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: 22/08/2017

To

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

Final Order No. A/70789-70790/2017-EX[DB] dated 26/07/2017

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/1627/2007	**Commissioner of Central Excise and Service Tax-Lucknow** 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH 226001
2	E/1709/2007	**Qst Ltd** Nindki Road FATEHPUR UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
4		Q S T Ltd Nindki Road,, FATEHPUR ,UP

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

AMIT AWASTHI ADVOCATE
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR, KANPUR-208002

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 LAWCRÚX 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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/1709 & 1627/2007-EX[DB]

(Arising out of Order-in-Appeal No. 168-CE/LKO/2006 dated 18/10/2006 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

Qst. LTD., (E/1709/2007)	**Appellant**
Vs.	
Commissioner of Central Excise, Lucknow	**Respondent**
&	
Commissioner of Central Excise, (E/1627/2007)	**Appellant**
Vs.	
QST LTD.	**Respondent**

Appearance:

Ms Stuti Saggi (Proxy Counsel) in A. No. E/1709/2007	for Appellant
Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR	for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/07/2017
Date of Decision : 26/07/2017

FINAL ORDER NO - 70789 - 70790/2017

Per: Anil G. Shakkarwar

Present appeals are arising out of Order-in-Appeal No. 168-CE/LKO/2006 dated 18/10/2006 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals) Lucknow. Appeal No. 1709/2007 is filed by M/s. QST Limited, whereas Appeal No. 1627/2007 is filed by Revenue. Brief facts of the case that M/s. QST were engaged in the manufacture of steel pipes & tubes. During the course of scrutiny of records it was noticed that the goods manufactured by M/s. QST were supplied to Government Department and the rates at which goods were supplied were based on FOR destination and were inclusive of freight charges. Further separately inspection charges were also paid by the purchasers. It appear to Revenue that the freight charges and inspection charges should be included in assessable ~~accessible~~ value for the period from ~~dated~~ 01/11/2001 to 10/06/2002. Total amount of Rs. 10,64,960.91/- was recovered towards freight and inspection charges, Central Excise duty of Rs. 170394/- @ 16% advalorem was demanded through show cause notice dated 08/10/2002. Said show cause notice was adjudicated through Order-in-Original No. 20/DEM/RBL/2005 dated 30/11/2005 wherein the original authority dropped the proceedings issued through the show cause notice dated 08/10/2002. Aggrieved by the said order Revenue preferred appeal before Commissioner (Appeals). The grounds of appeal before the Learned Commissioner (Appeals) were that inspection is done at M/s. QST premises by the buyer before clearance of goods and therefore the goods become marketable only after inspection and therefore, inspection charges should be included in the accessable value. Another ground presented before the Learned Commissioner (Appeals) by Revenue was that clearance was on the basis of FOR destination and buyer was taking over goods only at the point of unloading and therefore freight should become part of the assessable value. The Learned Commissioner (Appeals) accepted the grounds of Revenue and set aside Order-in-original dated 03/11/2005 and confirmed the demand of the differential duty of Rs. 1,70,394/- under Section 11A Central Excise Act, 1944 and imposed equal penalty and ordered to pay the interest. Aggrieved by the said order M/s. QST preferred appeal No. 1709/2007 before this Tribunal and simultaneously aggrieved by the said Order-in-Appeal No. 168-CE/LKO/2006 dated 18/10/2006 Revenue preferred the appeal before this Tribunal with appeal No. E/1627/2007.

2. The contention of Revenue in appeal No. 1627/2007 is that the Commissioner (Appeals) does not have power of adjudication and therefore the impugned Oder in Appeal dated 18/10/2006 may be set aside and matter may be remanded back to the original adjudicating authority for re-adjudicating the case in the light of observation made by the by the Learned Commissioner (Appeals).

3. The relief sought by M/s QST is to set aside impugned Order-in-Appeal dated 18/10/2006.

4. Heard the parties.

5. The grounds of appeal by Revenue before this Tribunal are contradictory to the grounds of appeal by Revenue before the Learned Commissioner (Appeals). Revenue raised two grounds of appeal before the Learned Commissioner (Appeals) and he has allowed both the grounds and allowed relief as

sought for by Revenue. Now the grounds raised by Revenue before this Tribunal are that the Commissioner (Appeals) does not have power to adjudicate. It means that the relief sought by them before Learned Commissioner in their opinion was in contravention of the provisions of law. There are contradictions in the grounds raised by Revenue before Learned Commissioner (Appeals) and before this Tribunal. If the grounds of appeal by Revenue before this Tribunal are accepted then the appeal filed before Learned Commissioner (Appeals) become infructuous. In that event the Order-in-Appeal dated 18/10/2006 does not survive in law as a result both the appeals become infructuous. In any case, both sides have prayed for setting aside impugned Order-in-Appeal dated 18/10/2006. We therefore hold that in the peculiar circumstances both the appeals are disposed by setting aside impugned Order-in-Appeal dated 18/10/2006. As a result order dated 03/11/2005 passed by original authority will become operational. In the above terms both the appeals are disposed.

(Dictated & Pronounced in Court)

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

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

Lks

प्रमाणित प्रति/Certified True Copy
25/08/17
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