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: 17/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70174/2017-SM[BR] dated 13/02/2017

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/1224/2008	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		APRICOT (INDIA) Kala Ka Tal, Agra,,

Copy T0;

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/1224/2008-EX[SM]

Arising out of Order-in-Appeal No.162-CE/APPL/KNP/2008 dated 31.03.2008 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

Commissioner of Central Excise, Kanpur

...APPELLANT(S)

VERSUS

M/s Apricot (India)

...RESPONDENT (S)

APPEARANCE

Shri D.K. Deb, Asstt. Commr., (AR) for the Department (s)
Absent for the Assessee (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 13.02.2017

FINAL ORDER NO.- 70174 /2017

Per Mr. Anil Choudhary :

The issue in this appeal is whether the Learned Commissioner(Appeals) have rightly deleted the penalty imposed under Section 11 AC of the Act.

2. The admitted facts are that the Department detected that the assessee (respondent herein), a declarant unit, were availing SSI exemption in respect of their own goods and simultaneously were manufacturing and clearing branded goods of another person without payment of Central Excise duty. On being so pointed out by the Revenue of the irregularity in availing the Central Excise exemption - SSI benefit, the respondent admitted their lapse and debited the duty involved voluntarily, before issue of show-cause notice. This is the third round of litigation. In the earlier round, this Tribunal vide Final Order No.591/2007-SM(BR) dated 06.03.2007

had observed that the Commissioner (Appeals) have set-aside penalty on the ground that duty was paid before the issue of show-cause-notice and the case is covered by the decision of this Tribunal in the case of Rashtriya Ispat Nigam Ltd. Vs. CCE, Vishakapatnam 2003(161) ELT 285 (Tri.-Bangalore). It was also observed that the Hon'ble Punjab and Haryana High Court in the case of CCE, Delhi-III Vs. Machino Montell India Ltd. 2006(202)ELT 398 overruled the decision of the Larger Bench of the Tribunal in the case of CCE Vs. Machino Montell India Ltd. on the same issue. The case was remanded back to the Ld. Commissioner (Appeals) with the directions to decide the matter afresh in the light of the decision of the Hon'ble Punjab and Haryana High Court in Machino Montell.

3. The Ld. Commissioner (Appeals) observed that the ruling of this Tribunal in the case of Rashtriya Ispat Nigam Ltd. (*supra*) had been appealed against by Revenue before Hon'ble Supreme Court and the said appeal had been dismissed. Thus, upholding the order of this Tribunal that penalty is not impossible in cases where duty have been paid before issue of the show-cause-notice. The learned Commissioner have also recorded, this judgement of the Apex Court in RINL have been followed by Karnataka High Court in Shree Krishna Pipe Industries 2004(165) ELT 507(T). Learned Commissioner also observed, the Bombay High Court in the case of Gaurav Mercantile Ltd. 2005(190) ELT 11 (Bombay), wherein it was held that no penalty is impossible even in cases where goods have been seized in transit and where attempted clandestinely removal established, provided that duty has been paid before the issue of show-cause-notice.

4. Aggrieved by the Order, Revenue is in appeal before this Tribunal on the ground that had the irregularity not been detected by the Department, the assessee would have happily continued to evade payment of Excise duty and misused the benefit of the SSI exemption. The learned AR for Revenue have relied upon the grounds of appeal.

5. The assessee is absent in spite of notice. Accordingly, it is decided to hear the ex-parte in absence of the respondent-assessee.

6. Having considered contentions of Revenue and on perusal of records, I find that there is no allegation of any contumacious conduct or deliberate defiance of the provisions of law on the part of the respondent-assessee, in availing the SSI exemption. Accordingly, I hold that the Ld. Commissioner (Appeals) is correct in deleting the penalty under Section 11 AC of the Act holding that there is no case of deliberate defiance of law and further the assessee have paid the tax on being so pointed out by the Revenue. Accordingly, this appeal by Revenue is dismissed.

(Dictated and Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
22/02/17
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

Mishra