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: 09/06/2017

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

Final Order No. A/70539/2017-EX[DB] dated 17/05/2017

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
1	E/1348/2011	**ESCORTS LTD.,** FARMTRAC, DIVISION, PLOT NO. 2&3, SECTOR-13, FARIDABAD (HARYANA)
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

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

SH.ATUL GUPTA, (ADVOCATE)
ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

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. 1

APPEAL No. E/1348/2011-EX[DB]

(Arising out of Order-in-Original No. 30/COMMR/NOIDA/2010-11 dated 25/03/2011 passed by Commissioner of Central Excise, Noida)

M/s Escorts Ltd. Appellant

Vs.

Commissioner of Central Excise, Noida Respondent

Appearance:

Shri Atul Gupta, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR). for Respondent

CORAM:

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

Date of Hearing : 17/05/2017
Date of Decision : 17/05/2017

FINAL ORDER NO. 70539/2017

Per: Anil Choudhary

The present appeal is preferred against Order-in-Original No. 30/COMMR/NOIDA/2010-11 dated 25/03/2011 passed by Commissioner of Central Excise, Noida.

2. The job-worker of the appellant, M/s Harig Crankhafts Ltd. (HCL) was served with a show cause notice dated 07.08.2009. The said show cause notice had a proposal for demanding Central Excise Duty of Rs.5,44,44,178/- and Rs.1,73,605/- under Section 11A of Central Excise Act, 1944 along with interest from M/s HCL. It further had a proposal for

impose penalty on M/s. HCL under Section 11AC of the Central Excise Act, 1944. The show cause notice also had a proposal to impose penalty on the appellant under Rule 26 of the Central Excise Rules, 2002. The said show cause notice was adjudicated through Order-in-Original dated 25.03.2011, wherein the Original Authority confirmed the demand to the extent of Rs.1,94,65,496/- along with interest against M/s HCL under the proviso to Section 11A (1) of Central Excise Act, 1944 and dropped the demand of Rs.3,49,78,682/-. Further, demand of Rs.1,49,535/- along with interest was confirmed against M/s HCL ~~on~~ for goods found short in the stock verification. Further, penalty of Rs.1,96,15,031/- was imposed upon M/s HCL under Section 11AC of Central Excise Act. The Order-in-Original also imposed penalty of Rs.25,00,000/- on the appellant under Rule 26 of the Central Excise Rules, 2002. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for the appellant, who has taken us through the impugned show cause notice, Order-in-Original and provision of Rule 26 of the Act.

4. Heard the learned A.R. for Revenue who has supported the impugned Order-in-Original.

5. Having considered the rival contentions, we find that the penalty under Rule 26 of the Central Excise Rules, 2002 can be imposed on a person who deals with the excisable goods liable for confiscation. We find from the impugned show cause notice that there was no proposal for confiscation of any goods. Therefore, it is clear that there were no goods, which were liable for confiscation. It is also clear that when the goods were not liable for confiscation, the appellant has not dealt with any goods which

were liable for confiscation. Therefore, the appellant was not liable for imposition of penalty under Rule 26 of the Central Excise Rules, 2002.

6. We, therefore, modify the impugned Order-in-Original to the extent that penalty on the appellant is set aside. Accordingly, the appeal is allowed.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Certified True Copy
14/06/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद
38, M. G. MARG