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: 17/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70356-70357/2017-EX[DB] dated 06/03/2017

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/MISC/51478/2015	E/1128/2009	**Chadha Brass Ltd.** Compound Chadha Palace, Prince Road, MORADABAD UTTA R PRADESH 244001
2	E/MISC/51479/2015	E/1129/2009	**Shri I.s. Chadha, Executive Director Of** M/s Chadha Brass Ltd. Compound Chadha Palace, Prince Road MORADABAD UTTA R PRADESH 244001
			Name and Address of Respondent
3			C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-
4			C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

K. K. Anand, Advocate
A-103, DEFENCE COLONY,
NEW DELHI,
DELHI
110024

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
E/MISC/51478 & 51479/2015
APPEAL Nos.E/1128 & E/1129/2009-EX[DB]

(Arising out of Order-in-Original No. 61-75/COMMR/M-II/2008 dated 31/12/08 passed by Commissioner of Central Excise & Customs, Meerut-II)

M/s Chadha.Brass Ltd.,

Shri I.S. Chadha, Executive Director of — Appellants

Vs.

Commissioner of Central Excise & S.T., Meerut-ii — Respondent

Appearance:

Shri K.K. Anand, Advocate — for Appellants
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 06/03/2017
Date of Decision : 06/03/2017

FINAL ORDER NO. 70356 - 70357/2017

Per: Anil G. Shakkarwar

Above stated two appeals are directed against impugned Order-in-Original No. 61-75/COMMR/M-II/2008 dated 31/12/2008 passed by Commissioner of Central Excise & Customs, Meerut-II, therefore they are taken together for decision.

2. The brief facts of the case are that M/s Chadha Brass Ltd. (CBL) were engaged in the manufacture of Untrimmed and Trimmed Copper and Brass Sheets and

Circles. Through a show cause notice dated 01.08.1996 issued to CBL revenue contended that CBL controverting the provisions of Rule-9, 49, 52-A, 174, 173-B, 173-G, 173-F, 226, 173-Q (1) of Central Excise Rules, 1944, in as much as that they did not file declaration under Rule 173-B of said Rules in respect of untrimmed sheets, circles of Copper and Brass since the untrimmed sheets and circles are distinguished excisable goods which are further used for manufacture of trimmed sheets and circles and that untrimmed sheets and circles are covered by Tariff Heading No.74.09 of schedule to Central Excise Tariff Act, 1985 and were attracting tariff rate of 15% as the rate of duty. There was a proposal of demand of Central Excise duty of Rs.8,16,551/- on untrimmed sheets and circles of copper and brass used during the month of January, 1996 under Section 11A of Central Excise Act, 1944. There was another proposal of demand of duty of Rs.1,05,459/- on untrimmed sheets and circles without claiming exemption under Notification No. 67/95 dated 16.03.1995. Six such identical show cause notices were issued. A show cause notice for the period covering February, 96 and March 96 was dated 03.09.1996 where demand on first issue was Rs.14,24,096/- as second issue was Rs.2,54,716/-. For the period April, 96 to May, 96, a show cause notice dated 01.11.1996 was issued where demand on first issue was Rs.19,41,094/- and second issue was Rs.1,46,778/-. Demand for April, 96 to May, 1996 through a show cause notice was issued on 02.01.1997 wherein demand on first issue was Rs.8,75,365/- and that on second issue was Rs.1,71,176/-. Another show cause notice was issued on 30.01.1997 for the period July, 96 to Sept. 96 and the demand for first issue was Rs.51,23,572/- and demand for the second issue was Rs.10,27,890/-. Further demand for October, 96 to December, 96, was issued through show cause notice dated 22.04.1997 wherein demand on first issue was Rs.50,11,497/- and the same on the second issue was Rs.6,80,148/-. Above stated 6 show cause notices were adjudicated through Order-in-Original No. 1-6/MBD/2000 dated 27.04.2000. CBL had contested before the original authority the method of valuation wherein the demand was raised on the presumption that 100 Kg of untrimmed sheets shall result in 60 Kg of trimmed sheets. They further contended that since the goods were not sold in the market they did not meet the requirement of criteria of marketability and therefore, the goods did not qualify to be called manufactured goods in terms of Section 2 (f) of

