FAX : 0532-2400149

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

Dated: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70876/2016-SM[BR] dated 21/09/2016

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/51084/2015	AMBIT SWITCHGEARS PVT LTD C-50, PLASE-II, NOIDA,UP 201305
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42,..SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

T. R. Rustagi,Advocate
SD-84, TOWER APARTMENTS,
PITAMPURA, DELHI
110034

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. ~~16~~ Office Copy ~~17~~ Guard File

Asstt. Registrar

23/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No. E/51084/2015-EX[SM]

Arising out of Order-in-Appeal No. NOI/EXCUSS/OOO/APP/306/2014-15 dated 29.12.2014 passed by Commissioner Appeals(2), Customs and Central Excise, Noida.

For approval and signature:

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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M/s. Ambit Switchgears Pvt. Ltd., Noida ...APPELLANT

VERSUS

Commissioner of Central Excise, Noida ...RESPONDENT

APPEARANCE

Shri T.R. Rustogi, Advocate for the Appellant
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 21. 09. 2016
FINAL ORDER NO. 70875/2016

Per Mr. Anil G. Shakkarwar :

The present appeal is against Order-in-Appeal No. NOI/EXCUSS/OOO/APP/306/2014-15 dated 29.12.2014.

2. The appellant is manufacture of electrical panels. They cleared their final product valued at Rs. 1,73,23,271/- against Served From India Scheme under notification No. 34/2006 and Status Holder Incentive Scheme under notification No.33/2012 dated 09.07.2012. It appeared to Revenue that goods cleared of above stated value were cleared without payment of duty and therefore under Rule 6(3) of Cenvat Credit Rules, 2004 an amount of Rs.10,70,578/- was recoverable from appellant under Rule 14 of Cenvat Credit Rules, 2004. Therefore, with such a proposal a show cause notice dated 26/07/2013 was issued to appellant. The appellant contended before the Original Authority that the exemption contained in the said notification provides for debit of Central Excise duty from SFIS scrips and SHI scrips and that CBEC through Circular No. 837/14/2006 dated 03.11.2006 as clarified that debit of original scrips is the must for payment of Central Excise duty exempted through same notification No. 34/2006 and therefore the goods cannot be treated as cleared without payment of duty. Further, appellant relied ~~as~~ on this Tribunal's final order in the case of Universal Power Transformer Pvt. Ltd. vs. C.C.E., Bangalore reported at 2010 (256) E.L.T. 244 (Tri.-Bang.) and Voltamp Transformers Ltd. vs. Commissioner of Central Excise, Vadodara reported at 2012 (276) E.L.T. 238 (Tri.-Ahmd.) and further submitted that the final order in the case of Voltamp was upheld by Hon'ble Gujrat High Court. The Original Authority confirmed the

demand of Rs.2,94,524/- on the goods cleared under notification No. 34/2006 and dropped the demand of Rs.7,76,054/- in respect of the goods cleared under notification No. 33/2012. The appellant preferred appeal before Commissioner (Appeals). The Commissioner (Appeals) through impugned order dated 29.12.2014 rejected the appeal by holding that the learned Single Member in the case of Universal Power Transformer Pvt. Ltd. has wrongly equated the debit of Central Excise duties in SFIS licences with the duty debit in the letter of undertakings issued in the case of export of goods vide notification no. 42/2001-CE as amended. He has further held that the learned Single Member has failed to appreciate the facts that in case of export of goods under bond or LUT there is such physical movement of the export goods to foreign land.

3. The learned counsel for the appellant has reiterated their grounds before the Original Authority and emphasized that the final order in the case of Universal Power Transformer Pvt. Ltd. has decided the point of law that whenever a scrips is debited it amounts to payment of duty in respect of which such debit is required by law and therefore, the said case law is applicable in the present case.

4. Learned D.R. supported the Order- in-Appeal.

5. I have gone through the contentions of both sides. First of all I take objection to the language used by learned Commissioner (Appeals) in the impugned Order-in-Appeal. The learned Commissioner (Appeals) cannot pass judgment on the understanding, interpretation and appreciation by any Member of higher appellate forum. He should not have used the words ~~that~~ "the Member of the Tribunal has wrongly

equated the debit entries" and the words like "Single Member has failed to appreciate". This Tribunal expresses unhappiness as use of such language by concerned learned Commissioner (Appeals) and expects that the said Commissioner (Appeals) shall be careful in future in use of language while analyzing the order passed by higher appellate forum. Further, I find that the ratio of the final order in the case of Universal Power Transformer Pvt. Ltd. passed by this Tribunal is squarely applicable in the present case. I, therefore, allow the appeal and set aside the impugned Order-in-Original. The appellant shall be entitled for consequential benefit, if any, as per law.

(Order was dictated in the open Court)

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

patel/-

सत्यापित प्रति / Certified True Copy
24.10.16
[illegible] / Asstt. Registrar
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[illegible] / (C.E.S.T.A.T.)
38, [illegible] 211001
38, M. G. MARG, ALLAHABAD-211001