choudhary :

The revenue is in appeal against order in appeal dated 28.12.2006, passed by the Commissioner (Appeals) Customs, Central Excise and Service Tax, Lucknow.

2.1 The brief facts are that on scrutiny of ER I returns for the period July 2002 to September 2003, October to December 2003, January to March 2004 and April 2004 to March 2005, it was noticed that the assessee's firm besides clearing the goods on payment of duty at concessional rate at 9.6% Adv. by availing the benefit of Notification No.9/2003-CE dt. 01.03.2003, have also cleared the goods at normal rate of duty that is 16% Adv., it appeared to Revenue that for availing the benefit of Notification No.9/2003-CE dt. 01.03.2003, there was a condition that a manufacturer, who intends to availed exemption under this notification shall exercise his option in writing for availing the exemption under this notification before affecting first clearance, such option shall be effective from the date of exercise of the option and should not be withdrawn during remaining part of the year. Accordingly, it appeared that the appellant did not satisfy the condition number 2 (1) of Notification No.9/2003-CE dt. 01.03.2003 and accordingly, differential duty was demanded. The respondent assessee contested the SCN, they have rightly availed the benefit of Notification No.9/2003-CE dt. 01.03.2003 and have simultaneously cleared the goods under the brand name of the buyers at normal rate. The said fact was in the knowledge of the Revenue as declaration was made under Rule 173B of CER, 1944 and quarterly returns filed from time to time and the correspondence made with the revenue from time to time. Further, the respondent assessee never crossed the benchmark of 100% under Notification No.9/2003-CE dt. 01.03.2003 and further clarified that they were eligible for exemption on the aggregate value of clearance minus value of clearances made at full rate of duty being clearance of branded goods.

2.2 The SCN was adjudicated vide order OIO dated 9/10/06 and the proposed demand was confirmed with interest and further penalty was imposed to Rs.50,000/- under Rule 25 of CER 2002.

2.3 Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order was pleased to allow the appeal and setting aside the order-in-original observing that there is no contravention of the provisions of Notification No.9/2003-CE dt. 01.03.2003. Although, the appellant assessee failed to file declaration as required under Notification No.9/2003-CE dt. 01.03.2003, but the ommission on the part of the assessee cannot be considered fatal for availing exemption. There being no contumacious conduct or deliberate violation of the provisions of statute, it was held that the appellant is entitled to the benefit of the notification and further no penalty is imposable.

2.4 Being aggrieved the Revenue is in appeal before this Tribunal. It is urged that the respondent assessee have misused the exemption provided under Notification No.9/2003-CE dt. 01.03.2003. Further, the ld.Commissioner (Appeals) has erred in holding that the demand is hit by limitation as the SCN was served upon the respondent after a gap of 1 & 1/2 years and is also not correct.

3. The ld. Counsel for the respondent urges for dismissal of the appeal being without merit. He further states that there is no dispute on the finding of fact that the appellant have cleared branded goods at full rate of duty but have availed exemption for SSI under the notification as permissible.

4. Having considered the rival contentions and in view of the uncontroverted fact that the appellant have availed exemption on the clearance of the un-branded goods and have paid full rate of duty on clearance of branded goods, we hold that the appellant have not violated the provisions of Notification No.9/2003-CE dt. 01.03.2003. Accordingly, we hold that the appellant is entitled to exemption benefit under the provisions of Notification No.9/2003-CE dt. 01.03.2003. Accordingly, we dismiss the appeal. The respondent assessee will be entitled to consequential benefit, if any.

(Pronounced in the open Court)

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

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
9-8
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