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: 30/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70076-70077/2017-EX[DB] dated 19/01/2017

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/1629/2010	**U P ASBESTOS LTD.** Mohanlalganj, Raibareilly Road, Lucknow.
2	E/1630/2010	**U P ASBESTOS LTD.** Mohanlalganj, Raibareilly Road, Lucknow.
		Name and Address of Respondent
3		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.
		-
4		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Kamaljeet Singh
J-144, PATEL NAGAR -I,
GHAZIABAD,
UTTAR PRADESH

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy ~~18 Guard File~~

Asstt. Registrar

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

APPEAL No. E/1629-1630/2010-EX[DB]

(Arising out of Order-in-Appeal No.60-61-CE/LKO/2010 dated 26/03/2010 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s U.P. Asbestos Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Kamal Jeet Singh, 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 : 19/01/2017
Date of Decision : 19/01/2017

FINAL ORDER NO-70076-70077/2017

Per: Anil Choudhary

The present appeal is filed by the appellant-assessee against Order-in-Appeal No.60-61-CE/LKO/2010 dated 26/03/2010.

2. The issue in this appeal is that appellant-assessee, a manufacturer of Asbestos Sheets etc., containing fly ash not less than 25% by weight in the products, and have allowed discount to their buyers and consignment agents posts clearance, whether the disallowance of such discount vide the impugned order is just and proper.

3. The admitted facts are that the appellant was clearing their goods by availing partial exemption of duty to the extent of 8% on their final products under Notification No. 5/2007, since they used fly ash not less than 25% by weight, in manufacturing their products.

The appellant clears their products in the following three ways: -

i) Through direct sale to its stockists/dealers from the factory;

ii) Sale through depots of the unit located at Delhi, Roorkee and Rudrapur which get products from the unit on stock transfer basis and then sell it to various stockist/dealers. These depots are managed by the employees of the appellant; and

iii) Sale through consignment agents located in different states who get products from the unit of the appellant on stock transfer basis and sell the goods to stockist/dealers/customers. The consignment agents get remuneration and office maintenance expenses from the appellant.

4. However, the goods are sold at uniform rate all over India and in all the three cases the goods are removed from the manufacturing unit, only on payment of Central Excise duty. On scrutiny of records, ER-1 returns and other documents, the Revenue for the period March, 2007 to July, 2007, was found that the appellant cleared the final products valued at Rs.38,12,03,764/- on which total duty works out to Rs.3,14,11,182/- was payable in terms of Rule 4 of Central Excise Rules, 2002 read with Rule 8. But after adjusting for discount extended to all the three categories of their buyers or sales as stated above, they paid Central Excise duty Rs 2,85,61,819/-. Upon enquiry by revenue the appellant stated that they have allowed cash discount from prompt payment, quantitative discount etc. to their dealers/buyers/consignment agents and such discount structure was known undisputedly and the said discount was adjusted in the invoices by way of issue of credit notes and further they have passed on the discount to their customers and made relevant adjustment in the books of accounts. Accordingly, they have paid the correct duty payable on the recalculated transaction value, in the returns filed with the revenue. A sum of Rs.28,49,363/- was demanded as short paid vide SCN dated 20/03/2008 for the period March, 2007 to July, 2007 and the SCN was adjudicated and proposed demand confirmed vide the separate Order-in-Originals. Being aggrieved, the appellant preferred

appeals before learned Commissioner (Appeals) who vide the common impugned orders have been pleased to reject the appeals.

5. Being aggrieved the appellant is before this tribunal. The learned counsel for the appellant pointed out that under similar facts and circumstances for the subsequent period October, 2008 to September, 2009 the learned Commissioner (Appeals) vide Order-in-Appeal No. 31-CE/LKO/2011 dated 23/02/2011 and for the period October, 08 to March, 09 vide Order-in-Appeal No.189-CE/LKO/2012 dated 28/03/2012 have been pleased to find that in principle the discounts in question are allowable subject to verification of the fact that the appellant have passed on the discount to their buyers.

6. Accordingly, in the remand Orders-in-Original No.54-56/2013/AC/Division-I/LKO dated 31/05/2013 the Assistant Commissioner have allowed the discounts as deductible pursuant to verification that the discounts in question have been passed on by the appellant to their buyers. He further points out that in the said order pursuant to remand the Assistant Commissioner in para-05 of the order have recorded that the Department have accepted the said order of the Commissioner (Appeals) vide communication No. iv-682/R/O-11/383 dated 12/02/2013. Accordingly, he states that the issue is no longer res integra in view of the acceptance by revenue of the order of Commissioner (Appeals) and the order after remand passed by the Assistant Commissioner.

7. The learned A.R. for revenue relies on the impugned order.

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8. Having considered the rival contentions we find that the issue stands squarely settled in favour of the appellant assessee as noticed by us hereinabove. Accordingly, we allow these appeals and set aside the impugned orders. The appellants will be entitled for consequential benefits, in accordance with law.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001