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

Dated: 26/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70878/2016-EX[DB] dated 07/06/2016

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/3294/2006	U.P.ORGANICS LTD. C/O SH ANSHUMAN SINGH,KOTHI ANTA GHAR,CIVIL LINES,BIJNOR(UP)
		Name and Address of Respondent
2		-C.C.E.MEERUT I MANGAL PANDEY NAGAR,MEERUT.

Copy To

3Advocate(s) / Consultant(s):

AALOK ARORA, ADVOCATE
82-MISSION COMPOUND,
SAHARANPUR,
UTTAR PRADESH
247001

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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

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/3294/2006-EX[DB]

Arising out of Order-in-Appeal No.197-CE/MRT-I/2005 dated 28.11.2005 passed by Commissioner (Appeals) Customs & Central Excise, Meerut.

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 U.P. Organics Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-I

...RESPONDENT (S)

APPEARANCE:

Shri Aalok Arora, Advocates for the Appellant (s)
Shri V.R. Reddy Asstt. Commissioner (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 07.06.2016

FINAL ORDER NO.- 70878/2016

<u>Per Mr. Anil G. Shakkarwar:</u>

The present appeal is preferred against Order-in-Appeal No.197-CE/MRT-I/2005 dated 28.11.2005 passed by Commissioner (Appeals) Customs & Central Excise, Meerut.

2. The brief facts of the case are that the appellants are manufacturer of Inverted Syrup and edible preparations not elsewhere specified falling under chapter heading 21.08 of Schedule to Central Excise Tariff Act, 1985. On 27.10.2001, Central Excise Officers visited factory of the appellant. The Officers found shortage of finished goods of 220kg involving duty of Rs.528/-. There was also shortage of 955-kg of `edible preparations not elsewhere specified' involving duty of Rs.4890/-. The officers also found shortage of input i.e. liquid Glucose 52700-kg, involving Rs.1,18,891/-. It was further notice that appellants charged Rs.0.30/- per kgs from M/s Britania India Ltd. as packing charges on which duty was not paid which worked out to Rs.3,187/-. The duty of Rs.528/-, 4890/-, 1,18,891/- & 3,187 were debited on 27.10.2001. They were issued with a show cause notice, bearing No. Prev/U.P. Organics/67/2001/193 dated 27.03.2003, wherein the appellants were called upon to show cause as to why Central Excise duty realized Rs.528/-, 4890/-, 1,18,891/- should not be appropriated. Further, they were called upon show cause as to why Central Excise duty of Rs.76,144/- on the amount of Rs.4,75,899/- realized from various companies as handling,

forwarding & packing charges during the period from 1998-99 to 2001-02 on which no Central Excise duty was paid should not be demanded. Further there was proposal to appropriate Rs.3,187 as Central Excise duty already paid. There were proposals to impose penalty and in respect of interest also. The said show cause notice was adjudicated through Order-in-Original No.47/AC/MZN-II/04 dated 21.09.2004. The original authority confirmed and appropriated Rs.528/-, 1,18,891, 4,890/- & Rs.3,187/-. Further, the original Authority has held that the appellant had realized handling, forwarding and packing charges from various companies and the said amount was not included in the assessable value and those packing were not in the nature of special packing but were general packing. Therefore, on the amount of Rs.4,75,899/- recovered for the period from 1998-99 to 2001-02 realized on account of such packing, Central Excise duty of Rs.76,144/- was confirmed by the original authority and original authority imposed penalty of Rs.1,98,750/- on the appellant under Rules 173 Q of Central Excise Rules, 1944 and Rule 25 of Central Excise Rules, 2001.

3. Aggrieved by the said Order-in-Original dated 21.09.2000, the appellant preferred an appeal before Ld. Commissioner (Appeals). Appellant argued before the first appellate authority that the demand has been raised on account of durable and returnable packing and the demand of duty of such is unsustainable and further they contended that during the relevant

period, appellant being SSI unit, SSI benefit was not extended by the Original Authority. The first appellate authority, therefore, held that the original authority should consider the claim of the appellant in respect of benefit of SSI exemption and remanded the matter to original authority for redetermination of duty in view of SSI exemption through Order-in-Appeal No.197-CE/MRT-I/2005 dated 28.11.2005.

4. Aggrieved by the Order-in-Appeal dated 28.11.2005, the appellant is before this Tribunal. The appellant has contested the issue of durable and returnable packing and also that of imposition of penalty. The grounds of appeal are that the charges on which duty was not paid were the charges for durable and returnable packing such as drums and canes and assessable value was not admissible to include the same as per the Law existed during the relevant period.

5. Heard learned counsel. He has contested that the law allowed deduction on account of durable and returnable packing upon to 30th June, 2000, and further contended that the shortages were found in the factory and there were no allegations of clandestine removal, therefore, the penalty was not justified.

6. The Ld. DR for Revenue has supported the impugned Order-in-Appeal.

7. We have taken into consideration the rival contentions. Prior to 01.07.2000, the amount recovered on durable and returnable

packing was deductable from value. Therefore, we modify the Order-in-Appeal dated 28.11.2005 to the extent that on reconsideration, original Authority shall not impose any penalty and Original authority shall allow the deduction of amount recovered by the appellant towards durable and returnable packing for the period upto 01.07.2000 and as directed by first appellate authority also examine the issue of extending the benefits of SSI exemption and re-determine the duty payable by the appellant. In above terms, the appeal is allowed.

(Operative part of the order pronounced in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy

24.10.16

Registrar