Central Excise Act, 1944 and therefore the said goods did not attract Central Excise Duty. In respect of goods captively consumed i.e. untrimmed sheets and circles of copper and brass they claimed the benefit of exemption under Notification No.67/95-CE dated 16.03.1995 and further contended that Revenue did not discharge its obligation to prove that the said notification is not applicable to them. They further contended that the rate of duty taken into consideration in the show cause notices was tariff rate of 15% where as through Notification No. 134/94-CE dated 27.10.94 the effective rate of duty was Rs.2000/- per MT and therefore the show cause notice was bad in law. They also claimed benefit of small scale Notification under Notification No.1/93 dated 28.02.1993. The original authority found that in all the above stated six show cause notices put together quantity of trimmed sheets of copper cleared without payment of duty was 11289.3 Kg and that of brass was 418576.15kg. On that basis the original authority has arrived at quantity of untrimmed copper, sheets and circles manufactured to 14111.625kg and that of brass to 523220.18kg. In respect of Notification No.67/95 dated 16.03.1995 the original authority has held that undoubtedly the said Notification was admissible to CBL in respect of goods which were capitivelly consumed. Further, he has denied the benefit of Notification No.1/93-CE to CBL. Ultimately the original authority had confirmed the demand of Rs.81,02,312/- under Section 11A of Central Excise Act, 1944. Further, as held by the original authority at page 07, he has allowed the benefit of Notification No.67/95-CE dated 16.03.1995 to CBL and held that no duty was leviable on untrimmed sheets and circles going into manufacture of dutiable trimmed sheets of copper and brass, he confirmed demand of duty of untrimmed sheets and circles of copper and brass which were going into manufacture of trimmed sheets and circles of copper and brass which were exempted in view of Notification No.42/94-CE dated 01.03.1994 i.e. the Notification where goods were exempted if used in the manufacture of Utensils and Handicrafts. So out of the demand of Rs.1,75,78,742/-. The original authority confirmed the demand of Rs.81,02,312/- which was pertaining to demand on untrimmed sheets and circles of copper and brass used in the manufacture of trimmed circles and sheets used for further manufacture of utensils and handicrafts. CBL preferred appeal before learned Commissioner (Appeals). CBL has contested before the learned Commissioner (Appeals) that this Tribunal in the case of M/s Lohia Sheet Products Vs CCE decided through Final Order No. 640-641/99-C dated 14.07.99 that no duty shall be chargeable on untrimmed sheets and circles since they were not marketable. They further contended that the original authority had erred in holding that untrimmed sheets were liable to duty at tariff rate of 15% addable and were not entitled to applicable rate of duty of Rs.2000/- per MT under Notification No.134/94-CE dated 27.10.1994. The said appeal was decided through Order-in-Appeal No.252-CE/MRT-2000 dated 29.08.2002. Learned Commissioner (Appeals) has held that the plea taken by the appellant that untrimmed sheets and circles of copper and brass are not marketable is not correct and he held that untrimmed sheets and circles of copper and brass were liable to appropriate duty of excise. He has further held that there was no controversy in the said appeal with regard the payment of duty under exemption of Notification No.67/95 dated 16.03.1995 in respect of untrimmed sheets and circles of copper and brass. He has further held that the issue to be decided in the appeal was duty on untrimmed sheets and circles of brass and copper going into the manufacture of

