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: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71195-71196/2016-SM[BR] dated 18/11/2016

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/2842/2009	**BERGER PAINTS INDIA LTD** (RAJDOOT DIVISION)BRITSIH PAINTS DIVISION, RPL HOUSE, 19 DDA COMMERCIAL COMPLEX, KAILASH COLONY EXTN. ZAMRUDPUR, NEW DELHI-110048.
2	E/2843/2009	**SHRI ALLEM HANFI COMMERCIAL MANAGER** (RAJDOOT DIVISION)(FINANCE, INTERNAL AUDIT AND ACCOUNTS) BRITSIH PAINTS DIVISION, RPL HOUSE, 19 DDA COMMERCIAL COMPLEX, KAILASH COLONY EXTN. ZAMRUDPUR, NEW DELHI-110048.

Name and Address of Respondent

3 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

4Advocate(s) / Consultant(s):

S. V. ARYA,ADVOCATE
CC-56, AVANTIKA, NEAR CHIRANJEEV
VIHAR, HAPUR ROAD,
GHAZIABAD,UTTAR PRADESH
201002

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/2842, & 2843/2009-EX[SM]

Arising out of OIA Nos. 210-211/CE/APPL/NOIDA/09 dated 31.07.2009 passed by Commissioner (Appeals), Customs & Central Excise, Noida.

i) Shri M.A. Mateen, Senior General Manager, Berger Paints India Ltd.
ii) Shri Allem Hanfi, Commercial Manager, M/s. Berger Paints India Ltd.

...APPELLANTS

VERSUS

C.C.E., Noida ...RESPONDENT

APPEARANCE

Shri S.V. Arya, Advocate for the appellants.
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 18. 11. 2016
FINAL ORDER NO. 71195 – 71196/2016

Per Mr. Anil G. Shakkarwar :

Present appeals are filed by Berger Paints India Ltd. (Rajdoot Division) and Shri Aleem Hanfi. However, the cause title stated to be Shri M.A. Mateen, Senior General Manager, Berger Paints India Ltd., Shri Aleem Hanfi, Commercial Manager. There appears to be some mistake while feeding data to the Central Server about the cause title. Therefore, I ordered to correct the cause title in the Server Data to the effect stated by me above.

2. The brief facts of the case are that, M/s. Berger Paints were issued with a show cause notice dated 31.10.2007. The show cause notice was for demand of Central Excise duty amounting to Rs. 2,39,069/-, 59,720/- 8,182/-, 12,83,832/- & 22,281/-. In addition there was proposal to recover interest on the said Central Excise duties and separately interest amounting to Rs.2,82,977/- involved on supplementary invoices. The show cause notice indicated that duties and interest payable were deposited by appellants and there were proposal for appropriation of the same. Show cause notice also had proposal to impose penalty on Berger Paints under Section 11AC of Central Excise Act, 1944. It also had a proposal to impose personal penalty on Mr. Aleem Hanfi, Commercial Manager. The issue was adjudicated through Order-in-Original No. 31/ADDL. COMMISSIONER/NOIDA/2008 dated 15.12.2008. The Original Authority confirmed the demands and appropriated duty and interest already paid. Further he imposed penalty of Rs. 3,29,252/- and Rs. 12,83,832/- under Section 11AC and Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act, 1944 on M/s. Berger Paints. The Original Authority also imposed personal penalty of Rs. 1 Lakh on Shri Aleem Hanfi. Aggrieved by the said order Berger Paints preferred appeal before Commissioner (Appeals). The Commissioner (Appeals) decided the appeal through Order-in-Appeal No. 210-211/CE/NOIDA/09 dated 30.07.2009 wherein learned Commissioner

(Appeals) did not find any infirmity in Order-in-Original passed by Original Authority. Aggrieved by the said Order-in-Appeal the appellants are before this Tribunal.

3. Learned counsel for the appellants submitted that show cause notice very clearly indicates that the duty and due interest was paid before issue of show cause notice. He has further submitted that this Tribunal in the case of ***Rashtriya Ispat Nigam Ltd. vs. Commissioner of Central Excise, Visakhapatnam*** reported at ***2003(161) E.L.T. 285 (Tri.- Bang.)*** has held that if duty is deposited before issue of show cause notice penalty under Section 11AC as well as under Rule 173Q of Central Excise Rules, 1944 cannot be imposed. The said Final Order of this Tribunal was challenged before the Hon'ble Supreme court. Hon'ble Supreme Court has dismissed the appeal filed against said Final Order of this Tribunal as reported at ***2004(163) E.L.T. A53(SC)***. He has contended that the issue has reached finality and pleaded that the penalty imposed on M/s. Berger Paints under Section 11AC does not sustain. Similarly personal penalty also does not sustain.

4. Heard the learned A.R. who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions, I find that the issue is covered by precedent decisions of this Tribunal upheld by Hon'ble Apex Court. Therefore, I set aside the penalty of Rs. 3,29,252/- imposed under Section 11AC of Central Excise Act, 1944 and penalty of Rs. 12,83,832/- imposed under Cenvat Credit Rules readwith Section 11AC of Central Excise Act, 1944 on M/s. Berger Paints. I also set aside

personal penalty of Rs.1 laks imposed on Shri Allem Hanfi, Commercial Manager. In the result, both the appeals are allowed and both the appellants shall be entitle for consequential relief.

(Pronounced and dictated in the open Court)

..16

(Anil G. Shakkarwar)
Member (Technical)

Patel/-

प्रमाणित प्रति / Certified True Copy
6.1.17
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