FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 07/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70950/2016-EX[DB] dated 29/09/2016

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/2931/2006	MICROMATI GRINDING TECHNOLOGIES C-40/1,MEERUT ROAD,INDS AREA,GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302

Copy To

3Advocate(s) / Consultant(s):

S. D. Gaur
SB-108, SHASTRI NAGAR,
GHAZIABAD,
UTTAR PRADESH

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

27/10/16

ISSUED ON

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

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

Appeal No.E/2931/2006-EX[DB]

Arising out of Order-in-Appeal Nos.69-CE/GZB/2006 dated 29.05.2006 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-I.

For approval and signature:

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

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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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M/s Micromatic Grinding Technologies

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Ghaziabad

...RESPONDENT (S)

APPEARANCE:

(Amicus curie)

Ms. Stuti Saggi, Advocate ~~for the Appellant (s)~~
Shri Sumanta S. Chattopadhyay Supdt. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 29.09.2016

FINAL ORDER NO.- 70950/2016

Per Mr. Anil G. Shakkarwar:

The present appeal is filed by M/s Micromatic Grinding Technologies. During the last hearing on 01.09.2016, appellant was absented but submitted written submission dated 30.05.2016 requesting to allow appeal on merits. This Bench had appointed Ms. Stuti Saggi, Advocate as Amicus Curie.

2. The brief facts of the case are that the appellant manufactured certain goods and supplied the same to M/s Solid State Physics Laboratory, Delhi, which is working under Defense Research and Development Organization. The clearance was through invoice No.16 dated 18.11.2004. The total invoice value was Rs.8,38,573/- and invoice included Excise duty of Rs.1,10,911/- and Education Cess of Rs.2,217/- Through application dated 14.09.2005, the appellant claimed refund of Excise duty paid through said invoice claiming that the goods were cleared to an organization and the said goods were eligible for exemption under Notification No.10/97-CE dated 01.03.1997. The Original Authority issued show cause notice stating that the certificate submitted by them issued by Solidstate Physics Laboratory was issued to another unit and that the duty was passed on and that the goods were not under the said category of specified goods in the said notification. The appellants submitted copy of certificate issued by the Director of the Laboratory stating that they were eligible for exemption and they did not pay element of Excise duty to the manufacturers. They have given copy of cheque slip and Ledger

account of Solidstate Physics Laboratory. The Original Authority held that the certificate was not pertaining to the manufacturer. They were not eligible for the said notification and duty payable was passed on to the customers and rejected the refund claim. The appellant preferred appeal before Ld. Commissioner (Appeals). The Ld. Commissioner (Appeal) through his Order-in-Appeal No.69-CE/GZB/2006 dated 29.05.2006, decided the appeal. The Ld. Commissioner (Appeal) has held that the goods cleared by the appellant were not specified in the said notification and, therefore, held that they were not eligible for the benefit of Notification No.10/97. The Ld. Commissioner (Appeal) rejected the appeal. Aggrieved by the said Order-in-Appeal, the appellant has preferred appeal before this Tribunal.

3. The grounds of appeal are that the goods cleared by them was "a machine having a specific function, breathing apparatus" and apparatus is covered by Notification No.10/97.

4. Ms Stuti Saggi Advocate presented the case on behalf of the appellant. She has submitted that the condition of notification was that the manufacturer produces the certificate issued by Director of Solidstate Physics Laboratory of DRDO. The said Director issued a certificate that the goods supplied through said invoice ~~was~~ were essential for research and they will used only for the research purpose and were eligible for the benefit of Notification No.10 of 97.

5. The Ld. DR for Revenue has supported Order-in-Original and Order-in-Appeal.

6. We have carefully gone through the records of the case. The invoice copy is available at Page No.6 & 7 of the Appeal paper book. The invoice shows the order number of the Solidstate Physics Laboratory as SPL/PL/07000079/B04-05/06 dated 28.04.2004 and it shows Excise duty as Rs.1,10,911/- and E. Cess of Rs.2,217/- total Rs.1,13,128/-. The invoice value is Rs.8,38,573/-. The certificate issued by Solidstate Physics Laboratory is at Page No.8 of Appeal paper book. The Ledger account of Solidstate Physics Laboratory also indicates that out of the invoice value of Rs.8,38,573/-, appellant received payment of Rs.7,20,898/- and balance on account of Excise duty has not been paid by purchaser of the goods to the manufacturer-appellant. The certificate is also issued by Director of said Laboratory ~~and~~ under DRDO and certificate states that the goods were required for Research purpose. The notification is applicable for Apparatus and it requires a certificate by DRDO to the effect that the goods are required for the such purpose. We find that all the requirements of the notification are fulfilled. The ledger also indicates that the Excise duty component has not been received by the manufacturer. We, therefore, allow the appeal and direct the Original Authority to pay the refund to the appellant within 60 days of the receipt of this Order. In above terms, the appeal is allowed.

(Dictated and Pronounced in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
25.1016
सहायक रजिस्ट्रार / Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001