Handicrafts and Utensils and the appropriate rate of duty of excise on such untrimmed sheets and circles. He has held that for availing the benefit under Notification No. 134/94-CE dated 27.10.94 and 8/96-CE dated 23.07.96 (sl.no.74.5) duty payable on such untrimmed sheets and circles of copper and brass was Rs.2000/- per MT up to 22.07.96 and Rs. 2500/-per MT from 23.07.1996 to December 96 and only condition in the said notifications was that no modvate credit under Rules 57-A, 57-Q should have been taken and further held that since the final product that is trimmed sheets and circles of copper and brass going into manufacture of Utensils and Handicrafts were attracting nil rate of duty the question of availment of modvate credit on inputs going into manufacture of such goods which are ultimately cleared at nil rate of duty does not arise at all and therefore he has held that the appellants were liable to pay Central Excise Duty @ Rs.2000/- per MT on untrimmed sheets and circles of copper and brass and going into the manufacture of Utensils and Handicrafts for the period from 01.01.1996 to 02.07.1996 and @ Rs.2500/- per MT during the period from 23.07.1996 to 31.12.1996 and further held that CBL was required to pay Central Excise Duty of Rs.12,52,151/- in respect of all the goods covered by all the above stated 6 show cause notices put together. The said Order-in-Appeal dated 29.08.2002 was challenged by both CBL and revenue. The appeal preferred by CBL was decided through Final Order No.60/03-B dated 22.01.2003. This Tribunal through the said Final Order has held that it was not going in the issue of none marketability of untrimmed circles and remanded the matter back to the adjudicating authority who had decided the issue of granting exemption under Notification No. 1/93-CE as claimed by CBL. The appeal preferred by revenue was decided through the final Order No.210-211/02-B dated 25.03.2003 wherein this Tribunal has held that the matter has already been remanded to the original authority and original authority was further directed to examine the question regarding admissibility of Notification No.134/94-CE and Notification No.8/96-CE dated 23.07.1996.

3. In the mean time the manufacturing unit of the CBL was once again inspected by officers of Central Excise on 22.10.2002. On the basis of investigation CBL was issued with a show cause notice dated 03.07.2003. The said show cause notice was issued by invoking provisions under proviso to sub Section (1) of Section 11A of Central Excise Act, 1944. It was contended by

revenue that since waste and scrap attracting nil rate of duty was emerging during the manufacture of trimmed sheets out of untrimmed sheets therefore, benefit of Notification No. 67/95-CE dated 16.03.1995 was not admissible to CBL for the goods going into manufacture of trimmed sheets on which appropriate duty of Central Excise was being paid. Therefore, through the said show cause notice Central Excise Duty of Rs.2,17,49,098/- was demanded under proviso to Sub-section 1 of Section 11A of Central Excise Act, 1944. Further, 08 such similar show cause notices were issued on 30.04.2004, 07.03.2005, 30.06.2005. 31.01.2006, 30.10.2006, 20.04.2007, 23.10.2007, 18.03.2008 demanding respectively Central Excise Duty of Rs.29,39,145/-, 5,99,505/-, 10,07,253/-, 18,16,173/-, 30,90,939/-, 22,97,959/-, 18,20,416/-, 16,50,250/-. Further, in show cause notices dated 23.10.2007 and 18.03.2008 there was a proposal to imposed personal penalty on Shri I.S. Chadha under Rule 26 of Central Excise Rules, 2002.

4. Learned Commissioner of Central Excise, Meerut-II has clubbed above stated 09 show cause notices issued from 03.07.2003 to 18.03.2008 and further clubbed the earlier show cause notices dated 01.08.1996 to 22.04.1997 which was remanded by this Tribunal and

