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: 26/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70397-70398/2017-EX[DB] dated 10/04/2017

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/1923/2007	C.C.E, LUCKNOW 7-A, Ashok Marg, Lucknow.
2	E/3106/2007	**M K Vinyle Pvt Ltd** Chaudagra,g.t. Road FATEHPUR UP
		Name and Address of Respondent
3		M.K. VINYLE PVT. LTD. Chaudagra, G.T. Road, Fatehpur,,
4		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Other Appellants and Respondents as per Annexure

Copy To

5 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos. E/3106 & 1923/2007-EX[DB]

Arising out of Order-in-Appeal No.184-CE/LKO/2006 dated 30.11.2006 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow.

I. M/s. M.K. Vinyle Pvt. Ltd. (E/3106/2007)
II. Commissioner of Central Excise, Lucknow (E/1923/2007)

...APPELLANTS

VERSUS

I. Commissioner of Central Excise -Lucknow.
II. M/s. M.K. Vinyle Pvt. Ltd.

.....RESPONDENTS

APPEARANCE

Shri Hrishikesh (Amicus Curie), Advocate for the assessee-appellant.
Shri Pawan Kumar Singh (Supdt.), A.R. for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 10. 04. 2017

FINAL ORDER NO. 70397 - 70398/2017

Per Mr. Anil Choudhary :

These cross appeals arise from Order-in-Appeal No. 184-CE/LKO/2006 dated 30.11.2006.

2. The issue in appeal filed by appellant-assessee is whether the freight and insurance charges from the factory gate to the buyer premises are includable in the assessable value or not.

3. The issue in the appeal filed by Revenue is whether the Commissioner (Appeals) instead of adjudicating the issue should have remanded the matter to the Assistant Commissioner by way of remand.

3. Heard the parties.

4. So far the first issue is concerned, the said issue is squarely covered by a decision of a co-ordinate Bench of this Tribunal in the case of ***Classic Polytubes Pvt. Ltd. vs. Commissioner of C.Ex., Lucknow 2016(336) E.L.T. 180 (Tri.- All.)*** wherein under the similar facts and circumstances relying on the ruling of Hon'ble Apex Court in 2015(324) E.L.T. 670, it have been held that under the concept of transaction value, readwith the valuation rules w.e.f. 01.07.2000, freight and insurance are not includable in the transaction value.

5. The second issue, in the Revenue's appeal becomes academic under the facts and circumstances in view of our decision on the main issue. However, we notice that the powers of Commissioner (Appeals) are co-extensive to that of the Adjudicating Authorities. Commissioner (Appeals) is also vested the power of enhancement of the tax and/or

penalty imposed, or escaped to be imposed. Accordingly, we allow the Appeal No. E/3106/2007 filed by assessee-appellant with consequential benefits, if any, and dismiss Appeal No. 1923/2007 filed by Revenue. This Tribunal appreciates the assistance provided by Shri Hrishikesh as Amicus Curiae.

(Order was dictated in the open Court)

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

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

Patel/-

08/05/2017
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