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: 15/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70171/2017-EX[DB] dated 30/01/2017

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.

15/2/17

Asstt. Registrar 15/2/17

Application	Appeal	Name and Address of Appellant
1	E/2169/2007	ATLANTIC CHEMICALS INDS. C-142, Anand Vihar, Delhi
		Name and Address of Respondent
2		-C.C.E. MEERUT I Excise Chowk, University Road, Mangal Pandey Nagar, Meerut - 250005.

Copy To

3Advocate(s) / Consultant(s):

SHRI ATUL GUPTA, ADV.
ALLD.
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2169/2007-EX[DB]

(Arising out of Order-in-Appeal No.80-CE/MRT-I/2007 dated 23/04/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s Atlantic Chemicals Industries **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Atul Gupta, Advocate. for Appellant
Shri Pawan Kumar Singh, Superintendent (AR). for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 30/01/20[illegible]

FINAL ORDER NO. 70171/2017

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Atlantic Chemicals Industries, against Order-in-Appeal No. 80-CE/MRT-1/2007 dated 23/04/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I.

2. The brief facts of the case are that the appellants were issued with two Show Cause Notices. Show Cause Notice dated 17/04/1994 covered the period from 01/04/1994 to 30/09/1994 & another Show Cause Notice dated

30/10/1995 covered the period from 01/04/1995 to 31/07/1995. The allegations in the said Show Cause Notices were that the appellants, M/s Foamsil Chemicals & third unit M/s Arun Chemicals (India) were belonging to the members of same family and the said three units were separately claiming Small Scale Exemption under Notification No. 1/1993-CE dated 28/02/1993 and that they violated the conditions ~~which was~~ stated in the said notification and the clearances of said three units needed to be clubbed together to arrive at value of clearance admissible for exemption under the said notification. Further on clubbing, the clearances the appellants were raised with a demand of Rs.6,24,298/- through said Show Cause Notice dated 17/04/1994 & demand of Rs.6,24,499/- through said Show Cause Notice dated 30/10/1995. Both the above stated Show Cause Notice were adjudicated through common Order-in-Original No. 29-31/Jt. Commr./2005 dated 28/11/2005. The Original Authority has recorded in the said Order-in-Original dated 28/11/2005 that the M/s Foamsil Chemicals submitted reply to Show Cause Notice, which was also clubbed with the above stated two Show Cause Notices for passing common order. However, from the said Order-in-Original dated 28/11/2005, it is emerging that the appellants did not submit any reply to Show Cause Notice nor appeared for hearing. The Original Authority adjudicated above stated two Show Cause Notices without taking into consideration submissions by the present appellants and confirmed the demand and imposed equal penalty. Aggrieved by the said Order-in-Original dated 28/11/2005 appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) has decided the said appeal through impugned Order-in-Appeal No. 80-CE/MRT-I/2007 dated 23/04/2007. The appellants submitted before the ld. Commissioner (Appeals) that the Original Authority has clubbed the clearance of three units whereas each unit is recognized as an independent unit in the eyes of law and the transactions among themselves are duly accounted for in the books of accounts and that the raw materials required for manufacture of final products were separately procured and the sale proceeds were also separately accounted for. It was further submitted before the ld. Commissioner (Appeals) that the Original Authority did not offer any personal hearing. The ld. Commissioner (Appeals) did not appreciate the submissions before him and did not interfere with the said Order-in-Original dated 28/11/2005. Aggrieved by the said Order-in-Appeal No. 80-CE/MRT-I/2007 dated 23/04/2007 appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant. He has submitted that the Original Authority did not take into consideration any defence while deciding the said two show cause notices and that it is very clear from the said Order-in-Original dated 28/11/2005 that the adjudication

was taken up on the basis of submissions by a third noticee. Further the issue is that the personal hearing was not offered to the appellant was raised before the ld. Commissioner (Appeals) and the same was also not be considered by the ld. Commissioner (Appeals). He further contended that due to said reasons the impugned Order-in-Appeal is bad in law.

4. Heard the ld. Departmental Representative who has supported the impugned Order-in-Original & Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, we find that the said Order-in-Original dated 28/11/2005 nowhere makes any mention of any grounds of defence submitted by the appellant for arriving at decision which was passed through said Order-in-Original dated 28/11/2005. Therefore, we hold that the Original Authority did not follow the principles of natural justice. We, therefore, remand the matter back to the Original Authority with a direction that the Original Authority shall allow the appellants to submit their defence reply and thereafter offer them opportunity of personal hearing and on hearing decide the matter as per law. The appellants are also directed to approach the Original Authority within 30 days of receipt of copy of this order along with their defence reply to the said show cause notices and submitted the same in the office of the Original Authority and appear for hearing whenever called

for. With the above directions, the appeal is allowed by way of remand.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

Ansari

प्रमाणित प्रति / Certified True Copy
21/02/17
सहायक रजिस्ट्रार / Asstt. Registrar
(C.E.S.T.A.T.)
38, M. G. MARG, ALLAHABAD-211001