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: 18/05/2017

To

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

Final Order No. A/70406-70407/2017-SM[BR] dated 31/03/2017

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/815/2008 | **LML LIMITED** C-10, Panki Industrial Estate, Site II, Kanpur. |
| 2 | E/CROSS/297/2008 | E/1595/2008 | **C.C.E. KANPUR** 117/7, Sarvodaya Nagar, Kanpur 208005. |
| | | | Name and Address of Respondent |
| 3 | | | -C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005. |
| 4 | | | SACHEVA AUTO CENTRE, (AUTHORISED DEALER/STOCKIST OF L.M.L.LTD.) C-3, PANKI INDUSTRIAL ESTATE, KANPUR. (U.P.),, |

Other Appellants and Respondents as per Annexure

Copy To

5Bar Association, CESTAT, Allahabad

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

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

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

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

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**

**E/CROSS/297/2008**
**Appeal Nos. E/1595 & 815/2008-EX[SM]**

Arising out of Order-in-Appeal Nos. 36-39 CE/APPL/KNP/2008 & 19-CE/APPL/KNP/08 dated 29.01.2008 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur.

I. Commissioner, Customs & Central Excise, Kanpur (E/1595/2008)
II. LML Ltd. (E/815/2008)

...APPELLANTS

VERSUS

I. Sachdeva Auto Centre, (Authorized Dealer/Stockiest of LML Ltd.
II. Commissioner, Central Excise, Kanpur

...RESPONDENTS

APPEARANCE

None appeared on behalf of assessee-appellants.
Shri Sandeep Kumar Singh, Deputy. Commr. (A.R.) for the Department

**CORAM:**

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

DATE OF HEARING & PRONOUNCEMENT : 31. 03. 2017
FINAL ORDER NO. 70406-70407/2017

**Per Mr. Anil Choudhary :**

The issue in these appeals are regarding demand and conformation of duty on the appellant LML Ltd. for Rs.1,22,742/- with interest and further levy of penalty of Rs.1,25,197/- under Section 11AC of the Act and further levy of penalty of Rs. 2000/- each under Rule 26 on M/s. Sachdeva Auto Centre (respondent in Appeal No.1595/2008).

2. The brief facts as per show cause notice dated 24th May, 2007 are that the appellant LML Ltd. engaged in packing, repacking, labeling and relabeling of spare parts, such activities amounted to deem

manufacture as defined under Section 2(f) (iii) of Central Excise Act, 1944 read with Notification No. 2/2006-CE(NT) dated 01/03/2003. LML Ltd. was not having Central Excise registration for carrying the said activity. In the course of search of M/s. Sachdeva Auto Centre, New Delhi who was authorised dealer/stockist of LML brand of auto parts, it was observed that they were getting spare parts under the cover of commercial invoice from LML Ltd.-Spare Part Division, Kanpur. Further, investigation was taken up, the appellant LML Ltd. stated that they were supplying spare parts in packed condition to the dealers and some parts are also sent in loose condition without packing and later on, they dispatch the packing material with the certificate "Not for sale". The goods in question were dispatched only on 31/05/2006. After some correspondence, the appellant LML admitted their liability and deposited the tax involved Rs.1,22,742/- with interest and also cess on 1st May, 2007 and thereafter informed the Adjudicating Authority vide their letter dated 3rd May, 2007 that they have deposited the said tax along with interest. However, subsequently Revenue issued show cause notice dated 24/05/2007, demanding the same amount of Rs.1,22,742/- with cess, Rs.2,455/- with further proposal to appropriate the same from the amount already deposited alongwith proposal to levy interest and further appropriate the same from the amount pre-deposited with further proposal to impose penalty.

3. The show cause notice was adjudicated on contest and the proposed demand confirmed and appropriated and further penalty was imposed on LML Ltd. of Rs.1,25,197/- and taking into account the

deposit of 25% amount of Rs.31,299/-, the benefit of abatement was allowed. Further, penalty of Rs. 2000/- each was imposed under Rule 26 on M/s. Sachdeva Auto Centre and Hari Gopal Budhaulia, Manager Excise of LML Ltd. (whose appeal has already been decided by this Tribunal).

4. LML Ltd. is in appeal against levy of penalty and the confirmation of demand, whereas Revenue is in appeal for levy of less penalty under Rule 26 as minimum penalty prescribed is Rs. 10,000.

5. Heard learned A.R. for the Revenue and perused the records.

6. Having considered the rival contentions, I find that in view of the admitted fact on record that the LML Ltd. had admitted their mistake and deposited the tax with interest and also informed the competent official of Revenue, in this view of the matter, the show cause notice is bad and not tenable as no further amount either towards duty or interest was recoverable. In this view of the matter I set aside the impugned order and Appeal No. E/815/2008 filed by appellant LML is allowed and Appeal No. E/1595/2008 filed by Revenue is dismissed. The C.O. also stands disposed of. The parties will be entitled to consequential benefits in accordance with law.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

patel/-

प्रमाणित प्रति/Certified True Copy
08/05/2017
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