FAX : 0532-2400149

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

Dated: 03/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71024/2016-EX[DB] dated 27/10/2016

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/3926/2006	SHILPI ENTERPRISES LALKOTHI S-2/638 A, CLUB ROAD, VARANASI CANTT(UP)
		Name and Address of Respondent
2		-C.C.E.ALLAHABAD 38, M.G.Marg, Civil Lines, Allahabad.

Copy To

3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA EXTENTSION LINK
ROAD NEW DELHI-110014

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

23-11-16

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

Appeal No. : E/3926/2006-EX[DB]

Arising out of OIA No.72/CUS/ALLK/2006 dated 20.06.2006 passed by Commissioner (Appeals), Central Excise, Allahabad.

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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Shilpi Enterprises. ...APPELLANT(S)
VERSUS
C.C.E., Allahabad ...RESPONDENT (S)

APPEARANCE

Shri Atul Gupta, Advocate for the appellant
Shri Rajeev Ranjan, Joint Commr. and Shri Pawan Kumar Singh, Supdt. (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 : 27. 10. 2016

FINAL ORDER NO. 7/024/2016

Per Mr. Anil G. Shakkarwar :

The present appeal is involving exemptions allowed through Notification No. 85/1985 dated 17.03.1985 and Notification No. 175/1986 dated 01.03.1986.

2. After hearing the learned counsel for the appellant for sometime we have gone through the impugned show cause notice No. VI(MP)(12)ADJ/123/87/208 dated 05/05/1988. Paragraph No. 1 of the said show cause notice is reproduced below:-

> *"Whereas it appears that Messrs Shilpi Enterprises, Club Road, Varanasi have contravened Rules 9, 52-A, 174, 174-A, 173-B, 173-C, 173-F and 173-G of the Central Excise Rules, 1944 in as much as they have manufactured Electric motors and parts thereof i.e. Stators and Rotors (falling under T.I. no. 30D and heading No. 8503-00 of Central Excise Tariff in 1985-86 and 1986-87 respectively) from Electrical Stamping (8311.00) and D.C. Rotors (8503.00) purchased from M/s. Sharma Electricals, Varanasi without submitting the annual declaration and without obtaining a Central Excise Licence. The said M/s Shipli Enterprises have cleared the stators and rotors so manufactured by them without payment of Central Excise duty in excess of the exemption granted vide Notfn no. 85/85 dated 17.3.85 amounting to the value of Rs. 6,81,694-00 and Central Excise duty Rs. 35,788-93 paise in the year 1985-86 and amounting to the value of Rs. 4,45,522-00 and Central Excise duty Rs. 44,522-00 paise in the year 1986-87 in excess of the exemption granted vide notification no: 175/86 dated 1.3.1986 read with Notification no : 216/86 dated 2.4.1986, as per detailed calculations given in the Chart enclosed after deducting minimum 10% discount given to buyers uniformly. The commission to selling agents is also not admissible under Section 4 of the Central Excise and Salt Act, 1944 as the same is utilized for sales promotions etc. The value of Rotors and Stators have been determined under Section 4 read with Valuation Rules 6(a) of 1975.*
>
> *The said Messrs Shilpi Enterprises, Club Road, Varanasi Cantt are hereby required to show cause to the Collector of Central Excise, Allahabad why a penalty should not be imposed on them under Rule 226 and 173-Q of the*

Central Excise Rules, 1944 and why the Central Excise duty should not be recovered from them under Rule 9(2) read with Section 11-A of the Central Excise and Salt Act, 1944 by involing them extended period of 5 years of the said section as M/s. Shilpi Enterprises have suppressed the facts by not taking out licence, filing any classification list, declaration and any other return to show the value of the clearance during the above period and have willfully evaded the Central Excise duty on the excisable goods manufactured by them."

It was seen that show cause notice states that extended period is invoked under Section 11A of Central Excise Act, 1944 and the demand for the period 1985-86 amounting to Rs. 35,788.93 and for the year 1986-87 amounting to Rs. 44,522.00 is raised. On going through the said show cause notice and Annexure 'A' enclosed to the said show cause notice, we found that the show cause notice is not in a position to reveal the reason for issue of said show cause notice. The facts and the provisions of law on the basis of which said conclusion is drawn by Revenue that differential Central Excise duty of Rs. 35,788.93 and 44,522.00 was payable are not forth coming from the said show cause notice. Since the show cause notice is ~~wage~~ vague and does not make any sense on reading the same, we consider that the proceedings arisen out of said show cause notice are totally vitiated. It is requirement of the law that a person who has been called upon to show cause should clearly understand the contentions of Revenue for raising the demand. The said show cause notice is not in a position to reveal the contention of Revenue which is basis for raising the demand. We also find that Original Authority has not given any finding ~~as~~ on whether the appellants have taken licence in the mean time. We, therefore, hold that the said show cause notice is not sustainable. As a result, the further proceedings of the aforementioned show cause notice are set aside and appeal is allowed with consequential relief.

(Pronounced in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
16.11
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