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: 21/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70194/2017-CU[DB] dated 12/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/50159/2015	**N C M L Industries Ltd** Khasra No. 512-514 Village Chijarasi HAPUR UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

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

Pravin Sharma,
KF 84, KAVI NAGAR,
GHAZIABAD,
UTTAR PRADESH

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.C/50159/2015-CU[DB]

Arising out of Order-in-Appeal No.MRT/EXCUS/002/APPL/85/2014-15 dated 14.10.2014 passed by Commissioner (Appeals), Meerut-II.

M/s N C M L Industries Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-II

...RESPONDENT (S)

APPEARANCE

Shri Pravin Sharma, Advocate for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (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: 12.01.2017
FINAL ORDER NO.- 70194/2017

Per Mr. Anil Choudhary :

The issue in this appeal is, whether the Ld. Commissioner (Appeals) was justified in denying the benefit of concessional rate of duty under Notification No.12/2012-CUS dated 17.03.2012 on the quantity of imported Crude Palm Oil, which was lost in transit on accounts of its having viscous material, which sticks to the surface of the containers and/or was lost in transit due to leakage, and some quantity lost in accident during transit from the port of import to the factory of the appellant/manufacturer.

2. The admitted facts are that the appellant is a manufacturer of Vanaspati & Refined Oil. For the purpose of manufacture, they imported Crude Palm Oil for manufacture of excisable goods and

according to the beneficial provisions of Notification No.12/2012-Cus paid concessional rate of duty on first import under the Customs (import of Concessional rate of duty for manufacture of excisable goods), Rules 1996, were required to properly account for the goods, used the same in manufacture and account for any shortage. When the consignment is received in the factory, the weighment is done & recorded in the regular books of account and register. Some minor variation (shortage) occurs, attributable to leakage/spillage in transit, difference in method of weighment on the weighing scale. It is further admitted facts that the appellant suo moto informed the Revenue, of the shortage in transit, which was approximately 0.267% during May, 2012 to March, 2013 and 033% during April, 2013 to December, 2013. The show-cause-notice for every shortage for the periods was issued by Revenue, acknowledging the information provided by the appellant of the shortage in transit, and it appeared to Revenue that such shortage of the raw material or Crude Palm Oil in the course of transit amounted to not being used in the manufacture of excisable goods and as such, the appellant is liable to pay full duty.

3. Heard both the parties.

4. We find that the duty issue is squarely covered by the precedent ruling of Hon'ble High Court of Allahabad in the case of Jhunjhunwala Vanaspati Ltd. Vs. CCE, Allahabad reported at 2015(323) ELT 681(All.) wherein the appeal of the manufacturer/assessee was allowed vide order dated 16th July, 2015. Hon'ble High Court under similar facts and circumstances held

that the said Rule of the Customs (import of Concessional rate of duty for manufacture of excisable goods), Rules 1996, comes into operation only when the goods are intended to be used by manufacturer for the specific purpose. The word 'intended for use' or the word 'for use' has been explained by Hon'ble Supreme Court in case of BPL Display Devices Ltd. -2004 (174) ELT 5 (SC), wherein Apex Court has held as under :-

> "We are of the view that no material distinction can be drawn between the loss on account of leakage and loss on account of damage. The word 'for use' used in similar exemption Notifications have also been construed by this Court earlier in the *State of Haryana Vs. Dalmia Dadri Cement Ltd.*, 1987 (Suppl) SCC 679 to mean 'intended for use'. According to this decision the object of grant of exemption was only to debar those importer/manufacturers from the benefit of the Notifications who had diverted the products imported for other purposes and had no intention to use the same for manufacture of the specified items at any stage."

4.1. Accordingly, the Hon'ble High Court was pleased to allow the appeal and answered the question in favour of the appellant-assessee and against the Revenue.

5. Following the ruling of the Hon'ble High Court and also appreciating that the loss in the given facts and circumstances is a normal loss and in such case, the material lost in transit have been definitely put to use for manufacture. Accordingly, we allow this appeal and set aside the impugned order. The appellant will be entitled to consequential benefits, if any, in accordance with Law.

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

Mishra

प्रमाणित प्रति / Certified True Copy
21/02/17
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