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: 06/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70157-70159/2017-SM[BR] dated 13/01/2017

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/2479/2008	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
2	E/2480/2008	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
3	E/2481/2008	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
4		EXION(INDIA) PVT LTD Situated Behind Laxmi Cold Storage, G.T. Road, Mandhana, Kanpur.,,
5		SH DURGESH RAI,DIRECTOR M/s Mercury (international) Pvt ltd, 2A/244-4A, Azad nagar, Opp Azad Nagar Bus Depot, Kanpur.,,
6		MERCURY (INTERNATIONAL)PVT LTD 2A/244-4A, Azad Nagar, Opp Azad Nagar Bus Depot, Kanpur,,

[redacted]

Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

AMIT AWASTHI
ADVOCATE
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR,
KANPUR- 208002

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

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

Appeal Nos.E/2479, 2480 & 2481/2008-EX[SM]

Arising out of Order-in-Appeal Nos.315-316-317-CE/APPL/KNP/2008 dated 09.07.2008 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

Commissioner of Central Excise, Kanpur ...APPELLANT(S)

VERSUS

(i) M/s Mercury (International) Pvt. Ltd.
(ii) Exion (India) Pvt. Ltd.
(iii) Sh Durgesh Rai, Director ...RESPONDENT (S)

APPEARANCE

Shri Rajeev Ranjan, Joint Commr. for the Department (s)

Shri Amit Awsthi, Advocate for the Assessee (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING: 13.01.2017

FINAL ORDER NO.- 70152-70159/2017

Per Mr. Anil Choudhary :

The issue in these appeals by Revenue is, whether the respondent Mercury (International) Pvt. Ltd. have manufactured and cleared goods of brand name of another and thus have wrongly claimed SSI exemption.

2. The brief facts as per the show-cause-notice dated 15.12.2006 issued to all the respondents herein is that M/s Exion (India) Pvt. Ltd. (EIPL for short) and M/s Mercury (International) Pvt. Ltd. (MIPL for short) situated in near vicinity of each other, were engaged in manufacture of Sodium Hypochlorite Solution (falling under Chapter Heading 28.28 of CETA, 1985) and other products like Glassy

Sodium Metaphosphate & Water Treatment Plants without obtaining Central Excise Registration for manufacture of the same. It appeared to Revenue that Calfix, being used to denote the brand name of chemical is being used by *MIPL*, to specifically denote the brand of *EIPL* for the water treatment chemical, being supplied. So far, the contention of respondent-Shri Durgesh Rai that 'Calfix' denotes the chemical 'Sodium Hypochlorite' and is not the brand name of *EIPL* does not appear tenable in as much as *EIPL* and *MIPL* both use packing slips, wherein at serial No.'a' name and grade of material is being differently indicated than the recognised trade-mark (i.e. Calfix), at serial No.'b' after the name and Grade of material. It is also pertinent to mention that Shri Durgesh Rai appears to have relied upon various tender documents wherein tenders were invited for supply of either Calfix or similar chemical. It appeared to Revenue that tenders were invited for supply of chemical either under brand Calfix or for similar chemical confirming to the technical specifications of the chemical being sold under the brand 'Calfix' belonging to *EIPL*. Accordingly, it appeared that the respondent *MIPL* was not entitled to SSI exemption. Accordingly, SCN was issued proposing duty of Rs.10, 94,333/- on *MIPL* with further proposal of penalty, and further penalty was proposed on *EIPL* and Durgesh Rai, common director of *MIPL* and *EIPL*. The SCN was adjudicated on contest vide O-I-O dated 26.06.2008 by the Additional Commissioner and the proposed duty with penalty was confirmed on *MIPL* with interest. Further penalty of Rs.1,00,000/- was imposed on respondents *EIPL* and Durgesh Rai, Director, each. Being aggrieved, the respondent preferred appeal before Ld.

Commissioner (Appeals) who vide the impugned order have been pleased to allow the appeals recording the following findings:

"Arguing the case, the appellant had categorically contended that Calfix Grade-A was a descriptive nomenclature of the product and not a brand name or trade name used in the course of trade. The issue involved and merit consideration in the appeals is as to whether 'Calfix Grade-A' was a brand name of Appellant No.2 within the definition as given in Notification No.8/2002-CE dated 01.03.2002 for the purpose of disentitlement of SSI exemption.

I take up the issues one by one for consideration.

As regards the issue relating to clearances of chemicals by the Appellant No.1 under the alleged brand of Appellant No.2, Revenue has placed reliance on the statements of employees of Appellant No.1 and confirmed the demand. The appellants have categorically pleaded that 'Calfix-Grade-A-Technical' was not a brand name of Appellant No.2 but it was descriptive nomenclature of Sodium Hydrosulphite. Further, Shri Durgesh Rai who happen to be a Director in Appellant No.1 and 2 had also clearly denied that Calfix Grade-A-Technical was a brand name of Appellant No.2. In support of aforesaid contention, the appellant have produced copies of number of orders placed by Central Govt., State Govt. Organization to other suppliers for supply of 'Calfix (Grade-A-Technical)'. On careful consideration of facts on record, I find that no evidence has been adduced by the Revenue that 'Calfix (Grade-A-Technical)' was the brand name of the Appellant No.2 except the statements of employees of Appellant No.1, whereas the Director and promoter of Appellant No.1 & 2 has clearly denied in his written statement that Calfix (Grade-A-Technical) was not brand of Appellant No.2. I am of considered view that facts revealed by the Director in his written statement recorded under Section-

14 of Central Excise Act, 1944 would prevail over the facts revealed by the employees, unless contrary is proved. The Revenue has alleged that Calfix (Grade-A-Technical) was the brand of Appellant No.2 but Director has denied it to be their brand. No further evidence has been adduced that if 'Calfix (Grade-A-Technical)' is a brand, to whom it belonged to. On the other hand, Appellant has clarified that 'Calfix' is nomenclature of water treatment chemical namely 'Sodium HydroSulphite' which was being frequently supplied by various independent vendors to Central Government, State Government & their undertaking organizations against tenders awarded to them.

Further, it is also not a case of the Revenue that the appellant had exceeded the exemption limit prescribed under Notification No.8/2002-CE dated 01.03.2002 in the respective years. In the circumstances, I am of the considered opinion that Calfix (Grade-A-Technical) could not be held as a brand of Appellant No.2 and clearances effected by Appellant No.1 merit SSI exemption, if otherwise admissible. In view of above, I find that demand of duty and interest thereon are not maintainable."

3. Heard learned AR for Revenue and perused the grounds of appeal.

4. In the ground it has been urged that the Ld. Commissioner (Appeals) have incorrectly held that 'Calfix Grade-A-Technical', could not be held as the brand name of *EIPL* and clearances effected by *MIPL*, merit SSI exemption, if otherwise admissible. *MIPL* is not eligible for SSI exemption as they were manufacturing and clearing their own goods as well as goods under brand name 'Calfix' being brand name of another. The grounds are more or less a repetition of the show-cause-notice. Heard learned counsel Mr. Amit Awasthi for the respondents.

5. Having considered the rival contentions, I find that no error have been pointed out either on the finding of facts or on law in the impugned order passed by learned Commissioner(Appeals). Accordingly, I dismiss the appeals filed by Revenue. The respondents will be entitled to consequential benefits, in accordance with law, if any.

(Dictated and Pronounced in the open Court)

Sd/-

Mishra

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
9.2.17
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