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: 18/07/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70433/2016-EX[DB]** dated **03/06/2016**

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/269/2006	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH 201307
		Name and Address of Respondent
2		SUPER CASSETTES INDUSTRIES LTD C-01, B-123, SECTOR-05,, NOIDA,,UP

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Copy To
3Advocate(s) / Consultant(s):

V. LAKSHMI KUMARAN
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/269/2006 (DB)

(Arising out of Order-in-Appeal No. 108/CE/APPL/NOIDA/05 dated 28/10/2005 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

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

Commissioner of Central Excise, Noida **Appellant**

Vs.

M/s Super Cassettes Industries Ltd. **Respondent**

Appearance:

Shri Ashok B. Kulgod, Assistant Commissioner (AR) for Appellant
Shri Atul Gupta, Advocate &
Shri Hrishikesh, Advocate, for Respondent

CORAM:

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

Date of Hearing : 03/06/2016
Date of Decision : 03/06/2016

Final ORDER NO. 70433/2016

Per: Anil G. Shakkarwar

Present appeal is filed by Commissioner of Central Excise, Noida against Order-in-Appeal No. 108/CE/APPL/NOIDA/05 dated 28/10/2005.

2. The brief facts of the case are that the respondent was functioning from a godown and was dealing with different products such as Audio Compact Disc, Recorded Video Compact Disc, Blank Audio Cassettes of TDK Brand etc and were registered with Central Excise as trader of trading of excisable goods like polycarbonate. During the visit by Central Excise Officers on 30th June, 2003, they noticed that respondents were importing DVD/VCD players and Home theatre in finished form from China and stored in the said godown. The said goods were tested for work abilities and defects were rectified if required by replacing the part. Subsequently, stickers were pasted on the components inside the DVD/VCD players as a token of identification, since respondents undertook warranty of the sets. Further, labels/stickers were pasted on the body of the DVD/VCD players as well as on the packing boxes. The MRP was printed on the said goods at the source. With effect from 01.03.2003 definition of manufacture in Central Excise Act included packing or repacking of goods in unit container or labeling or relabeling of containers. It appeared to Central Excise Authorities that pasting of

stickers on the said goods amounted to manufacture. On 01.07.2003 Central Excise Officers detained said goods belonging to respondent. On 16.07.2003 Central Excise Officers conducted verification of detained goods. The respondents were not registered as manufacturer with effect from 01.03.2003. Therefore, the goods on which stickers were pasted ~~with stickers~~ after 01.03.2003 valued at Rs.1,19,54,604/- were seized. The respondent registered with Central Excise on 04.07.2003. The seized goods were provisionally ~~realized~~ released on 04.07.2003. The respondents were issued with a show cause notice dated 29.06.2004 proposing confiscation of seized goods with a proposal to impose penalty on them. The said show cause notice was adjudicated through Order-in-Original No.10/ADDL.COMMR/NOIDA/2005 dated 20.05.2005. Through the said order seized goods were confiscated and redemption fine of Rs.20 Lakhs ~~were~~ was imposed. Further, the penalty of Rs.5 Lakhs was imposed on respondent under Rule 25 of Central Excise Rules, 2002.

3. Aggrieved by the said order dated 20/05/2005 respondent preferred an appeal before the Commissioner (Appeals). The Original authority had taken on record that the respondent filed an application on 19.02.2004 stating that the respondents have paid Central Excise Duty of Rs.1,01,56,647/- on the goods cleared from 01.03.2003 to 30.06.2003 and requested Ld. Commissioner of Central Excise, Noida that as provided under Section 11A (2B) of Central Excise Act, 1944 further proceedings may be dropped. Deputy Commissioner of Central Excise through his letter dated 08.07.2004 informed the

respondents that Ld. Commissioner has accepted respondents application dated 19.02.2004 under said Section 11A (2B). Learned Commissioner (Appeals) has decided the appeal through the impugned order. The Commissioner (Appeals) has taken into consideration voluntary payment of duty by respondent and acceptance of application by Commissioner under Section 11A (2B) of Central Excise Act, 1944. He has also taken into consideration that the show cause notice for confiscation of goods was issued after expiry of 6 months from the date of seizer and extension was granted by Commissioner of Central Excise, Noida by an order dated 31.12.2003 without issuing of show cause notice and grant of personal hearing to the respondents and as ruled by the Apex Court in the case of Harbans Lal Vs. CCE reported at 1993 (67) E.L.T. 20 (S.C.) in the event of failure to ~~observed~~ observe the requirements of the extension of period of seizer beyond 6 months, the seized goods are to be returned to the appellant. He held that the seized goods were not eligible to be confiscated and also the penalty under Rule 25 was not imposable in the present case. Therefore, learned Commissioner (Appeals) set aside the said order-in-Original dated 20.05.2005.

4. Aggrieved by the impugned order Revenue is in appeal before us. The ground inter-alia for filing appeal before us is that the Learned Commissioner (Appeals) has failed to appreciate the fact that the acceptance of deposit made under Section 11A (2B) ibid was granted in respect of goods already removed during the period from 01.03.2003 to 30.06.2003, duty voluntarily deposited amounting to

Rs.1,01,56,647/- and interest of Rs. 83,160/- is not the subject, matter of show cause notice and it has no relation with the instant case and that Learned Commissioner (~~AR~~ Appeals) has further observed that before granting extension a show cause notice should have been issued and personal hearing should have been granted ~~appeals~~ appears to have challenged the inherent powers of commissioner vested under the provisions of Section 110 (2) of Customs Act, 1962 and that said provisions do not annex any such preconditions for extending the period to issue show cause notice.

5. Heard the learned Departmental Representative who has reiterated the submission in the grounds of appeal.

6. Learned Counsel for the respondent has submitted that as on 01.03.2003 there was no change in their activity of pasting stickers on the imported goods and marketing them and by way of amendment of Section 2(f) ibid their activity got subjected to Central Excise regulation. The moment they came to know about it they have taken registration, voluntary paid duty and their representation was accepted by Commissioner in respect of goods manufactured from 01.03.2003 to 30.06.2003 as provided under Section 11A (2B) ibid. They were not liable for imposition of penalty nor as on the date of acceptance of their representation dated 19.02.2004, the seized goods continued to be contravened goods. They have further submitted that the Central Excise Duty payable was already paid in the f~~i~~orm of CVD on importation of said goods and there was no loss to revenue by pasting of said stickers. The CVD paid was admissible to them as CENVAT

credit and since there was no alteration in MRP, Central Excise Duty payable was equal to CVD paid. As a result the goods were not contravening at any point of time.

7. We have taken into consideration the rival contentions. The respondent had imported goods, they had paid CVD on the basis of MRP declared before importation, there was no alteration in the MRP on importation. Therefore, there was no loss to revenue. Therefore, we do not find any reason to interfere with impugned order. We dismiss the appeal filed by the Revenue.

(Dictated in Court)

-Sd-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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