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/71188/2016-EX[DB] dated 02/12/2016

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/372/2009	CCE MEERUT EXCISE CHOWK,OPPOSITE CHOUDHARY CHARAN SINGH UNIVERSITY MANGAL PANDAY NAGAR, MEERUT - 250005.
		Name and Address of Respondent
2		PIONEER FABRICATORS PVT. LTD. B-2, SARASWATI INDUSTRIAL AREA, PARTAPUR, MEERUT.,,

Copy To

3Advocate(s) / Consultant(s): SH ABHISHEK JAJU,ADV

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), Valthyaran 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

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

COURT-I

Appeal No. E/372/2009-EX[DB]

Arising out of Order-in-Appeal No. 201-CE/MRT-I/2008 dated 28.11.2008 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-I.

C.C.E., Meerut-I ...APPELLANT

VERSUS

Pioneer Fabricators Pvt. Ltd. ...RESPONDENT

APPEARANCE

Shri T.K. Sikdar, Asstt. Commr. (A.R.) for the Department
Shri Abhishek Jaju, Advocate for the respondent-assessee

CORAM:

HON'BLE MR. JUSTICE (Dr.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 02. 12. 2016
DATE OF PRONOUNCEMENT : 29/12/2016
FINAL ORDER NO. 71188/2016

Per Anil G. Shakkarwar :

The present appeal is filed by Revenue against the Order-in-Appeal No. 201-CE/MRT-I/2008 dated 28.11.2008 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-I.

2. The brief facts of the case are that the respondent-assessee was registered with Central Excise Department and was engaged in the

manufacture of fabricated items falling under Chapter sub heading No. 7306.90. The respondent received an order from IRCON International Limited for supply of 1000 mtr of Metal Crush Barrier (Double rail type) and 20230 Lm. Single Guide Rails (Crush Barrier) through purchase order dated 22.07.2005. During the period from September, 2005 to March, 2006 respondent cleared 13500 Lm. Of Metal Crush Barrier at Nil rate of duty claiming exemption under Notification No. 108/95 CE dated 28.05.1995. Similarly M/s. KMC Constructions Ltd. placed a purchase order dated 14.07.2005 on respondent for supply of 131 MT Guard Rails and purchase order dated 12.04.2006 for supply of 297 MT Metal Crush Barrier. The respondent cleared 427 MT of Metal Crush Barrier at Nil rate of duty claiming the benefit of said Notification No. 108/95. It appeared to Revenue that there was no procedure of subletting of the supply by the awardee of the contract from competent authority for supply of goods at Nil rate of duty under the said notification. The respondent had totally cleared goods at Nil rate of duty availing exemption under Notification No. 108/95 and availed the exemption of Rs. 48,47,040/-. The respondent-assessee was issued with show cause notice dated 28.03.2006 wherein it was alleged that M/s. IRCON and M/s. KMC were awarded the contract for supply of goods to a project financed by United Nations or an International Organization and since the respondent had not supplied goods to the project financed by United Nations but supplied the goods to awardee of the contract therefore they were not eligible for the benefit of said notification. The show cause notice was adjudicated through Order-in-Original No. 14/2008 dated 07.03.2008. The Original Authority has held that it was the statutory requirement that the awardee himself produces a certificate for claiming exemption under said notification and the said notification was not eligible to be availed by sub contractor such as the respondent. Therefore, the Original Authority confirmed the demand of Rs. 48,47,040/- and imposed equal penalty. Aggrieved by the said order, respondent preferred appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 201-CE/MRT-I/2008 dated 28.11.2008. The learned Commissioner (Appeals) has held that the goods supplied by the respondent-assessee were duly received by the project implementing authority and that there were sub contracts between the main contractor and the respondent and that the main contractor M/s. IRCON and M/s. KMC issued certified statement of receipt of goods and money transactions and that both M/s. IRCON and M/s. KMC are Government of India, Gujrat undertakings. The learned Commissioner (Appeals) also held that the goods were supplied by the respondent for a World Bank Project approved by Government of India/State Government and a certificate to that effect was given by project implementing authority in respect of the said goods. The learned Commissioner (Appeals) has held that the final order of this Tribunal in the case of ***IBM India Pvt. Ltd., vs. Commissioner of Central Excise, Pondicherry*** reported at ***2008(223) ELT 429 (Tri. Chennai)*** was squarely applicable and in view of the said final order allowed the appeal filed by the respondent-assessee to this appeal before her by setting aside the said Order-in-Original dated 07.03.2008. Aggrieved by the said Order-in-Appeal dated 28.11.2008, Revenue has preferred this appeal.

3. The ground of appeal is that the Department has not accepted the said final order in the case of IBM India Pvt. Ltd. vs. Commissioner of Central Excise, Pondicherry and department had filed appeal against the

same before Hon'ble High Court of Chennai and the matter was still pending before the said Hon'ble High Court.

4. Heard learned D.R. for the Revenue who has reiterated the ground of appeal.

5. Heard Shri Abhishek Jaju, Advocate for the respondent-assessee, he has placed reliance on the ruling by Hon'ble high Court at Madras in the case of ***C.C.E., Pondicherry vs. Caterpillar India Pvt. Ltd.*** reported at ***2013 (297) ELT 8(Mad.)*** which was affirmed by Hon'ble Apex Court as reported at ***2016(335) ELT A27(S.C.).***

6. Having considered the rival contentions, we find that the Hon'ble Madras High Court in the above stated case of C.C.E. Pondicherry vs. Caterpillar India Pvt. Ltd. had held that the exemption under Notification No. 108/95 CE was admissible to the goods supplied to the contractors which were executing project financed by United Nations or an International Organization. We find that the said ruling by Hon'ble High Court of Madras was affirmed by Hon'ble Supreme Court. We also find that the said case law is squarely applicable in the present case. In view of our said finding, we reject the appeal filed by Revenue.

(Order pronounced on 29/12/2016.)

-Sd-
(Anil G. Shakkarwar)
Member (Technical)

-Sd-
(Justice Dr. Satish Chandra)
President

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