

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
 38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
 Regional Branch, Allahabad

Dated: 08/06/2017

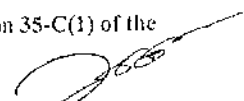
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70532-70536/2017-EX|DB| dated 16/05/2017

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/1527/2010	C.C.E, MEERUT-I Excise Chowk, Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
2	E/1528/2010	C.C.E, MEERUT-I Excise Chowk, Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
3	E/1529/2010	C.C.E, MEERUT-I Excise Chowk, Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
4	E/1530/2010	C.C.E, MEERUT-I Excise Chowk, Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
5	E/1531/2010	C.C.E, MEERUT-I Excise Chowk, Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
		Name and Address of Respondent
6		SHRI SANJAY SHARMA, PARTNER OF M/S TIRUPATI AGENCIES, P.L.SHARMA ROAD, MEERUT. ,,
7		KARNWAL LIME CHEM (INIDA) PVT. LTD. 7TH KM STONE, CHANDPUR- DATTAYANA ROAD, CHANDPUR, DISTRICT- BIJNOR. (U.P)

8

SHRI DARSHAN KUMAR
JAIN, (PROP) OF
M/S RUBBER CHEMICAL
UDYOG, S-151, INDUSTRIAL
AREA, JALANDHAR.,,

9

SMT. KUSUM SINGLA,
(PROP) OF
M/S KUSUM CHEMICALS
(UNIT-II), HOTEL AMALTAS,
NEAR GURUDWARA,
LUDHIANA. ,,

10

SHRI VIKAS KARNWAL,
DIRECTOR OF
M/S KARNWAL LIME CHEM
(INDIA) PVT. LTD., 7TH KM
STONE, CHANDPUR-
DATTAYANA ROAD,
CHANDPUR, DISTRICT-
BIJNOR. ,,

Other Appellants and Respondents as per Annexure

Copy To

11 Advocate(s) / Consultant(s):

Rishi & Associates
60 - VILVESHWARPURI,
BEHIND SADAR THANA,
MEERUT CANTT,
UTTAR PRADESH

12 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

19 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

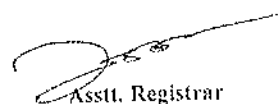
20 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

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

22 C.D.R.

23 Office Copy

24 ~~Guard File~~


Asstt. Registrar

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No. E/1527, 1528, 1529, 1530 & 1531/2010-EX[DB]

(Arising out of Order-in-Appeal No. 220-CE/MRT-I/2009-10 dated 25/02/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

Commissioner of Central Excise, Meerut-I

Appellant

Vs.

M/s Karnwal Lime Chem (India) Pvt. Ltd.,

Shri Vikas Karnwal, Director of,

Shri Darshan Kuman Jain, (Proprietor) of,

Smt. Kusum Singla, (Proprietor) of &

Shri Sanjay Sharma, Partner of

Respondent

Appearance:

Shri Mohammad Altaf, Assistant Commissioner (AR), for Appellant

Shri R. K. Rishi, Advocate (In Appeal Nos. E/1527, 1528 & 1529/2010)
for Respondent

CORAM:

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

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

Date of Hearing & Date of Decision : 16/05/2017

FINAL ORDER NO. 70532-70536/2017

Per: Anil G. Shakkarwar



The above stated five appeals filed by Revenue are arising out of common impugned Order-in-Appeal No. 220-CE/MRT-I/2009-10 dated 25/02/2010. Therefore, these are taken together for decision.

2. The brief facts of the case are that the respondents were manufacturers of Calcium Carbonate. On investigation, it

6

appeared that the respondents were clearing Calcium Carbonate manufactured/cleared in the garb of Hydrated Lime/Calcite Powder. Therefore, they were issued with a Show Cause Notice dated 31/03/2005 demanding differential Central Excise duty amounting to Rs.33,65,475/- for the period from April, 2000 to September, 2004. Further, there was a proposal to impose a personal penalty on Shri Vikas Karnwal - Director, Shri Darshan Kumar Jain - Proprietor, Smt. Kusum Singla - Proprietor, Shri Sanjay Sharma - Partner under Rule 209A of Central Excise Rules, 1944 read with Rule 26 of the Central Excise Rules, 2001/2002. Subsequently, another Show Cause Notice on the same line was issued on 03/11/2005 demanding Central Excise duty amounting to Rs.2,12,813/- for the subsequent period i.e. October, 2004 to March, 2005. The said Show Cause Notices were adjudicated through common Order-in-Original No. 35-36/ADC/2006 dated 31/10/2006 wherein the Central Excise duty demanded through above stated two Show Cause Notices was confirmed and equal amount of penalty imposed on the respondent. Further, personal penalty of Rs.1,00,000/- was imposed on Shri Vikas Karnwal - Director and personal penalty of Rs.20,000/- was imposed on each Shri Darshan Kumar Jain, Proprietor, Smt. Kusum Singla, Proprietor & Shri Sanjay Sharma, Partner. Aggrieved by the said order respondents has preferred appeal before Commissioner (Appeals). The Id. Commissioner (Appeals)

