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: 03/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71300/2017-SM[BR] dated 25/10/2017

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/3198/2009	**SCT LIMITED,** C-15, INDUSTRIAL AREA, MEERUT ROAD, GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3 Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No: E/3198/2009-EX[SM]

(Arising out of Order-in-Appeal No. 229-CE/APPL/GZB/2009 dated 17/09/2009 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut-I at Ghaziabad)

M/s SCT Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri A. P. Mathur, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR) for Respondent

CORAM:

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

Date of Hearing : 25/10/2017
Date of Decision : 25/10/2017

FINAL ORDER NO. 71300/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 229-CE/APPL/GZB/2009 dated 17/09/2009 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut-I at Ghaziabad.

2. Brief facts of the case are that the appellants were manufacturers of Electrical Transformers falling under Chapter Heading No.85.04 of schedule to Central Excise Tariff Act, 1985. The appellant were issued with a show cause

notice dated 27/04/2006 wherein it was stated that during the course of scrutinizing the ER-1 filed for the months of May, 2005 to June, 2005 it was noticed that vide invoice nos. 15, 23, 24, 25, 26, 29, 34, 35, and 40 dated 04/05/2005 to 22/06/2005 appellant exported goods to Pakistan and Dubai valued at Rs.27,12,555/- without payment of Central Excise duty and without furnishing any bond. Therefore, through the said show cause notice appellants were called upon to show cause as to why Central Excise duty amounting to Rs.4,43,186/- should not be recovered from them under Section 11A of Central Excise Act, 1944. The appellant submitted before the Original Authority through their letter dated 24/05/2006 informing that the goods covered by invoice numbers stated in the said show cause notice were directly purchased from the supplier and were exported. They further enclosed chart showing copy of purchase of goods as well as export invoice to establish genuineness of export. They further submitted that Excise duty was not involved since the goods were not manufactured by them and therefore export of such goods did not need the filing of ARE-1. Without appreciating the submissions made before the Original Authority, the Original Authority decided the said show cause notice through Order-in-Original dated 09/08/2007 wherein the Original Authority confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Learned

Commissioner (Appeals) decided through impugned Order-in-Appeal dated 17/09/2009. The Commissioner (Appeals) has not accepted the contentions by the appellant that there was absolutely no difference between the quantity of Transformers and raw material purchased and the quantity shown in the corresponding documents evidencing export of the goods in question, based on the findings by the Original Authority and rejected the appeal. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the Learned Counsel for appellant who has taken me through the said show cause notice dated 27/04/2006 wherein the relied upon documents stated are Annexure-1 (One Sheet), Annexure-2 (One Sheet), Annexure-3 (Four Sheet). He has also shown that all the Annexure were prepared by Revenue and there is no documents relied upon from the record of the assessee for issue of said show cause notice. He has also submitted that show cause notice did not established that the goods which were exported through the invoices stated in the said show cause notice were manufactured by them. He further submitted that it was submitted before the Original Authority that the goods covered by the invoices stated in the show cause notice were purchased from outside and exported as such and therefore, such goods did not require following any procedure of Central Excise.

4. Heard the Learned A.R. for Revenue who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of record, I find that the said show cause notice did not establish that the goods covered by the invoice numbers stated therein were manufactured by the appellant. The said show cause notice was relied upon documents which were prepared in the form of chart by Revenue and the source of information for the same was not stated anywhere. Further, it is stated that during the scrutiny of ER-1 return Revenue came to know about the said export. The said ER-1 is not relied upon for issue of said show cause notice. Therefore, I find that Revenue did not discharge its burden to prove that the goods exported through the invoices stated in the said show cause notice were manufactured by the appellant. I therefore, set aside the impugned Order-in-Appeal. As a consequence the Order-in-Original does not exist in law.

6. In above terms, I allow the appeal. Appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

प्रमाणित प्रति/Certified True Copy
27/11/17

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

akp