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/71090/2016-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(I) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/3154/2010	CCE KANPUR 117/7, SARVODAYA NAGAR, KANPUR 208005.
		Name and Address of Respondent
2		PROPENE PRODUCTS (P) LTD., E-19, PANKI SITE-I, KANPUR.,,

Copy To

Advocate(s) / Consultant(s):

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy ~~15 Guard File~~

Asstt. Registrar

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

Appeal No.E/3154/2010-[SM]

Arising out of Order-in-Appeal No.420-CE/APPL/KNP/2010 dated 31.08.2010 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

For approval and signature:

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

---

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

---

Commissioner of Central Excise, Kanpur ...APPELLANT(S)

VERSUS

M/s Propene Products (P) Ltd. ...RESPONDENT (S)

APPEARANCE

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

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 28.11.2016

FINAL ORDER NO.- 71090/2016

Per Mr. Anil Choudhary :

This Appeal is filed by the Revenue against Order-in-Appeal No.420-CE/APL/KNP/2010 dated 31.08.2010 passed by Commissioner (Appeal).

2. The issue in this Appeal by Revenue is, whether the Commissioner (Appeals) have erred in modifying the Order-in-Original, whereby for default in payment of duty beyond the period of 30 days from the due date, the tax, which was admittedly paid prior to issue of show cause notice with interest, was again demanded to be paid in cash or from PLA with interest and also penalty of Rs.5 lakhs was imposed under Rule 25 of Central Excise Rules, 2004. The Ld. Commissioner (Appeals) recording ~~their~~ finding that the appellant-company had become sick during the period and had been referred to BIFR and revival plan had also been approved in the year 2005 and IDBI was appointed as the Implementing Agency under the supervision of the BIFR. Under such facts and circumstances, the Ld. Commissioner(Appeals) observed that there is no deliberate, default on the part of the assessee and, further noticed that the statutory provisions, regarding the procedure to be followed, clearly specifies that in case of default in paying the duty, in stipulated timeframe, the facility of paying duty on consignment basis without utilizing Cenvat Credit for payment of duty, stands withdrawn. Under the facts that the amount under demand had already been paid by the assessee along with interest and there is no restriction in utilizing the Cenvat Credit in subsequent months, which was earned during the defaulting months. Therefore, further observed that if the demand is confirmed, it will result into Revenue ~~without~~ neutral

exercise as first amount shall be debited in PLA and the amount already debited in Cenvat Credit records shall be credited. Further, in view of the appellant being admittedly a sick company under the monitoring of the BIFR. The demand was set aside and the penalty imposed under Rule 25 was reduced to Rs. 1 lakh.

3. The respondent-assessee is absent in spite of notice. As the issue ~~is~~ lies in a very narrow compass, it was decided to dispose of the appeal ex parte.

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

5. Having considered the rival contentions, I find that in view of the admitted facts, it is clear that there is no case of deliberate default. The respondent-assessee was a sick industry/company and a revival package had been approved by BIFR, which was under implementation through the Implementing Agency – IDBI. Accordingly, I find no error in the impugned order. Accordingly, this appeal by Revenue is dismissed. The respondent-assessee will be entitled to consequential benefits, if any, in accordance with law.

(Dictated & Pronounced in the open Court)

(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