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: 09/01/2018

To

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

Final Order No. A/70131/2018-EX[DB] dated 02/01/2018

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/190/2009	CCE & ST, ALLAHABAD 38,M.G.Marg, Civil Lines, Allahabad
		Name and Address of Respondent
2		SHAURYA ALUMINIUM CO. LTD., B-49-50, INDL. AREA, SATHARIYA, JAUNPUR, (U.P.),,

Copy To

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

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

APPEAL No.E/190/2009-EX[DB]

(Arising out of Order-in-Appeal No. 95-CE/Appl/ALLD/2008 dated 05/11/2008 passed by Commissioner of Customs & Central Excise (Appeals), Allahabad)

Commissioner of Central Excise, Allahabad **Appellant**

Vs.

M/s Shaurya Aluminium Co. Ltd. **Respondent**

Appearance:

Shri Mohammad Altaf, Assistant Commissioner (AR) for Appellant
Absent, for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 02/01/2018
Date of Decision : 02/01/2018

FINAL ORDER NO. 70131/2018

Per: Anil G. Shakkarwar

The present appeal filed by Revenue is directed against Order-in-Appeal No. 95-CE/Appl/ALLD/2008 dated 05/11/2008 passed by Commissioner of Central Excise (Appeals), Allahabad.

2. The brief fact of the case is that the respondents were engaged in the manufacture of Aluminum Wire Rod classifiable under Chapter sub Heading No.7614.10. The respondents were issued with a show cause notice dated

24.07.2006 wherein it was alleged that the respondents were selling the goods manufactured by them to M/s Sarthak Enterprises and there were allegation in the said show cause notice that M/s Sarthak Enterprises and respondents were related persons and therefore, the goods sold by respondent to M/s Sarthak Enterprises should be assist under Rule 9 of Central Excise Valuation Rules, 2000. There was also a proposal to recover short payment of Central Excise duty on account of said proposed differential valuation for the period from April, 2000 to March, 2002 to the tune of Rs.26,54,193/-. Further, there were proposals for imposition of penalty. The issue ultimately reached before the learned Commissioner (appeals). The learned Commissioner (Appeals) through the impugned Order-in-Appeal has held that in old Section 4 of the Act, except for the specifically named categories buyer was held to be related to selling assessee only if they were so associated that they had interest directly or indirectly in the business of each other. In contrast, no such general condition/restriction applies for inter-connected undertakings to be related under new Section 4. Further, he has relied on Hon'ble Supreme Court's decision in the case of M/s Atic Industries reported at 1984 (17) ELT 323 (SC) and recorded that it was ruled by Hon'ble Supreme Court that one company holding shares in another does not establish mutuality of interest and therefore, are not related persons and further recorded that mutuality of interest in each other's business means that there should be a two-way flow. In view of the same the learned Commissioner (Appeals) has held that Revenue has failed to prove that there was mutuality of interest and the price was not sole consideration for sale. In view of such finding, he allowed the appeal. Aggrieved by the said order, revenue has preferred present appeal.

3. Heard the learned A.R. who has presented the grounds of appeal and perused the records.

4. Having considered the contentions of Revenue in grounds of appeal and on perusal of records, we find that grounds of appeal raised are repetition of show cause notice and there is no whisper in the grounds of appeal about the tenability of finding by learned Commissioner (Appeals) in the impugned Order-in-Appeal. We, therefore, do not find the grounds of appeal raised by revenue to merit consideration for interference in the impugned Order-in-Appeal.

5. Therefore, appeal filed by Revenue is rejected.

(Dictated in Court)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

akp

प्रमाणित प्रति/Certified True Copy
12/02/18
38 M. G. MARG, ALLAHABAD-211001