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: 30/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70922-70924/2016-SM[BR] dated 09/02/2016

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/54610/2014	QUALITY FLAVOURS EXPORT 100% EOU, MORA INDUSTRIAL ESTATE, KANTH ROAD, MORADABAD UP
2	E/54611/2014	ANURAG KOTHIWAL EMPLOYEE OF M/S QUALITY FLAVOURS EXPORT 100% EOU, MORA INDUSTRIAL ESTATE, KANTH ROAD,MORADABAD UP
3	E/54612/2014	RAJIV GUPTA MANAGER OF M/S QUALITY FLAVOURS EXPORT 100% EOU, MORA INDUSTRIAL ESTATE, KANTH ROAD, MORADABAD UP

Name and Address of Respondent

4 C.C.E. & S.T.-Meerut-ii
OPPOSITE SHAHEED SMARAK,DELHI
ROAD...BHANSALI GROUND,
MEERUT,UTTAR PRADESH-

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Lasa Consultancy (P) Ltd.
C-15, 16, HARTHALA INDUSTRIAL
AREA, KANTH ROAD,
MORADABAD,UTTAR PRADESH

O/C
23/10/16

ISSUED ON

SUPDT. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos.E/54610-54612/2014- [SM]

Arising out of Order-in-Appeal No.MRT/EXCUS/002/APP/009/14-15 dated 01.05.2014 passed by Commissioner (Appeals) Customs & Central Excise, Meerut.

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3. Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental Authorities?	: Yes

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(i) M/s Quality Flavours Export
(ii) Anurag Kothiwal,
(iii) Rajiv Gupta ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-II ...RESPONDENT (S)

APPEARANCE:

Shri R.L. Thapliyal, Consultant for the Appellant (s)
Shri D.K. Sinha Asstt. Commissioner (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 09.02.2016

FINAL ORDER NO.- 70922 - 70924/2016

Per Mr. Anil Choudhary :

These three appeals are filed by appellant-M/s Quality Flavours Export & others against Order-in-Appeal No. MRT/EXCUS/002/APP/009/14-15 dated 01.05.2014.

2. The brief facts of the case are that the appellant-1 is registered as 100% EOU for manufacturing of different mentha products falling, under Chapter Heading No. 29, 30 & 33 of the Central Excise Tariff Act, 1985. On an intelligence, one truck was intercepted by the officers of the Preventive Branch of Central Excise Division on 27.10.2009, and goods (said to be Denatured Mentha Oil) or DMO, weighing 2,880 Kg. valued at Rs.10,91,400/-, packed in 16 G.I. drums, were detained for further investigations. The scrutiny of the documents as available with the driver of the vehicle and the statements tendered under Section 14 of the Central Excise Act, 1944 of the driver as well as Shri Anurag Kothiwal an employee of the company accompanying the goods, it was noticed that the detained goods were purchased by the appellant-M/s Quality Flavours Export on their own purchase vouchers. The two persons in their statement dated 27.10.09 stated that the material has been purchased from the unregistered traders and they do not know the name and address of any one of them. The said Form 21 (road permit under sales tax) shows the name and address of the consignor as self. Further, on the date mentioned on Form-21, the date of clearance was initially mentioned as 28.10.2010 but has been over written as 27.10.2010. Shri Anurag admitted that he

