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: 07/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70325-70326/2017-EX[DB] dated 02/03/2017

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/3012/2011	**KAVIT PU FOAM INDUSTRIES** A-11/3, Ind Area, Sahibabad, Ghaziabad.
2	E/3775/2010	**Kavit Pu Foam Industries** 6,sehgal Colony,court Lane Civil Lines,lower Ground Floor DELHI 110054

Name and Address of Respondent

3	-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
4	C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX- II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD, UP

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy ~~18~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL Nos. E/3012/2011 & 3775/2010-EX[DB]

(Arising out of Order-in-Appeal No. 17-CE/GZB/2011-12 dated 13/04/2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad & Order-in-Original No. 16/Commissioner/GZB/2010 dated 13/08/2010 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad.)

M/s Kavit PU Foam Industries — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Meerut-I — **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, — for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (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: 02/03/2017

FINAL ORDER NO. 70325-70326/2017

Per: Anil Choudhary

The present appeals have been filed by the appellant-assessee. In Appeal No. E/3775/2010, the grievance is regarding the rejection of claim for remission. Vide Order-in-Original No. 16/Commissioner/GZB/2010 dated 13/08/2010, wherein the claim have been rejected holding that the loss due to fire accident was a result of negligence on the part of the appellant-assessee. Secondly, Appeal No. E/3012/2011 is relating to the demand of Rs.30,29,485/-

raised against the appellant by the Additional Commissioner vide Order-in-Original No. 56/ADC/GZB/2010 dated 28/09/2010 with interest under Section 11AB of Central Excise Act, 1944 read with Rule 8(3) of Central Excise Rules, 2002 and equal amount of penalty under Rule 25 of Central Excise Rules, 2002, and the same was confirmed due to rejection of claim vide Order-in-Appeal No. 17-CE/GZB/2011-12 dated 13/04/2011 passed by the ld. Commissioner (Appeals).

2. The ld. Counsel for the appellant-assessee states that incident of fire took place in their factory premises on 30/03/2006 at 21.00 hours due to short circuit of electricity. As per the report of the Fire Department, they had immediately informed them of the incident of fire and due to timely information, the Fire Department could reached in time and colossal damage could be saved. The ld. Counsel further states that in view of the 'No Objection Certificate' dated 19/02/2006 issued by the In charge of the Jurisdictional Fire Station, wherein it stated that pursuant to inspection it was found that the appellant-assessee have got Hoseril , Fire Alarm System, Tarrics Tank, Down Comer, Fire Extinguisher & Fire Buckets, which were active and working and on test were found to be in satisfactory condition and accordingly the consent was granted to operate their factory. Thus, the finding of ld. Commissioner that the appellant was negligent and had not taken adequate measures to prevent

fire accident are, prima-facie wrong in view of the facts of records. He, further, urges that the rejection of their claim by the Insurance Company for loss suffered due to fire accident, cannot be a ground for rejection of their claim with the Central Excise Department under Rule 21 of Central Excise Rules, 2002. Thus, the finding of ld. Commissioner that the appellant-assessee failed to satisfy that the loss suffered due to fire accident was due to reasons beyond their control, is vitiated and perverse and accordingly, fit to be set aside and their remission claim accordingly allowed and the appellant be held to be entitled to consequential benefits.

3. Heard the ld. A. R. for Revenue who supports the impugned orders.

4. Having considered the rival contentions and on perusal of records, we find that the ld. Commissioner have erred in rejecting the claim due to misappreciation of facts of record, in view of the consent given by the Fire Department dated 19/02/2006, wherein the Fire Department has found everything is in satisfactory condition during test. Thus, there is no case of negligence attributable to the appellant. Further, from the Fire Report, the reason of fire is evident, that the fire occurred due to short circuit of electricity, which is definitely beyond the control of the appellant-assessee and there is no foul play. Accordingly, we set aside the impugned order(s) and hold respondent is entitled to remission, as have been claimed on semi finished/finished goods, which had been

destroyed in the fire accident. It has been, further, stated by the ld. Counsel for the appellant in the course of arguments, in the remission claim, they have not claimed any remission for destruction of raw-materials. Accordingly, both the appeals of appellant is allowed with consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति / Certified True Copy
24/04/17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001