1

decided the appeal through Order-in-Appeal No. 166-169-CE/MRT-I/2007 dated 24/08/2007 on the basis of submissions made by the respondents that in 13 statements it was stated by the said dealers that they had purchased Calcium Carbonate, Hydrated Lime & Calcite Powder from the dealer of the respondents. Therefore, the Id. Commissioner (Appeals) remanded the matter back to the Adjudicating Authority for De-novo Adjudication. The respondents presented their assessments before the Original Authority once again. Satisfied by the submissions of the respondents the Original Authority through Order-in-Original No. 31-32/ADC/MRT-I/2008 dated 29/05/2008 ^Δdropped the proceedings initiated through above stated two Show Cause Notices.

4. Aggrieved by the said Order-in-Original dated 29/05/2008 Revenue preferred appeal before Commissioner (Appeals). The Id. Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal No. 220-CE/MRT-I/2009-10 dated 25/02/2010. The Id. Commissioner (Appeals) has held that the Adjudicating Authority had properly examined all the relevant aspects as per the remand directions of the Id. Commissioner (Appeals) through Order-in-Appeal No. 166-169-CE/MRT-I/2007 dated 24/08/2007 and arrived at a well reasoned and speaking order and only thereafter dropped the proceedings and in view

Δ

of the same the Id. Commissioner (Appeals) rejected the appeal filed by the Revenue. Aggrieved by the said Order-in-Appeal dated 25/02/2010 Revenue is before this Tribunal.

5. Heard the Id. D. R. for Revenue who has presented the grounds of appeal which are the repetition of contentions in the Show Cause Notice.

6. Heard the Id. Counsel for the ^{respondents} ~~appellant~~ who has stated ^{Ar} that the Original Authority has gone through all the evidences submitted before it and passed a well reasoned and speaking order and only thereafter dropped the proceedings initiated through said Show Cause Notices. The Commissioner (Appeals) has also upheld the finding of Id. Original Authority. Further, three times Revenue has raised the same grounds which were raised before Commissioner (Appeals) on the earlier occasion and before the Commissioner (Appeals) on the second occasion when Commissioner (Appeals) decided the said grounds of appeal through impugned Order-in-Appeal dated 25/02/2010. He further contended that the grounds of appeal raised by Revenue are not sustainable.

7. Having considered the rival contentions and on perusal of the facts on record, we find that the Id. Commissioner

6

(Appeals) in the impugned Order-in-Appeal have recorded as follows:-

"However, from a perusal of the grounds contained in the Revenue's Memorandum of Appeal it is evident that it is merely a reiteration of the allegations in the Show Cause Notice which has already been dealt with at the first appellant stage. There is neither any reference to the findings of the Appellate Authority nor the terms of remand before the Adjudicating Authority to decide. The memorandum of appeal did neither specify the points for determination nor controverted the findings which have arisen out of the impugned order of the Adjudicating Authority, as per the remand directions of the Commissioner (Appeals).

As already discussed in the foregoing paras, the jurisdiction of the lower authority in a de novo proceeding is limited to the terms of the order of remand and the entire matter was not at large before the Adjudicating Authority to re-adjudicate. If the department had any misgivings about the findings of the Appellate Authority at the first stage, the proper course was to file an appeal against that order which was not done, instead of re-opening the same issues again at the second appellate stage.

In the light of the foregoing discussions and findings, I find that the Adjudicating Authority has properly examined all the relevant aspects as per the remand directions of the Commissioner (Appeals) and arrived at a well reasoned and speaking order and only thereafter dropped the proceedings against the respondents.

I do not find any merit or substance in the Revenue's present appeal. I, therefore, uphold the impugned orders of the Adjudicating Authority. The appeal filed by the Revenue is therefore rejected."

We find that Revenue has once again raised the same grounds for filing appeals before this Tribunal. We find that the said grounds of appeal have already been rejected by Commissioner (Appeals) and therefore, we do not find any merit in the appeals filed by Revenue. We, therefore, upheld the impugned Order-in-Appeal and reject all the five appeals filed ^{by} Revenue. The ^{respondents} appellants will be entitled for ^{Ans} consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member (JUDICIAL)

Ansari

-Sd/-

(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

प्रमाणित प्रति/Certified True Copy

14/06/2017
सहायक पंजीकार/Aasst. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण (C.E.S.I.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001