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: 02/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70231-70232/2017-EX[DB] 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/70103/2015	**Kanpur Texel(p) Limited** Unit-ii,19 Industrial Estates KANPUR UP 208012
2	E/70163/2015	**Kanpur Texel (p) Ltd** Unit-11-19 Industrial Estates KANPUR UP 208012
		Name and Address of Respondent
3		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
4		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-I,
Mayur Vihar,
Delhi
110091

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 AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal Nos.E/70103 & 70163/2015-EX[DB]

Arising out of Order-in-Appeal Nos.86-87/CE/ALLD/2015 dated 12.08.2015 passed by Commissioner (Appeals) of Central Excise, Allahabad.

M/s Kanpur Texel (P) Limited

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.T., Kanpur

...RESPONDENT (S)

APPEARANCE:

Shri R. Krishnan, Advocate for the Appellant (s)

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 22.02.2017

FINAL ORDER NO.-70231-70232/2017

Per Mr. Anil G. Shakkarwar:

The above stated two appeals are directed against common impugned Order-in-Appeal No.86 & 87/CE/ALLD/2015 dated 12.08.2015. Therefore, they are taken together for decision.

2. Brief facts of the case are that the appellants are 100% export Oriented Unit engaged in the manufacture of Synthetic Braided Cord and Synthetic Narrow Woven Fabrics. With the permission of competent Authority, appellant cleared goods manufactured by them into Domestic Tariff Area. The appellants claimed benefit of Notification No.23/2003-CE dated 31.03.2003 as amended by Notification No.22/2006-CE dated 01.03.2006 and Notification No.10/2008-CE

dated 01.03.2008. For the purpose of application of said Notification No.23/2003-CE appellant claimed benefit of Notification No.30/2004-CE dated 09.07.2004 for the duty chargeable under Sub-Section (1) of Section 3 of Customs Tariff Act, 1975, which in common parlance is also called CVD. It appeared to Revenue that said Notification No.30/2004 was not admissible to the appellant for the reason that the said notification did not have specific mention that the said notification was admissible to goods manufactured by 100% EOU in view of the provisions of proviso to Sub-Section (1) of Section 5A of Central Excise Act, 1944 which has provided that exemption provided through a notification issued in exercise of powers ~~confessed~~ conferred under said Section 5A is not applicable to goods manufactured in an 100% EOU unless there is specific mention in the notification that the exemption is also available to goods manufactured in ~~an~~ a 100% EOU. Therefore, it appeared to Revenue that the appellant did not pay CVD for the period from August, 2009 to March, 2013. Therefore, appellant were issued with three show-cause-notices. Show-cause-notice dated 01.03.2012 demanded Central Excuse duty of Rs.29,18,296/-. Show-cause-notice dated 31.07.2012 raised demand Central Excise duty of Rs.9,08,840/- and show-cause-notice dated 22.04.2103 raised demand of Rs.4,83,216/- towards Central Excise duty under Section 11A of Central Excise Act, 1944. All the above stated demands were on account of proposal to deny benefit of Notification No.30/2004 to the appellant. Show-cause-notice dated 01.03.2012 and 31.07.2012 were adjudicated through Order-in-Original No.17-18/2013 DATED 31.03.2013, wherein the demand was confirmed and equal penalty was imposed. Show-cause-notice dated 22.04.2013 was adjudicated through Order-in-Original No.11/2013 dated 06.08.2013 wherein, the demand was confirmed and equal penalty was imposed. Aggrieved, by the said Orders-in-Original, appellants preferred appeals before Commissioner(Appeals). The learned Commissioner (Appeals) decided the above stated two appeals through impugned Orders-in-Appeal Nos.86 & 87/APPL/CE/ALLD/2015 dated 12.08.2015. The learned Commissioner has held that proviso to Sub-Section (1) of Section 5A of Central Excise Act, 1944 has provided that unless specifically provided in any notification, exemption provided in such notification is not applicable to the goods manufactured by 100% EOU and that said notification No.30/2004 have no such provision and therefore, benefit of Notification No.30/2004 was not available to the appellant. He has dismissed appeals and upheld the said Orders-in-Original dated 31.03.2013 and 06.08.2013. Aggrieved by the said order, appellants are before this Tribunal.

3. The learned counsel for the appellant has submitted that similar issue had come up before Circuit Bench of Tribunal at Allahabad and it was held that under similar circumstances, benefit of Notification No.30/2004 was admissible to the appellants therein. He has argued that the facts of the present case are similar to the facts of the case decided by Circuit Bench at Allahabad in the case of Commissioner of Central Excise, Lucknow Vs. Srivatsa International Ltd. reported at 2015(326) ELT 699 (Tri.-Alld.). He has further submitted that the Bench had taken into consideration the ruling by Hon'ble Supreme

Court of India in the case of SRF Ltd. Vs. Commissioner of Customs, Chennai reported at 2015(318) ELT 607 (SC) for passing final order in the said case of Srivatsa International Ltd.

4. Heard the learned DR for Revenue, who has supported the Orders-in-Appeal.

5. Having considered the rival contentions, we find that the issue in the present appeals is, whether exemption under Notification No.30/2004-CE dated 09.07.2004 for the goods manufactured by 100% EOU for payment of duty on it clearances in DTA is admissible or not. We find that relying on the ruling by Hon'ble Supreme Court in the said case of SRF Ltd. Vs. Commissioner of Customs, Chennai (*supra*), the Circuit Bench of this Tribunal through its Final Order No.A/70010-70011/2015 dated 18.09.2015 in the case of Commissioner of Central Excise, Lucknow Vs. Srivatsa International Ltd. (*supra*) has held that benefit of Notification No.30/2004 was available to the appellants for determination of extent of CVD for determination of Central Excise duty payable under proviso to Section 3 of Central Excise Act, 1944 by availing benefit of Notification No.23/2003-CE. Following the precedent decision of this Tribunal as stated above, we allowed both the appeals. The appellants shall be entitled for consequential relief.

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

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

Mishra

प्रमाणित प्रति / Certified True Copy
07/03/2017
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