REGISTERED / AD

FAX : 0532-2400149

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

Dated: 26/12/2016

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71161/2016-SM[BR] dated 29/11/2016

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	E/3795/2010	CCE MEERUT OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
		Name and Address of Respondent
2		GANGESHWAR SPINNING MILLS (PROP. T.T.LTD) N.H. 24, TIRUPATIPURAM, GAJRAULA, DISTT. J.P.NAGAR (U.P.),

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/3795/2010-EX[SM]

Arising out of Order-in-Appeal No.256-257-CE/MRT-II/2010 dated 20.08.2010 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II.

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, Meerut-II.

...APPELLANT(S)

VERSUS

M/s Gangeshwar Spinning Mills (Prop. T.T. 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: 29.11.2016

FINAL ORDER NO.- 71161/2016

Per Mr. Anil Choudhary :

The present appeal is filed by the Revenue against Order-in-Appeal Nos.256-257-CE/MRT-II/2010 dated 20.08.2010.

2. The issue in this appeal by Revenue is, whether the Commissioner (Appeals) have rightly allowed the benefit to the respondent-assessee under Notification No.22/2003-CE under the facts, he had procured duty free items like Bus Bar Trunking Flexible End Copper Termination, Panel/Board Plan 3, Main LT Panel etc. during August, 2004 to September, 2006 being capital goods for utilization in their 100% EOU for use with their captive power plant/diesel generating set. Upon inspection by Revenue, goods was found to have been installed in the adjoining 100% EOU namely 'Gajraula Spinning Mills' owned by the same company, namely T.T. Ltd. and the admitted facts being that the power through the said disputed equipments/capital goods was being received by the respondent-assessee, namely the 'Gangeshwar Spinning Mills'.

3. The SCN dated 11.12.2008 was issued, invoking the extended period, as on the facts stated above, it appeared to Revenue that the respondent-assessee have violated the condition of Notification No.22/2003–CE, wherein exemption is available to 100% EOU, subject to the condition that impugned goods are used by the unit for the purpose specified therein, that is in connection with production and export of goods. Further, it is observed in the SCN that the user-industry could have transferred the impugned goods to another EOU for use within the unit after giving intimation to the proper officer subject to maintenance of proper accounts of removal and receipt of goods and following the procedure. In the course of inspection, on

21.12.2006, statements of Mr. B. C. Jain the vice President of both the units was recorded, who stated that they were under the impression that EOU of same owner can share facilities of captive power plant and panels, and therefore, the goods mentioned in the table in the SCN, were installed in the premises of Gajraula for convenience instead of in the premises of Gangeshwar, as such equipment for transmission of power had to be installed near the captive power plant, which was installed in the premises of Gajraula. It was also clarified that both the EOU units are located side-by-side having common boundary wall, owned by the same company. It was further stated that they had obtained legal advice, wherein it was advised that EOU could share equipments with other units of the same owner in view of Notification No.50/2005-CUS. The SCN was adjudicated on contest and the duty on capital goods, amounting to Rs.7,40,377/- was demanded with interest and equal amount of penalty was imposed on the respondent-assessee, Gangeshwar Spinning Mills. A penalty of Rs.5,000/- was also imposed on Gajraula Spinning Mills under Rule 27 of CER, 2002. Being aggrieved, the respondent-assessee preferred appeal before Ld. Commissioner (Appeals), who vide the impugned order allowed the appeal of the respondent-assessee, observing that as per Para 2A of the notification, user-industry may transfer the capital goods to any other user/industry, subject to the condition that the user industry shall give prior intimation to the authority before such transfer of capital goods. Further observed that the moot point in the case is, whether it is justified to deprive the assessee from substantial benefit of the Notification that is exemption on waiver of duty, on account of non-compliance of the said condition being failure to intimate the

Department. Under the facts and circumstances that the capital goods in question had been installed in the adjoining premises of another EOU owned by the same assessee and admittedly the power through the said equipment being received by the respondent-assessee fulfils the condition of user and/or the purpose of notification being manufacture of goods and export thereof being fulfilled. It is only for the minor error failure to give intimation to Revenue, cannot result in denial of substantial benefit.

4. The Ld. AR for Revenue relies on the grounds of appeal and also relies on the findings in the Order-in-Original.

5. The counsel for the respondent-assessee have not appeared in spite of notice. Accordingly, as the issue lies in narrow compass the appeal is decided with the assistance of Ld. A.R. for Revenue and after going through the records.

6. Having considered the rival contentions, I find that there have been substantial compliance of the conditions of Notification No.22/2003 – CE, which required that duty-free capital goods acquired by the 100% EOU should be utilised by it for manufacture of goods, which are finally exported. Accordingly, there is no error found in the Order-in-Appeal passed by Ld. Commissioner (Appeals), hence the appeal filed 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
2.8.12
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