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: 28/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70214/2017-SM[BR] dated 22/02/2017

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/3157/2010	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		KRISHNA AGRICULTURAL INDUSTRIES, 938-939, WAIDPUR, RAIPUR BYE-PASS, UNNAO.,,

Copy To

3Advocate(s) / Consultant(s):

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.E/3157/2010-EX[SM]

Arising out of Order-in-Appeal No.416-CE/APPL/KNP/2010 dated 30.08.2010 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

For approval and signature:

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

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

VERSUS

M/s Krishna Agricultural Industries ...RESPONDENT (S)

APPEARANCE

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)
None for the Respondent (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 29.11.2016

FINAL ORDER NO.- 70214/2017

Per Mr. Anil Choudhary :

The issue in this appeal is, whether the respondent-assessee can be said to be a manufacturer for 'Parnala' as the same is got manufactured by others on job work.

2. The brief facts are that the respondent-assessee was engaged in manufacture and clearance of excisable commodities being Hand tools and other tools of a kind used in Agricultural, Horticulture and Forestry namely Spades (Phawra, an instrument for digging ground, field) and Parnala (a structure of iron used as an attachment to the mechanical appliances for conveying solid materials or placed at the roof top of the buildings for outflow of rainwater). The respondent-assessee neither got itself registered with the Department nor filed any declaration under Rule 174 of CER, 1944. The assessee was availing SSI exemption benefit under Notification No.8/99-CE, the Revenue observed that during the year 1999-2000, the appellant has cleared commodities under category of "Agricultural Instruments" and "Scrap" to the tune of Rs.1,58,38,639/- and scrap Rs.1,33,107/-, which was over the specified SSI limit of Rs.50 Lakhs and, therefore, the respondent was liable for payment of duty. Accordingly, SCN dated 30.08.2010 was issued to the appellant, proposing to demand duty of Rs.12,07,079/- with interest and further penalty was proposed under section 11 AC of the Act read with Rule 173Q of CER Rules, 1944. The SCN was adjudicated on contest and the proposed demand was confirmed with equal amount of penalty under Section 11AC of the Act. The contention of the respondent-assessee was rejected, wherein they claimed that they manufactured Phawra themselves, whereas, they get Parnala

manufactured by others/job workers by supplying the cut iron sheet.

3. Being aggrieved, the respondent-assessee preferred appeal before Ld. Commissioner (Appeals) who have been pleased to allow the appeal observing that the assessee had filed affidavits of the persons, who have done job work for him but the Revenue has not verified the validity of the affidavits of the job workers and no enquiry was made about the job workers. Excise duty is payable by the manufacturer or processor of excisable goods. In this case, it is the job worker who has manufactured the goods/Parnala and duty liability is on the job worker and not on the assessee. The assessee also led evidence by filing copies of Ledger account, Balance sheet for job charges paid to the Job workers, copy of challans and vouchers of the disputed period. Evidencing the delivery of raw materials to the job workers as also job charges paid in the form of debit notes. The Ld. Commissioner (Appeals) also found that the respondent-assessee got Parnala manufactured by the job workers on principal to principal basis. Job workers were not proved to be dummy/hired labourers of the assessee, rather they independently worked as a manufacturer of Parnala on job charges basis. Reliance was placed on the ruling of the Hon'ble Supreme Court in collector Vs. M.M. Khan Vatwala 1996 (84) ELT 161 and Ujagar Prints & others reported in 1988(38) 535 SC. It was also found that under the facts and circumstances, the respondent assessee is only Trader of Parnala and cannot be said to be the manufacturer as they have simply supplied material to the job workers and got the manufacture of goods or 'Parnala' from them.

4. The learned AR relies on the grounds of Appeal and the Order-in-Original.

5. Having considered the rival contentions, I find that there is no averment in the show cause notice by which the respondent-assessee can be said to be manufacturer of Parnala. Further, there are no such findings recorded by the Courts below that the appellant have not got the Parnala manufactured on job work basis but have manufactured it themselves by hiring labourers. Thus, I hold that supply of raw material to another for manufacturing of goods with drawing/design and specifications, does not make the supplier a manufacturer of such goods, unless it is proved that the manufacturing was done by the assessee himself and such job workers were only dummy workers of the firms. Accordingly, this appeal filed by the Revenue is dismissed. The respondent-assessee will be entitled to consequential benefits, if any, in accordance with law.

(Dictated & Pronounced in the open Court)

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

Mishra

प्रमाणित प्रति / Certified True Copy
03\03\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