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: 10/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70033/2017-EX[DB] dated 09/01/2017

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.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2209/2009	SUPERHOUSE LEATHERS LTD 71-A,Jajmau, Kanpur.
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.

Copy To

3Advocate(s) / Consultant(s):

Anurag Mishra
117/10 SK APARTMENT
SARVODAYA NAGAR,
KANPUR,
UTTAR PRADESH

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/2209/2009-EX[DB]

(Arising out of Order-in-Appeal No. 92-CE/APPL/KNP/2009 dated 23/04/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s Super House Leathers Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Anurag Mishra & Shri Abhinav Mishra, Advocates for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 22/12/2016
Date of Decision : 22/12/2016

FINAL ORDER NO.-70033/2017..........

Per: Anil G. Shakkarwar

The present appeal is filed against Order-in-Appeal No. 92-CE/APPL/KNP/2009 dated 23/04/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The brief facts of the case are that the appellant was engaged in the manufacture of Leather Uppers, Leather Hand Bags and Leather and other articles. They were availing exemption under Notification No. 08/2003 dated 01.03.2003 which is Exemption for small scale manufacturer. Notification No. 30/2003-CE dated 01.04.2003

amended Notification No. 08/2003-CE wherein for the period with effect from 01.04.2003 the aggregate value of clearances for previous year also included clearances at nil rate of duty. Leather manufactured by appellant was attracting nil rate of duty. During the period from 01.04.2003 to 20.08.2003 value of clearance at nil rate of duty happened to be Rs.12,34,763.98/-. Therefore, it appears to revenue that the appellant was not entitled to said exemption under Notification No. 08/2003 with effect from 01.04.2003. Therefore, appellant were issued with a show cause notice dated 13.02.2004 demanding Central Excise duty of Rs.1,19,614/-. The original authority adjudicated the said show cause notice through the order-in-Original No.52/Dem/ACK-III/08 dated 28.11.2008. He confirmed the demand of Rs.1,90,614/- and imposed penalty of equal amount under Rule 25 of Central Excise Rules, 2002. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals), who dismissed the appeal through the impugned Order-in-Appeal. Aggrieved by the said Order-in-Appeal, appellants are before this Tribunal.

3. Heard the ld. Counsel for the appellant. He has contended that Central Board of Excise and Customs vide clarification dated 06.08.2003 clarified that for availing benefit of SSI Exemption under Notification No. 08/2003-CE dated 01.03.2003 for the financial year 2003-04 value of clearance of exempted goods including nil rate of excise duty of preceeding financial year shall be included. The appellant further contended that appellant deposited Rs.02 Lakhs

towards duty on 27.08.2003. Ld. Counsel for the appellant submitted that they filed a writ petition before the Hon'ble Allahabad High Court on 27.09.2003 challenging the validity of Notification No.08/2003-CE as amended by Notification No.30/2003-CE. The Hon'ble Allahabad High Court through its order dated 23.11.2007 dismissed the said petition of the appellant challenging the validity of notification. The Ld. Counsel further contended that he has deposited the duty before the issuance of show cause notice and that therefore, there was no case for imposition of penalty.

4. Ld. D.R. of the revenue supports the impugned order.

5. Having consider the rival contentions and in view of the order of the Hon'ble High Court dated 23.11.2007, we hold that the confirmation of demand in the said Original Order is as per law. However, we find that the duty was deposited much before the issuance of show cause notice. Therefore, intentions to evade duty do not get establish. In view of that we set aside the penalty imposed through the Order-in-Original under Rule 25 of Central Excise Rules, 2002. The Order-in-Original stands modified to that effect. In view of the above we allow the appeal partially.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति / Certified True Copy
20.1.17
सहायक पंजीयक / 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