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: 09/03/2017

To

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

Final Order No. A/70266/2017-EX[DB] dated 01/03/2017

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/989/2009	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		RATIONALE IRON & STEEL CO. JUHI KHURD, KANPUR.,,

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

VISHNU DUTT TRIVEDI
CONSULTANT
E-70, KRISHNA VIHAR,
AWAS VIKAS,
KALYANPUR, KANPUR U.P.

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/989/2009-EX[DB]

(Arising out of Order-in-Appeal No. 10-CE/APPL/KNP/2009 dated 14/01/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise, Kanpur Appellant

Vs.

M/s Rationale Iron & Steel Co. Respondent

Appearance:

Shri Pawan Kumar Singh, Superintendent, for Appellant
Shri Vishnu Dutt Trivedi, Consultant, forRespondent

CORAM:

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

Date of Hearing & Date of Decision : [illegible]2017

FINAL ORDER NO...70266/2017..........

Per: Anil G. Shakkarwar

The present appeal is filed by Revenue against Order-in-Appeal No. 10-CE/APPL/KNP/2009 dated 14/01/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. Brief facts of the case are that the respondents/M/s Rationale Iron & Steel Co. was engaged in manufacture of Machine Mincing and classified the same under Tariff Item No. 73239100 and claimed exemption from payment of

Central Excise duty under Notification No. 10/2006 dated 01/03/2006. It appeared to Revenue that the goods manufactured by the respondents were not eligible to be classified under Tariff Item No. 73239100 but were appropriately classifiable under Tariff Item No. 84385000 which covers "Machinery for the Industrial preparation or manufacture of food or drink." Therefore, respondents were issued with a Show Cause Notice dated 08/02/2008 wherein it was contented that the goods manufactured by the respondents were falling under Tariff Item No. 84385000 and were not eligible to be classified under Tariff Item No. 73239100 & CSH 732391 covered "Kitchen or other household articles and parts thereof", and further it was claimed that the respondents were not eligible for benefit of Notification No. 10/2006 dated 01/03/2006 and respondents were called upon to show cause as to why the Central Excise duty amounting to Rs.1,26,573/- + Education Cess of Rs.2,531/- should not be demanded and recovered from them under Section 11A of the Central Excise Act, 1944. The appellant contested the Show Cause Notice and stated that the goods manufactured by them were appropriately classifiable under Tariff Item No. 73239100. The said Show Cause Notice dated 08/02/2008 was adjudicated through Order-in-Original 50/Dem/ACK-III/2008 dated 25/11/2008, wherein the Original Authority did not appreciate the contention of the respondents and confirmed the demand amounting to Rs.1,26,573/- + Education Cess of Rs.2,531/- & imposed equal penalty under Rule 25 of Central Excise Rules, 2002 on M/s Rationale Iron & Steel Co. Aggrieved by the said Order-in-Original dated 25/11/2008 respondents preferred appeal before Commissioner (Appeals). The said appeal was decided through impugned Order-in-Appeal No. 10-CE/APPL/KNP/2009 dated 14/01/2009. The respondents/M/s Rationale Iron & Steel Co. contended before the ld. Commissioner (Appeals) that the goods manufactured by them were supplied exclusively in the Army Units consisting of 20 to 30 persons and the said Mincing Machine was a small kitchen gadget of specific design, specially developed by DGQA and the said goods were used exclusively in kitchen of Indian Army for mincing the meat for making Kababs etc. and that the machines were never seen in the market nor it ever been supplied into the market. The ld. Commissioner (Appeals) has examined the requirement of goods to be classified under Tariff Item No. 84385000 and held that the goods required to be classified under Tariff Item No. 84385000 should be of a kind of Machinery for the Industrial preparation or manufacture or drink and the goods supplied by respondents were for domestic consumption used in the kitchen of Indian Army and therefore they did not qualify to be classified under Tariff Item No. 84385000. The ld. Commissioner (Appeals) allowed the appeal filed by the respondents. Aggrieved by the said order Revenue has filed this appeal before this Tribunal.

3. The main ground ~~of~~ raised by Revenue is that the Mincing Machine for Meat is appropriately classifiable under Chapter 84.38 because it was provided on Page 1236 of Explanatory Notes, 1996 Volume 3 of World Customs Organization at Serial No. 6 under Heading (VII) that Meat Mincing Machine or dicing machines are specifically mentioned there and therefore the goods manufactured by respondents should be classified under Tariff Item No. 84385000.

4. Heard the ld. D. R. for Revenue who has presented the grounds of appeal.

5. Heard the ld. Consultant for Respondents who has submitted that the ld. Commissioner (Appeals) has passed a reasoned order in view of the fact that the goods supplied by respondents were small kitchen gadget of specific design used in the kitchen of Indian Army.

6. Having considered the rival contentions and on perusal of Page 1 of Show Cause Notice wherein at Para 3 of Show Cause Notice Tariff description of goods falling under Tariff Item No. 84385000 are stated as "Machinery for the industrial preparation or manufacture of food or drink" and on perusal of the contention of Revenue about the Explanatory Notes, we find the ground raised by Revenue are

not sustainable because the Explanatory Notes have no force of law and they are only for guidance whereas the finding of ld. Commissioner (Appeals) is on the basis of Central Excise Tariff Act, 1985 enacted by Indian Parliament. We, therefore, hold that the ground raised by Revenue are not sustainable. We, therefore, dismiss the appeal filed by Revenue. The respondents will be entitled to consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-	-Sd/-
(ANIL CHOUDHARY)	(ANIL G. SHAKKARWAR)
Member (JUDICIAL)	Member(TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy
14/03/2017
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001