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: 04/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70439/2017-EX[DB] dated 17/04/2017

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/2267/2007	**VINYL TUBES PVT. LTD.** 8/33, Kirti Nagar, Indl. Area, New Delhi
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To

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/2267/2007-EX[DB]

(Arising out of OIA No. 42-CE/LKO/07 dated 11.05.2007 passed by Commissioner (Appeals), Central Excise, Lucknow.)

Vinyl Tubes Pipes Ltd. ...APPELLANT

VERSUS

Commissioner, Central Excise, Lucknow ...RESPONDENT

APPEARANCE

None for the appellant.
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 : 17. 04. 2017

FINAL ORDER NO.- 70431/2017

Per Mr. Anil G. Shakkarwar :

The present appeal is directed against Order-in-Appeal No. 42-CE/LKO/07 dated 11.05.2007 passed by Commissioner (Appeals), Central Excise, Lucknow.

2. The brief facts of the case are that the appellant was manufacturing rigid PVC pipes and he was supplying the goods to the Government Department on the basis of freight contract and claimed the deduction of freight from the assessable value. It appeared to Revenue that by doing so he undervalued the goods and also suppressed the information. Therefore, through a show cause notice

dated 14.09.2005, allegations were leveled against the appellant that during the period 01.07.2000 to 28.02.2003 appellant did not pay duty on the freight charges and undervalued the goods and evaded Central Excuse duty of Rs. 5,59,111/-. Therefore, through the said show cause notice said duty of Rs. 5,59,111/- was demanded. Further, there were other proposals in the show cause notice. The issue was adjudicated through Order-in-Original No. 52/JC/LKO/2006 dated 20.12.2006 wherein the demand was confirmed and equal penalty was imposed. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) has observed that before issue of show cause notice the appellant had deposited duty and therefore penalty was not imposable. However, the learned Commissioner (Appeals) did not interfere with ~~on the~~ confirmation of demand. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

3. The appellant is absent during hearing.

4. Heard learned D.R. who has presented the case and supported the Order-in-Appeal.

5. We have perused the records we find that in the opening paragraph on page-3 of show cause notice dated 14.09.2005 it has been stated that during the period from 01.07.2000 to 28.02.2003 the appellant supplied rigid PVC pipes with coupler and solvent cement to UP Jal Nigam and other Government Departments and charged equated freight amounting to Rs. 36,44,466/- as shown in their invoices during the aforesaid period which was not included in the assessable value. Further, in the next paragraph of said show cause

notice records that the appellant did not disclose the said fact to the department and therefore there were grounds for invocation of proviso to Sub Section (1) of Section 11A of Central Excise Act, 1944 for extended period for issue of show cause notice. We find from what has been stated in said two paragraphs that there were no grounds for issue of show cause notice for the extended period. We, therefore, hold that impugned show cause notice dated 14.09.2005 is not tenable in law. Therefore, we set aside the impugned Order-in-Original and Order-in-Appeal and allow the appeal. The appellant shall be entitled for the consequential relief, if any.

(Pronounced and dictated in the open Court)

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

Patel/-

प्रमाणित प्रति/Cerified True Copy
09/05/2017
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