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: 29/03/2017

To

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

Final Order No. A/70314/2017-SM[BR] dated 17/02/2017

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/1188/2008	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		MUKUND LIMITED 904/754, CIVIL LINES,VIP ROAD, FATEHPUR-212601.,,

Copy To

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

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

Asstt. Registrar

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

Appeal No.E/1188/2008-EX[SM]
with
CROSS Application No.E/CROSS/262/2008

Arising out of Order-in-Appeal No.108-CE/APPL/KNP/2008 dated 29.02.2008 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

Commissioner of Central Excise, Kanpur

...APPELLANT(S)

VERSUS

M/s Mukund Limited

...RESPONDENT (S)

APPEARANCE

Shri S.K. Singh, Deputy Commr. (AR) for the Department (s)
None for the Assessee (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 17.02.2017

FINAL ORDER NO.-70314 /2017

Per Mr. Anil Choudhary :

The issue in this appeal by Revenue is, whether the respondent-assessee, who have supplied goods (duty paid diesel) to the contractor for construction and strengthening of existing two-lane section on NH-2 in Uttar Pradesh, under third National Highway- World Bank Project (an International Organization of UN) had procured and supplied diesel-HSD, as duty free diesel was not available from the warehouse of IOC due to Notification No.17/2004-CE (withdrawal of duty-free warehousing facility) is entitled to refund under Notification No.108/95-CE dated 28.08.1995 as held by learned Commissioner (Appeals).

2. The admitted facts in the appeal are that as per contract agreement dated 12.03.2001 between National Highways Authority of India

(Ministry of Road Transport & Highways) and M/s Controdorstory, Kyzetsky Most, 19, Moscow – 103031, Russia, the work of four laning and strengthing of existing two lane section on NH2 (Construction Package-II-C) in Uttar Pradesh under Third National Highway world Bank Project was entrusted to M/s Controdorstory, Russia and the appellant was appointed by M/s Controdorstory, Russia as their identified supplier for supply of input materials, incidental to the execution of the project. In terms of Notfn. No.108/95, the Certificate (for duty free procurent) dated 26.08.2002 was issued by National Highways Authority of India (NHAI) and countersigned by Director General (Road Div.) & Special Secretary, Ministry of Road Transport & Highways, Govt. of India. The appellant had been appointed by M/s Controdonstory, Russia as their approved supplier for the materials and had purchased 5000 KL of Diesel for execution of Project, and Govt. of India had duly approved the said project. The Govt. of India vide Notfn. No.17/2004-CE(NT) dated 04.09.2004 had withdrawn facility of removal of Diesel (HSD) from the factory of production to a warehouse or from one warehouse to another warehouse without payment of duty. Due to logistic reasons, the appellant had to purchase 1148 KL and 516 KL of Diesel meant for completion of said project on payment of Central Excise duty amounting to Rs.17,86,782/- and Rs.17,81,902/- from IOC Ltd., Panki Terminal, Kanpur which was otherwise exempt from whole of duty of Excise by virtue of Notfn. No.108/95-CE dated 28.08.1995. Accordingly, the appellants had filed the refund claims on such purchase of 1148 KL and 576 KL of Diesel. On 12.09.2005 and 25.09.2006 for refund of

Central Excise duty amounting to Rs.17,86,782/- & Rs.17,81,902/- paid on purchase of said quantities of Diesel (HSD) from IOC, Panki Terminal.

3. The National Highway Authority of India, Ministry of Transport and Highways had issued a certificate dated 07.08.2002 for procurement of 5,000 KL diesel from IOC without payment of Central Excise duty. The adjudicating authority issued show-cause-notice on the ground that it is not understood, as to why the respondent started procuring the said goods after 30.09.2004 on payment of duty, that is after issue of Notification No.17/2004-CE(NT). Further, the respondent did not produce any evidence, document or otherwise, which could give any evidence that they have not collected the duty element from the principal. Thus, two separate show-cause-notices were issued for the two refund claims and the same were adjudicated vide common O-I-O dated 17.10.2007 and the refund claim was rejected. Being aggrieved, the appellant preferred appeal before Ld. Commissioner (Appeals).

