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: 12/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70616/2017-SM[BR] dated 07/07/2017

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/962/2009	**EXPLICIT TRADING & MARKETING** (A UNIT OF PARLE AGRO PVT. LTD.) A-7, SECTOR 22, INDL. AREA, MEERUT ROAD, GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.

Copy To
3Advocate(s) / Consultant(s):

Hrishikesh, (Adv.) ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

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

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

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

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/962/2009-EX[SM]

(Arising out of Order-in-Appeal No. 307-CE/GZB/2008 dated 26/12/2008 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Explicit Trading & Marketing	**Appellant**
Vs.	
Commissioner of Central Excise, Meerut-I	**Respondent**

Appearance:

Shri Hrishikesh, Advocate	for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR).	for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 07/07/2017
Date of Decision : 07/07/2017

FINAL ORDER NO- 70616/2017

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil Choudhary

This appeal is filed against Order-in-Appeal No. 307-CE/GZB/2008 dated 26/12/2008, passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad, wherein the appeal by this appeal, was rejected by the Commissioner (Appeals), wherein they were seeking refund of Rs. 6lakhs + Rs.71,277/-.

2. The brief facts of the case are that appellant are manufacturer of Fruit pulp/Juice based drinks, under the Brand Name 'Fruity' falling under Tariff Sub-heading No.2202.40 of Central Excise Act, 1985. They were also receiving various inputs and availing Cenvat credit.

The said product was declared/exempt vide Notification No.3/2001 dated 01/03/2001. Thereafter, revenue insisted for debit/payment of Cenvat credit of Rs.13,82,652/- on inputs, used in the manufacture of finished goods as well as raw materials lying as opening stock on 01/03/2001. The said demand was raised pursuant to show cause notice dated 05/03/2002, as the appellant had challenged that they are not required to reverse vide their letter dated 04/12/2001, in view of the ruling of Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs Dai Ichi Karkaria Ltd. reported at 1999 (112) ELT 353 (SC). Demand was confirmed on contest vide Order-In-Original dated 27th May, 2002, the amount already paid of Rs.6,71,277/- was appropriated in the Order-In-Original. Thereafter, the appellant was successful before the learned Commissioner (Appeals) who reversed the Order-in-Original vide order dated 30/06/2003.

3. Aggrieved by the said order, revenue preferred appeal before this Tribunal and vide ex-parte order, being Final Order No.275/2004 dated 10th March 2004, this Tribunal allowed the revenue appeal, upholding the Order-in-Original, following the ruling of Hon'ble Supreme Court in the case of Albert David Ltd. reported at 2003 (151) ELT 443 read with 2003 (157) ELT A81. Pending final adjudication of the appeal before the Supreme Court (preferred by Appellant Company) by order dated 30th March, 2009, appellant had preferred

refund claims in the year 2002, after being successful before the Commissioner (Appeals).

4. Heard the parties.

5. Having considered the rival submissions, I find that the issue of refund herein stands concluded by confirmation of demand, by Hon'ble Supreme Court in the case of SLP © No.8949--8950/2005 Order dated 30/03/2009. Thus, this Appeal have become in-fructuous. Accordingly, the same is dismissed.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

alp

प्रमाणित प्रति/Cerified True Copy
17/07/2017

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