had made cuttings on the date mentioned on Form-21 bearing SI No. 0666885 and the same has been signed by him, though he is not the authorized signatory. It has been found that the appellant failed to provide the valid documents/evidences in support of the claim that the goods were actually not produced by him instead it has been purchased from the local market. It is also a fact that the appellant has been registered to manufacture the seized goods during the relevant period. The appellant-Rajiv Gupta in his statement stated that he is looking after the work relating to Excise and Sales Tax and purchase of raw material for the company. He confirmed that the appellant-Anurag Kathiwal is an employee of appellant's company. He stated that he had asked the appellant-Anurag Kathiwal on 27.10.2009 to go with 40 drums, Kisan Purchase Voucher and Form 21 (road permit) and get DMO from Shri Mukesh on payment. He also stated that he did not pay any commission to Shri Mukesh, instead the commission is paid by the seller of the material. Shri Mukesh used to arrange DMO from un-registered dealer i.e. Kisan, Traders or General public, who are not registered. He further stated that the 85% of DMO is procured from un-registered persons and they refuse to sign the documents and disclose their name and address. Shri Mukesh Kumar Rastogi in his statement stated that he had provided only 6 drums of DMO to M/s Quality Flavours Export, Moradabad on 27.10.09. Shri Rajeev Gupta had asked him to provide only 6 drums of DMO. He further stated that he had no office & records of his business and the commission is paid to him by the seller only.

3. The goods were provisionally released on payment of estimated duty and furnishing of Bond.

4. Thereafter SCN dated 22.10.2010 was issued proposing levy of duty, confiscation of goods & truck and also penalty was proposed. The SCN was adjudicated on contest vide O-I-O dated 15.03.2012 ordering (i) confiscation of seized goods (2880kg DMO) valued at Rs.10,91,400/- involving Excise duty Rs.1,69,632/- & subject to (ii) Appropriation of pre-deposit of Rs.1,69,632/- (iii) Redemption fine Rs.2,50,000/-, (iv) Confiscation of truck, bearing No.JK08-B-4353 valued at Rs.8,60,000/-, with option to Redeem on fine of Rs.1,00,000/-, (V) Penalty on company Rs.1,69,632/- U/s 11 AC of the Act, (vi) Rs.1,00,000/- penalty on Rajiv Gupta & Rs.10,000/- on Anuraj Kathiwal under Rule 26 of CER, 2002.

5. Being aggrieved, the appellant preferred appeal before the Ld. Commissioner (Appeals) who was pleased to allow appeal in part by (i) setting aside the confiscation of seized goods along with dropping the redemption fine, (ii) confirmed the duty of Rs.1,69,632/- along with interest, (iii) Uphold the penalty of Rs.1,69,632/- under Rule 25 of CER read with Section 11AC of the Central Excise Act on the company, (iv) Uphold penalty of Rs.10,000/- upon the appellant-Mr. Anurag Kathiwal, and (v) reduced the penalty to Rs.15,000/- on Mr. Rajiv Gupta (Manager of Quality Flavours Export). The Ld. Commissioner observed that the show cause notice have been issued beyond the period of six

months from the date of seizer and the same is in valuation of the proviso under Section 110 of Sub-Section 2 of the Customs Act. In view of the fact that no extension for issue of show cause notice was granted by the competent authority in the present case. Accordingly, he held that the seized goods and the truck are not liable to confiscation. The duty on the goods in question i.e. loaded in the truck, amounting to Rs.1,69,632/- was confirmed, holding that the appellant has not enable to corroborate that the goods-DMO were being transported on being charged from the local market.

6. Being aggrieved, the appellants have preferred appeal before this Tribunal, urging that no case of clandestine removal have been made debit against the appellants. Further, in view of the purchase bill and the accompanying road permit (under provisions of Sales Tax), there was ample evidence that the goods were being transported pursuant to purchase from the market. This fact is uncontroverted and have been rejected by the Revenue on the basis of conjectures and surmises. Accordingly, it is prayed that the confirmation of duty and penalty on the appellant be set aside and the appeals be allowed with consequential benefit.

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

8. Having considered the rival contentions, I take notice of the fact that the goods were on interception found the company by the purchased bill of the appellant and secondly, the goods were being

transported with road permit (statutory document, pre authenticated by the Sales Tax Department). Under such circumstances, the genuine of the transaction is prima facie established as being one of purchase/trade and prima facie no goods of clandestine removal is made out and/or established by the Revenue. Accordingly, I allow all the three appeals and set aside the duty and penalty confirmed in the impugned appellate Order. Thus, the appeals are allowed with consequential benefits, if any.

(Operative part of the order pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

/ Certified True Copy

25.1.2016