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: 16/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70479/2017-EX[DB] dated 08/05/2017

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
	E/1247/2009	**Sampark Industries Ltd** P-2/5,sie-iv,upside Indl. Area GREATER NOIDA UP

Name and Address of Respondent

C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

STUTI SAGGI (AMICUS CURIAE), ADVOCATE
102,MAHALAXMI ENCLAVE,STANLEY ROAD,CIVIL LINE,ALLAHABAD,UTTAR PRADESH

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/1247/2009-EX[DB]

(Arising out of Order-in-Appeal No. 3/CE/Noida/2008 dated 14/01/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II (Noida))

M/s Sampark Industries Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Noida **Respondent**

Appearance:

Ms. Stuti Saggi (Amicus Curiae), Advocate, for Appellant
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 & Date of Decision : 08/05/2017

FINAL ORDER NO....70479/2017........

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant - M/s Sampark Industries Ltd. against Order-in-Appeal No. 3/CE/Noida/2008 dated 14/01/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II (Noida).

2. The brief facts of the case are that the appellant - M/s Sampark Industries Ltd. were engaged in the manufacture of CPP Films, Metalized/Coated/embossed BOPP Films. It was held by Hon'ble Supreme Court in the case of Metlex (I) Pvt.

Ltd. *Verus* Commissioner of Central, New Delhi reported at 2004 (165) E.L.T. 129 (S.C.) that metalizing does not amount to manufacture. During the period from June, 2005 to February, 2006, the appellant manufactured Metalized Polyester/BOPP Films. It appeared to Revenue since CPP Films were dutiable, in view of the proviso to Notification No.89/1995-CE dated 18/05/1995 Waste & Scrap arising out of the production of Metalized Polyester/BOPP Films was not exempted from levy of Central Excise duty and therefore, appellants were issued with a Show Cause Notice dated 15/11/2007 to show cause as to why Central Excise duty of Rs.1,82,369/- should not be demanded from the appellants. The said Show Cause Notice dated 15/11/2007 was adjudicated through Order-in-Original No. 05/AC/N-V/2008 dated 25/08/2008. The Original Authority confirmed the demand and imposed penalty of equal amount of Rs.1,82,369/- under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. The appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 3/CE/Noida/2008 dated 14/01/2009, wherein the ld. Commissioner (Appeals) upheld the confirmation of demand but reduced the penalty from Rs.1,82,369/- to Rs.40,000/-. Aggrieved by the said Order-in-Appeal dated 14/01/2009, appellant preferred appeal before this Tribunal.

3. One of the grounds raised by the appellant is that the process of metallization was carried on duty paid plastic films and the credit of duty paid on said plastic films was not availed. Therefore, the Waste & Scrap arising does not attract any duty.

4. Heard Ms. Stuti Saggi, ld. Counsel who was appointed as Amicus Curiae. She has presented the appeal and urged that since the Waste & Scrap arising was only remaining part of the duty paid goods the same does not attract duty.

5. Heard the ld. D. R. who has supported the impugned Order-in-Appeal.

6. Having considered the rival contentions and on perusal of the facts on record, we find that the ground raised by the appellant that the metallization process was carried on duty paid plastic films is very vital. However, in the entire proceedings it is not coming through whether the raw material on which metallization was carried out was duty paid or not except in the said ground. Therefore, we find it appropriate to remand this matter back to the Original Authority with a direction to verify whether the process of metallization was carried out on the duty paid plastic films and on verification, if it is found that metallization was carried on duty paid plastic films, then the Waste & Scrap on which duty was demanded was only the remaining part of the duty paid goods and the same does not attract duty and may accordingly drop the proceedings. With the above directions,

we remand the matter back to the Original Authority by setting aside the impugned Order-in-Appeal & Order-in-Original. The appeal is allowed by way of remand. We appreciate the assistance rendered by Ms. Stuti Saggi (Amicus Curiae), Advocate.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
23\05\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