passed a common order through Order-in-Original dated 31.12.2008 in respect of admissibility of Notification No. 1/93-CE dated 28.02.1993. The original authority has held that since CBL had not claimed the said benefit at the beginning the question of granting them such benefir under such Notification at this stage is not in the interest of justice and denied the benefit of Notification No.1/93-CE to CBL. Further, in respect of Notification No. 134/94-CE dated 27.10.94 and 8/96-CE dated 23.07.96 the original authority has held that the appellant had availed a credit of Rs.89,698/- under Rule 57-Q and Rs.37,11,385/- under Rule 57-A during the period from January, 96 to December, 96 and therefore they have violated the condition for the availment of Notification No. 134/94-CE and 8/96-CE and therefore the benefit of the above stated two Notifications were not admissible to CBL. He, further held that Notification No. 67/95-CE dated 16.03.95 was amended vide Notification No.31/2001-CE dated 01.06.2001 which clarified that the exemption was also available to the goods which were consumed within the factory production for manufactured of dutiable and exempted final products provided such manufacturer discharges the obligation prescribed in Rule 6 of Cenvat Credit Rules, 2004 and since CBL had not discharged any such obligation at any stage, therefore, CBL was not entitled for the benefit of Notification No.67/95-CE at the stage of untrimmed sheets and circles and ultimately confirmed the demand raised in 06+09 show cause notices i.e. Rs.1,75,78,342/- and Rs.3,71,87,614/- and imposed penalty of Rs.5,47,65,956/- under Rule 173-Q of Central Excise Rules, 1944 and Rule 25 of Central Excise Rules, 2002. He imposed personal penalty of Rs.25 Lakhs on Shri I.S. Chadha under Rule 26 of Central Excise Rules, 2002. Aggrieved by the said Order-in-Original both appellants have filed appeal before this Tribunal.

5. The grounds of appeal inter-alia include as follows:-

i) The show cause notice dated 03.07.2003 invoking extended period of limitation was issued in valuation of existing provisions of Law.

ii) In respect of Notification No. 1/93 dated 28.02.1993 appellant submitted that they had claimed the said benefits in the declaration filed in Rule 173-B in the year 93-95 and in again in the year 96-97. The Original Authority has ignored the orders of this Tribunal.

iii) The original authority has erred in confirming demand of Rs.1,75,78,742/- in respect of first 06 show cause notices which were remanded by this Tribunal and that the original authority in remand proceedings could not have imposed penalty when no penalties were imposed in the original proceedings and therefore the entire impugned order has travelled beyond term of reference of remand. In the remand proceedings the Commissioner could not have taken up the issue of duty which was already dropped in the earlier proceeding and, secondly was legally obliged to pass orders within the parameters of the directions of the Tribunal directed in the remand order and that the action of the original authority in confirming the duty demand in respect of remanded matter, when original and appellate authority has not confirmed the demand, such order is bad in law.

6. Heard the learned counsel for appellant. He has submitted that the second set of 09 show cause notices were issued without authority of law. Since, the original authority through its order-in-Original dated 27.04.2000 had already decided the admissibility of Notification No.67/95-CE dated 16.03.1995 in respect of untrimmed sheets and circles of copper and brass which were used in the manufacture of trimmed products on which duty

was being paid and that when the matter was already settled and the department has not contested on such findings to issue show cause notice denying the benefit of Notification No.67/95 through such 09 show cause notices dated 03.07.2003 to 17.03.2008 was without authority of law and further that show cause notice dated 03.07.2003 was issued invoking the extended period even when the matter was within the knowledge of authorities at the appellate stage and therefore, such show cause notices were not tenable in law in view of the Ruling of the Hon'ble Supreme Court in the case of M/s Nigam Sugar factory Vs Commissioner of Central Excise, reported at 2006 (197) ELT 465 (SC). He has further relied on the ruling of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Jaipur Vs Mewar Bartan Nirman Udyog reported at 2008 (231) ELT 27 (SC). He has submitted that Hon'ble Supreme Court has clarified the provisions of law in respect of exemption of goods such as trimmed and untrimmed sheets and circles of copper and brass as provided in Notification No.3/2001-CE dated 01.03.2001. He further contended that the Hon'ble Supreme Court through the said ruling has clarified that copper and brass are two different identifiable commodities and it has been provided in said notification that trimmed and untrimmed sheets and circles of metal other than copper are fully exempted through the said Notification No.139/2001-CE dated 01.03.2001 and that trimmed or untrimmed sheets and circles of copper are attracting duty of Rs.3500/-per MT provided that Cenvat credit is not availed by them. He has further submitted that over the period through the various Notifications which paramateria are the same, such provisions existed for assessment of Central Excise Duty on trimmed and untrimmed sheets and circles of copper and brass. He, further submitted that Notification No. 134/94-CE dated 27.10.1994 was paramateria same for subsequent period as that was provided through Notification No.5/99-CE dated 28.02.99, 6/2000-CE dated 01.03.2000, 3/2001-CE dated 01.03.2001, 6/2002-CE dated 01.03.2002 and 5/2006-CE dated 01.03.2006. He has further submitted that all throughout the provisions in such Notifications were same as were clarified ~~classified~~ by the Hon'ble Supreme Court through the Ruling in the case of Commissioner of Central Excise Vs Mewar Bartan Nirman Udyog (supra). He has further contended that as clarified by Hon'ble Supreme Court in the said ruling only such untrimmed circles and sheets of copper attracted Central Excise

