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: 15/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70561/2017-EX[DB] dated 06/06/2017

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/3091/2007	**U.P. STATE SPINNING CO. LTD.** AMAWAN ROAD, RAIBARELI, U.P.
		Name and Address of Respondent
2		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.

Copy To
3Advocate(s) / Consultant(s):

L. P. ASTHANA & REENA KHAIR
R - 163, IIND FLOOR,
GREATER KAILASH - 1,
NEW DELHI,110048

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/3091/2007-EX[DB]

(Arising out of Order-in-Appeal No. 20-CE/LKO/2007 dated 21/05/2007 passed by Commissioner of Customs & Central Excise (Appeals), Lucknow)

M/s U. P. State Spinning Co. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Request for Adjournment, for Appellant
Shri Pawan Kumar Singh, Superintendent (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 : 06/06/2017

FINAL ORDER NO....70561/2017........

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant - M/s U. P. State Spinning Co. Ltd. against Order-in-Appeal No. 20-CE/LKO/2007 dated 21.05.2007 passed by Commissioner of Customs & Central Excise (Appeals), Lucknow.

2. The brief facts of the case are that the appellants - M/s U. P. State Spinning Co. Ltd. were engaged in the manufacture of Cotton Yarn, P. C. Yarn, classifiable under Chapter 52 and Poly/PV/Acrylic Yarn, Viscose Yarn, classifiable under Chapter 55 of the Schedule to the Central

Excise Tariff Act, 1985. During the period from 01.04.2001 to 30.10.2001 the appellant sold goods manufactured by them from factory as well as from depot/consignment agents. It appeared to Revenue that the appellant charged extra amount of Rs.18,90,776/- in respect of the goods cleared from depot/consignment agent as compared to the value at which goods ~~was~~ were cleared from factory gate. Therefore, it was alleged that the goods at depot/consignment agents was on higher value. Therefore, a Show Cause Notice dated 15.04.2002 was issued. The appellants were called upon to show cause as to why short paid Central Excise duty amounting to Rs.3,47,903/- should not be demanded from them. The appellants submitted before the Original Authority that the extra amount that was pointed out in the said Show Cause Notice dated 15.04.2002 was nothing but the transaction charges and the same were admissible to be deducted from the assessable value of the goods cleared from depot/consignment agents. The Original Authority did not appreciate the same and confirmed the demand and imposed penalty of Rs.50,000/- under Rule 25 of Central Excise Rules, 2002. Through Order-in-Original No. 29/Demand/RBL/2006 dated 05.09.2006. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) upheld the said Order-in-Original dated 05.09.2006 through which the demand was confirmed and penalty was imposed. Aggrieved by the said

Order-in-Appeal dated 21.05.2007 appellant filed this appeal before this Tribunal.

3. The appellant submitted Time Petition on account of non-availability of train ticket to the Counsel. The time petition is being rejected as on earlier three occasions ~~and~~ adjournments were allowed on the request of the appellant/counsel. Perused the record. The appellant had submitted before this Tribunal during the hearing of Stay Application that during the relevant period the price of the goods sold from factory gate as well as from depot/consignment agents were the same and the extra amount that was alleged to have been collected in the Show Cause Notice was cost of transportation and the cost of transportation was shown separately in the invoices and that the same was deductable and they have further relied on the decision of this Tribunal in the case of Ispat Industries Ltd. *Versus* Commissioner of Central Excise, Nagpur reported at 2004 (165) E.L.T. 231 (Tri. – Mumbai).

4. Heard the ld. D. R., who has supported the impugned Order-in-Appeal dated 21.05.2007.

5. Having considered the contentions of ld. D. R. and gone through the record of the case and the submissions before this Tribunal during the hearing of Stay Application, we find that this Tribunal has held in the said case of Ispat Industries Ltd. *Versus* Commissioner of Central Excise, Nagpur (supra) that cost of transportation from the factory gate to the

depot/consignment agents which is place of removal up to the place of delivery is admissible for deduction. We, therefore, hold that the said Show Cause Notice dated 15.04.2002 is not sustainable. We, therefore, allow the appeal by setting aside both the impugned Order-in-Original & Order-in-Appeal. The appellant shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
19/06/2017
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