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: 04/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70445/2017-EX[DB] dated 25/04/2017

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/1889/2008	**MINDA CORPORATION LTD.** D-6-11, SECTOR-59, NOIDA-201301.
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, 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. I

APPEAL No.E/1889/2008-EX[DB]

(Arising out of Order-in-Appeal No. 78-79/CE/APPL/NOIDA/08 dated 30.05.2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

M/s Minda Corporation 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 : 25/04/2017
Date of Decision : 25/04/2017

FINAL ORDER NO....70445/2017........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No.78-79/CE/APPL/NOIDA/08 dated 30.05.2008.

2. The brief facts of the case are that the appellants procured moulds and dies for use in or in relation to manufacture of their final products and cleared the same to their vendors without payment of duty. Therefore, they are issued with a show cause notice dated 23.08.2007 wherein it was stated that with effect from 10.09.2004 appellants

cleared said moulds and dies to their vendors without payment of Central Excise Duty and that appellant had taken credit of Rs.43,46,542/- paid on said moulds and dies. It is further stated that on being pointed out, appellant paid a sum of Rs.43,46,542/- on 18.07.2006 and interest of Rs.5,56,972/- on 20.07.2006. It is further stated in the said show cause notice that vide their letter dated 20.07.2006 appellant informed jurisdictional Central Excise Officers that they had paid both the duty amount of Rs.43,46,542/- and interest of Rs.5,56,972/- and therefore the matter may be closed under Sub-section (2B) of the Section 11-A of Central Excise Act, 1944. The show cause notice invoked proviso to Sub-section 1 of Section 11A and also invoked provisions of Rule 14 of Cenvat Credit Rules and called upon appellant to show cause, as to why duty amounting to Rs.43,46,542/- should not be confirmed and already paid should not be appropriated. There was also a proposal for importation of penalty. The show cause notice was adjudicated through Order-in-Original dated 31.01.2008. Aggrieved by the said Order-in-Original, appellants preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) did not interfere with the said confirmation of demand and confirmed the imposition of penalty on the appellant. Aggrieved by the said order of learned Commissioner (Appeals), the appellant is before this Tribunal.

3. Heard the learned Counsel for appellant, who has pleaded that their case is covered by the provisions of Sub-section 2B of Section 11A of Central Excise Act, 1944 and as provided in said Sub-section, there was no need for issuance of present show cause notice and had there been no show cause notice, the question of imposition of penalties did not arise.

4. The learned D.R. has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, we find that the said Sub-section (2B) of Section 11A of Central Excise Act, 1944 provides that 'when an assessee on his own ascertainment pays the amount of duty and interest thereon before issue of show cause notice then show cause notice demanding the said amount cannot be served on the assessee'. The said provision as provided under explanation-1 to Sub-section is not applicable if there has been any short payment of duty by a reason of fraud, collusion or any willful miss-statement or separation of facts or contravention of any of the provisions of the Central Excise Act, 1944 or of the rules made thereunder with intention to evade payment of duty. We further find from show cause notice at para 5.4 that it has been stated that appellant had paid both duty and interest thereon and made a request to close the matter under the provisions of Sub-section (2B) of

Section 11A of Central Excise Act, 1944. We find that the show cause notice has not at all dealt with the aspect as to why the assessee's present case is not covered by the provisions of said Sub-section (2B) of Section 11A of Central Excise Act, 1944 and how the demand of Rs.43,46,542/- is tenable in spite of provisions of Sub-section (2B) of Section 11A of Central Excise Act, 1944. We therefore find that the show cause notice dated 23.08.2007 is not tenable in law. We therefore, set aside the impugned Order-in-Original & Order-in-Appeal and allow the appeal. The appellant shall be entitled for consequential relief, if any, in accordance with law.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Certified True Copy
09/05/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
... मार्ग, इलाहाबाद-211001
... MARG, ALLAHABAD-211001