Duty which was not further used in the manufacture of dutiable final products. Further, he has pointed out that as per the Order-in-Original dated 27.04.2000 the quantity of untrimmed sheets and circles of copper which could have subjected to Central Excise Duty of Rs.2000/- per MT was 14111.625 kg in all the show cause notices put together. The said quantity of 14111.625 kg untrimmed copper sheets would have attracting duty @ Rs.2000/- per MT and such duty works out to around Rs.30,000/- where as they have debited duty of Rs.17,49,185/-.

7. Heard the learned A.R., who has supported the impugned order-in-Original.

8. Having considered the rival contentions and after having gone through the ruling of Hon'ble Supreme Court in the case of Nigam Sugar Factory (supra) and in the case of M/s Mewar Bartan Nirman Udyog (supra) we find that the show cause notices dated 03.07.2003 onwords up to 17.03.2008 are not tenable in law because the Department has referred the issue of admissibility of Notification No. 67/95-CE by CBL when the original authority had decided the matter in favour of CBL through the Order in Original dated 27.04.2000 which

was not challenged by revenue. In respect of 06 show cause notices which were remanded back by this Tribunal to the Original authority and were adjudicated by Commissioner, we find that during the remand order this Tribunal did not have the benefit of ruling of Hon'ble Supreme Court in the case of Mewar Bartan Nirman Udyog (supra) and since now, we have the benefit of said ruling, and we examined the said issue with respect to the rulings of Hon'ble Supreme Court in the case of Mewar Bartan Nirman Udyog and we find that in first 06 show cause notices dated 01.08.1996 to 22.07.1997 that only 14111.625 Kg of untrimmed copper sheets attracted Central Excise Duty @ Rs.2000/- per MT for the period from January, 1996 to July, 1996 and attracted duty @ Rs.3500/- per MT from August, 1996 to December, 1996 and the entire amount of duty that could have been confirmed was Rs.36,844/-. We therefore, modify the Order-in-Original to the extent that duty of Rs.36,844/- is confirmed and appellant is directed to pay interest on the same. The duty of Rs.17,49,185/- and Rs.89,698/- already paid to be taken into consideration for refund of excess duty paid after taking into consideration the interest that is liable to be paid. The remaining part of the impugned Order-in-Original dated 31.12.2008 is set aside. We wave the penalty imposed on the appellant and personal penalty on the other appellants. The appellant shall be entitled for consequential relief, as admissible under law. Miscellaneous Application Nos. E/MISC/51478 & 51479/2015 are dismissed, since they were filed for extension of stay and have become in fructuous.

9. Accordingly, Appeal No. E/1128/2009 is allowed partially & Appeal No. E/1129/2009 is allowed.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति / Certified True Copy
28/04/2017
सहायक ... / Asstt. Registrar
सीमाशुल्क, ... एवं सेवा कर
अपील ... / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001