FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 30/12/2016

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71200-71201/2016-SM[BR] dated 25/11/2016

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/685/2009	**SHIVANJI METAL INDUSTRIES (P) LTD** 100/1, JAGANNATHPURI, MATHURA(UP)
2	E/686/2009	**MR.MURLIDHAR AGGARWAL** 100/1, JAGANNATHPURI, MATHURA.

	Name and Address of Respondent
3	-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.
4	-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

RAJ KUMAR, FCA
U-18, PAWAN PLACE, SAMAD ROAD,
ALIGARH,
UTTAR PRADESH

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy ~~18 Guard~~ File

Asstt. Registrar

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

Appeal Nos. : E/685 & 686/2009-EX[SM]

Arising out of OIA Nos. 228-231/CE/LKO/2008 dated 29.12.2008 passed by Commissioner (Appeals), Central Excise, Lucknow.

i) Shivanji Metal Industries (P) Ltd.
ii) Mr. Murlidhar Aggarwal

...APPELLANTS

VERSUS

C.C.E., Lucknow. ...RESPONDENT

APPEARANCE

Shri Raj Kumar, Charted Accountant for the appellants.
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 25.11.2016

FINAL ORDER NO. 71200 – 71201/2016

Per Mr. Anil G. Shakkarwar :

The brief facts of the case are that M/s. Shivnji Metal Industries (P) Ltd., hereinafter called "SM" were manufacturing Aluminum Circles and Aluminum Utensils. They were issued with a show cause notice dated 17.08.2007 wherein it was stated that SM did not take Central Excise registration, therefore, there was proposal to confiscate goods valued at Rs. 30,01,651/- and there was proposal to demand duty of Rs. 24,299/- on Aluminum Circles. There was proposal to impose penalty on SM and personal penalty on Shri Murlidhar Agggarwal, Director. The appellants contended before the Original Authority that they manufactured Aluminum Utensils from May, 2003 to March, 2006 and since March, 2006 till the visit of the unit by Central Excise officers on 22.02.2007 there was no production. They further submitted before Original Authority that they paid Central Excise duty for the entire period @ 10,000/- per month for the period upto March, 2006 and they totally paid Rs. 3,40,000/- through challan dated 07.08.2007 and therefore the demand of captive consumption on Aluminum Circles for Rs. 24,299/- as well as penalty for not taking registration is not sustainable and the proposal for confiscation of the goods was also not sustainable. The Original Authority confiscated goods and imposed redemption fine of Rs. 5 lacs. The demand of Rs. 24,299/- was confirmed. A penalty of Rs. 5 lacs was imposed on M/s. Shivanji Metal Industries (P) Ltd. and penalty of Rs. 50,000/- was imposed on Shri Murlidhar Aggarwal, Director. Both M/s. Shivanji Metal Industries (P) Ltd. and Shri Murlidhar Aggarwal preferred appeal before Commissioner (Appeals). The appeal was decided through Order-in-Appeal No. 228-231/CE/LKO/2008 dated 29.12.2008. The Appellate Authority reduced redemption fine from Rs. 5 lacs to Rs. 2 lacs. The penalty imposed on M/s. Shivanji Metal was reduced to Rs. 41,890/- and demand of duty was increased to Rs. 41,890/-. The personal penalty on Shri Murlidhar Aggarwal was reduced to Rs. 41,890/-. Aggrieved by the said order M/s. Shivanji Metal and Shri Murlidhar Aggrawal are before this Tribunal.

2. Heard learned counsel for appellant. He has submitted that three connected appeals bearing Nos. E/864, 865 & 866 of 2009 arising out of same Order-in-Appeal and appeal filed by Revenue were disposed off as withdrawn under the litigation policy through Final Order No. A/70541-70543/2016-EX[DB] dated 08.07.2016. He further submitted that it was brought to the notice of the Original Authority that the entire duty for entire period of show cause notice was paid through compounded levy procedure on 07.08.2007 and the goods seized were manufacture before 31.03.2006 and since as on 07.08.3007 they all became duty paid goods and therefore confiscation of the same was not warranted. He further submitted that the said amount of Rs. 24,299/- demanded in the show cause notice is a component of Rs. 3,40,000/- paid by them and therefore he prayed for setting aside confiscation and setting aside demand of duty. He further argued that the demand of Rs. 18,067/- is beyond the scope of show cause notice.

3. Learned D.R. has supported the impugned Order-in-Appeal.

4. Having considered the rival contentions, I find that the demand confirmed in the impugned Order-in-Appeal to the extent of Rs. 18,067/- is beyond the demand raised in the impugned show cause notice. I further find that all the seized goods were duty paid, therefore, confiscation of the same was not warranted. I further find that the demand of Rs. 24,299/- raised in show cause notice is also

covered by Central Excise duty of Rs. 3,40,000/- paid by the appellant. I, therefore, set aside the Order-in-Original and Order-in-Appeal and allow the appeals. I, however, order that this will not result in refund of Rs. 3,40,000/- paid by the appellants.

(Pronounced and dictated in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

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