4. The grounds urged before the learned Commissioner (Appeals) were that the rejection is bad as the adjudicating Authority have travelled beyond the scope of show-was-notice. Further, it was urged that refund is available to an eligible purchaser as per the provisions of Section 11B read with explanation clause (e) thus, the contention of the Assistant Commissioner, was urged is fallacious in that the respondent is not entitled to refund. Further, it is urged that IOC, Panki, Kanpur have clarified the payment of Excise duty on the goods purchased from their records and further that the element of

which have not been passed over to the contractor or any other person as per affidavits and declarations made by the principal contractor and thus, there is no unjust enrichment, and the goods having suffered the duty of excise, the appellant being the ultimate customer/consumer, is established from the exemption certificates, granted to the respondent. Further urged that the respondent had tendered the exemption certificate issued by the competent Authority before procurement of the goods to the IOC Authority, who had accepted it. But, as IOC was unable to supply duty free diesel due to issue of Notfn No.17/2004-CE, the benefit of exemption under section 108/95-CE could not be denied by denying the refund. It was further urged that the respondent is the ultimate consumer of the said goods in relation to the execution of the said World Bank Project.

5. The learned Commissioner (Aappeals) was pleased to allow the appeal appreciating that in view of the subsequent Notification No.17/2004-CE, the respondent had to procure duty paid petroleum products/diesel in spite of being in possession of the exemption certificate as required under Notification 108/95 and further found that the appellant had regarding consumption of diesel procured, for use in specified project and non-passing of duty incidence had produced affidavit, declaration of principal contractor duty supported by a certificate issued by the Chartered Accountant to this effect to prove their bona fides. Accordingly, the learned Commissioner was pleased to allow the appeal holding that the refund could not be rejected for trivial grounds of some alleged procedural irregularity.

6. Heard learned AR for Revenue, who has relied on the Order-in-Original and also forcefully urged the grounds of appeal. Reiterating the grounds of appeal he states the Commissioner (Appeals) have erred in allowing the exemption under Notification No.108/95-CE to a buyer of duty paid goods for supply of the same to a project funded by the UN or an International Organization and approved by the Government of India, whereas, the said exemption notification is meant only for the manufacturers of goods, supplying the same to a project funded by the UN or an International Operation and approved by the Government of India. Further, as per the terms of the said notification, the manufacture of goods should submit before the clearance of the goods, to the jurisdictional authority, certificate from the competent authorities as per the said notification to the effect that the goods are required for the execution of a project funded and approved accordingly. The supplier of the goods, respondent-assessee to the project, not being a manufacturer, purchased duty paid goods and supplied the same for such project and filed refund claim later on for refund of duty paid on the said goods, on the ground that no duty was payable, the refund is rightly rejected by the Assistant Commissioner, as nobody except a manufacturer could be treated as entitled to the benefit of exemption Notification No.108/95-CE.

7. The respondent-assessee is absent in spite of notice. I also find that the respondent was absent on the earlier three dates also and accordingly the appeal is taken up for disposal ex parte.

8. Considered the contentions of learned AR and perused the records. I find that the Revenue is not disputing the eligibility of removal of goods without duty to the road construction project which have been financed by World Bank, a unit of United Nations and further Revenue is also not disputing the eligibility of supply of duty-free goods to the project in question. The only dispute being raised is that it is the manufacturer only, who is entitled to exemption under Notification No.108/95-CE and not the buyer of the goods and/or the contractor. I find that Revenue have failed to read the scheme of the Central Excise Act as a whole and accordingly have reached to erroneous conclusion. The learned Commissioner (Aappeals) have rightly held that under Section 11AB read with explanation clause (e) read with Notification No.108/95-CE read with Notification No.17/2004-CE, the respondent-assessee is rightly eligible for refund of duty paid in the facts and circumstances. Accordingly, there is no merit in the appeal of Revenue. The appeal of Revenue is dismissed. The cross objection by the respondent-assessee stands allowed for statistical purposes. The respondent/assessee will be entitled to consequential benefits, if any.

(Dictated and Pronounced in the open Court)

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

Mishra

प्रमाणित प्रति / Certified True Copy
03/04/2017
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