FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 05/12/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71820-71825/2017-SM[BR] dated 01/12/2017

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/1532/2010	CCE, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
2		E/1533/2010	CCE, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
3		E/1534/2010	CCE, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
4	E/Stay/1609/2010	E/1615/2010	**SHINO & SONS** Raipur Sarwan Khera, Akbarpur, Kanpur (Dehat)
5	E/Stay/1610/2010	E/1616/2010	**SHINO CHEMICALS** Office at 69/156, Danakhori, Kanpur
6	E/Stay/1611/2010	E/1617/2010	**SHAILESH PAINTS** Office at 69/156, Danakhori, Kanpur

Name and Address of Respondent

7 -C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur
208005.

8 -C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur
208005.

9 -C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur
208005.

10 SHINO & SONS,
RAIPUR SARVAN KHERA,
AKBARPUR, KANPUR. ,,

11 SHINO CHEMICALS.,
69/156, DANAKHORI, KANPUR. ,,

12 SHAILESH PAINTS,
69/156, DANAKHORI,
KANPUR. ,,

Other Appellants and Respondents as per Annexure
Copy To
13Advocate(s) / Consultant(s):

Amit Awasthi
H-1, IST FLOOR, RADHEY
APPARTMENT,
PLOT NO. 7/116A,
SWAROOP NAGAR,
KANPUR,
UTTAR PRADESH
208002

14 Bar Association, CESTAT, Allahabad

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

16 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

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

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

24 C.D.R.   25 Office Copy   26 Second Folder Copy   27 Guard File

Asstt. Registrar

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

DATE OF HEARING: 13.11.2017

DATE OF DECISION: 01|12|2017

Ex. Appeal Nos. 1532, 1533, 1534 /2010

(Arising out of order in appeal No. 157-CE/APPL/KNP/2010 dated 23.3.2010 passed by the Commissioner (Appeals), Kanpur).

CCE, Kanpur — Appellant -Revenue

Vs.

M/s Shino & Sons
M/s Shino Chemicals
M/s Shailesh Paints. — Respondent - assessee

Ex. Appeal Nos. 1615, 1616, 1617 of 2010

(Arising out of order in appeal No. 157, 158,159-CE/APPL/KNP/2010 dated 23.3.2010 passed by the Commissioner (Appeals), Kanpur).

M/s Shino & Sons
M/s Shino Chemicals
M/s Shailesh Paints — Appellant

Vs.

CCE, Kanpur — Respondent -Revenue

APPEARANCE

Sh. Mohd. Altaf, Asst. Commissioner (DR) for the Revenue
Sh. Vaibhav Dixit, Advocate for the Assessee

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Final Order Nos. 71820-71825/2017

Per Ms. Archana Wadhwa:

All the appeals, three filed by the assessee and three by the Revenue are being disposed of by a common order.

2. After hearing both the sides duly represented by Sh. Mohd. Altaf, ld. DR for the Revenue and Sh. Vaibhav Dixit, ld. Advocate for the assessee, I find that M/s Shino & Sons are engaged in the manufacture of thinner and the two other assessees M/s Shino Chemicals and M/s Shailesh Paints are undertaking the trading activities of the said thinner as also of other chemicals.

3. As a result of investigation conducted at the manufacturers end, who were availing the benefit of Notification No. 8/2003 dated 01.03.2003, the Revenue entertained a view that the said manufacturing unit was clearing their final product to the said two traders on the basis of kachcha slips. Based upon the said investigation, proceedings were initiated against the appellant for confirmation of duty amounting to Rs.2,33,81,204/-, by denying them the benefit of the SSI notification on the ground that their clearances exceeded the exemption limit of Rs. 1 crore. The same were confirmed by the original adjudicating authority alongwith imposition of penalties on various appellants.

4. On appeal, the Commissioner (Appeals) reduced the duty to Rs. 3,70,795/- alongwith reduction in penalty on the manufacturing unit and reduced the penalties on the trading unit to Rs. 1 lakh by observing as under:

"Thus in my opinion, as per findings of impugned order as well as facts accepted by appellant No. 4 that appellant No. 1 was engaged in manufacture of only six brands namely N-101, SP-55, G-51, NC-44, NC, N-9 and it is also not proved beyond doubt that other mentioned brand of RUD-9 of Show Cause Notice, have been manufactured by appellant No. 1. In the cases of clandestine removals, it is settled law that charges against appellant should be proved beyond doubt, which is missing in the instant case other than the six brands admitted by the appellant No. 4. On this basis re-quantification of duty is required. However, duty calculation chart (RUD-9 of SCN) has been challenged by appellant No. 1 in their grounds of appeals and pointed out some calculation mistakes committed by department. I have gone through the objections of appellant No. 1 and observed that they have pointed out total 94 mistakes but furnished reasons only for a few mistakes, which are not sustainable on merit. Thereafter, I have quantified the value of clearance against 6 brands of variant. Thinners of Shino Brand from the records provided by appellant No. 1. The total value of 6 Brands of Shino Brand Thinner comes to Rs. 1,22,72,033/-. In my opinion the duty liability on appellant has to be decided on this basis itself, comes to Rs. 3,70,795/- (BED Rs. 3,63,525/- and Edu. Cess Rs. 7,270/-) after extending the benefit of Notification No. 6/2003. Accordingly, duty liability against appellant No. 1 is reduced from Rs. 21,83,813/- to Rs. 3,70,795/-. Once duty liability is reduced to Rs. 3,70,795/- penalty under Section 11AC must be equal to duty amount. Therefore, I also reduce the penalty amount imposed upon appellant No. 1 from Rs. 21,83,813/- to Rs. 3,70,795/-."

5. The said order of Commissioner (Appeals) is impugned by the assessees as also by the Revenue.

6. After going though the record, I find that the appellate authority has upheld a part of duty on the clandestine activities, based upon the statement of the authorized representative of the appellant. However, I find that apart from that there is virtually no evidence on record to show that the manufacturing unit was indulging in clandestine activities. In the absence of any positive and affirmative evidence to confirm the above charge, the finding of Commissioner (Appeals) cannot be upheld. Accordingly, I set aside the impugned order confirming the demand and imposing of penalties on all the appellants.

7. Inasmuch as the demands have been set aside, the penalties imposed upon all the three appellants are also set aside. Their appeals are also allowed with consequential relief.

8. In view of the above, Revenue's appeal, which are against that part of the order vide which a part of the demand was dropped, have become infructous, as the confirmed demand is also set aside. The same are accordingly rejected.

(Pronounced on 1/12/2017)

Sd/-
(Archana Wadhawa)
Member(Judicial)

Pant

प्रमाणित प्रति/Certified True Copy
04/01/18

38, A. G. MARG, ALLAHABAD