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: 05/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71089/2016-SM[BR] dated 28/11/2016

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	~~ESStay/2819/2010~~	E/3046/2010	**KUWER INDUSTRIES LTD.** A-71-72, SECTOR-58, NOIDA.
			Name and Address of Respondent
2			-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3 Advocate(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

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

Appeal No.E/3046/2010-EX[SM]

Arising out of Order-in-Appeal No.171/CE/APPL/NOIDA/2010 dated 25.06.2010 passed by Commissioner (Appeals) Customs & Central Excise, Noida.

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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M/s Kuwer Industries Ltd. ...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida ...RESPONDENT (S)

APPEARANCE

None for the Appellant (s)
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 28.11.2016

FINAL ORDER NO.- 71009/2016

Per Mr. Anil Choudhary :

The appellant, M/s Kuwer Industries Ltd., is in appeal against Order-in-Appeal No.171/CE/APPL/NOIDA/2010 dated 25.06.2010 passed by Commissioner (Appeals)

2. The issue in this appeal by the assessee, manufacturer of Metallised Polyester film, is that appellant had defaulted in payment of duty for the month of June, 2008. The duty was admittedly paid on 12.08.2008 along with interest. The show-cause-notice was issued on 17.12.2008 demanding duty of Rs.10,05,749.51/- as to have been paid consignment wise from PLA on goods cleared from 06.08.2008 to 11.08.2008 (the period of default). According to Revenue, appellant have defaulted in payment of duty for more than 30 days from due date and accordingly, under Rule 8(3A) of CER, 2002 was not eligible to avail Cenvat Credit during the period of default being 06.08.2008 to 11.08.2008 and, accordingly, the duty should again paid in cash. Vide O-I-O dated 21.01.2010, the duty of Rs.10,05,750/- was again demanded with interest and equal amount of penalty was imposed under Section 11 AC of the Central Excise Act, 1944. Being aggrieved, the appellant had preferred appeal before Ld. Commissioner (Appeals), who was pleased to reject the appeal.

3. The appellant-assessee is absent in spite of notice.

4. Heard the Ld. AR for the Revenue and perused the appeal records.

5. Having considered the rival contentions, I find that the whole issue is Revenue neutral as the appellant is entitled to take Cenvat Credit of the amount again demanded in cash, which have been earlier

paid by debit to Cenvat Account. Further, I find there is no case of deliberate default made out by the Revenue. Further, it have been held by Hon'ble Gujarat High Court in the case of Indsur Global Ltd. Vs. Union of India, 2014 (310) ELT 833, that the provisions of Rule 8(3A) of Central Excise Rules, 2002 are ultra vires with Article 19 and 14 of the Constitution of India, as the same are against the basic principles of Cenvat Credit Scheme and also are draconian in nature. Even, otherwise, I find that the delay beyond 30 days is for a period of only five days, which does not call for any penalty. Accordingly, in view of my findings and the admitted position that tax was suo motu paid before the issue of show cause notice with interest, I allow this appeal and set aside the impugned order. The appellant will be entitled to consequential benefits, if any.

(Dictated and Pronounced in the open Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

Mishra

प्रमाणित प्रति / Certified True Copy
8/12
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