REGISTERED / AD

FAX : 0532-2400149

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

Dated: 28/11/2017

To

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

Final Order No. A/71651/2017-SM[BR] dated 21/11/2017

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
:	E/3726/2010	**SUPER CASSETTES INDUSTRIES LTD** G-3 to 6,20 & F-65, Sector-II, Noida
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

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

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

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/3726/2010-EX[SM]

(Arising out of Order-in-Appeal No. 282/CE/Appeal/Noida/2010 dated 31/08/2010 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Super Cassettes Industries Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Absent on call
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 21/11/2017
Date of Decision : 21/11/2017

FINAL ORDER NO. 71651/2017

Per: Anil Choudhary

The issue in this appeal is whether the appellant was liable to pay duty on clearance of waste and scrap.

2. The facts in brief are that the appellant is a manufacturer of Audio Cassettes, CD and CDR. In the course of manufacture some waste and scrap of plastic is generated falling under Chapter Heading 3915 of CETA. The said goods as per Revenue, with effect from 10th May 2008, being the date of enactment of Budget 2008-09, It appeared that the appellant have cleared waste and scrap

without duty in contravention of the provisions of the Act and the Rules. As the amended clause D in Section 2 of the Central Excise Act amended the definition of excisable goods to include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. CBEC had issued Circular No.904/24/09-CX dated 28/10/2009, clarifying with this regard to excisability of Bagasse, Aluminium/Zinc draws and other such products termed as waste residue or refuse arising during the course of manufacture. It was clarified that the waste and scrap under the amended definition in Section 2(d) of the Act and capable of being sold for concession would be excisable goods and chargeable to payment of excise duty. It also appeared that the appellant had exported one such consignment of waste and scrap to a buyer in Hong Kong vide ARE-1 dated 9th February, 2010. On being directed by the Superintendent vide letter dated 12/11/2009 to work out the amount of duty on the waste and scrap removed and to deposit the duty along with interest. The appellant in response paid the duty total Rs.1,17,700/- along with interest Rs.14,408/- on 12th December, 2009 under protest. Thereafter the appellant filed refund claim on

21/01/2010. The Revenue issued a show cause notice dated 11/03/2010 to confirm the demand of duty with interest on the waste and scrap and to further appropriate amount deposited. Vide Order-in-Original dated 30th April, 2010 the Deputy Commissioner decided the refund claim rejecting the same on the ground that show cause notice dated 11/03/2010 for demand of duty of the matching amount is pending for adjudication.

3. Being aggrieved the appellant preferred appeal before Learned Commissioner (Appeals), who was pleased to reject the appeal and confirmed the rejection of refund.

4. The appellant is absent in spite of notice. The counsel for the appellant on record Mr. Lakshmi Kumaran have informed that they have instructions not to appear in the matter. Under the circumstances of the notice as served the appeal is taken up for disposal ex parte.

5. Heard Learned A.R. for Revenue and perused the records.

6. Having considered the rival contentions and on perusal of the record, I find that the rejection of refund claim without adjudicating the show cause notice dated 11/03/2010 is bad and against the provisions of natural Justice. The same also causes harassment to the

assessee. In this view of the matter, I set aside the impugned order and remand the matter back to the Adjudicating Authority to decide the show cause notice as well as the refund claim together, if not yet decided. The Adjudicating Authority shall consider the case law of Hon'ble Bombay High Court in the case of Hindalco Industries which has been confirmed by Hon'ble Supreme Court wherein it is decided that in spite of the amendment in the year 2008, no tax is payable on ~~draws~~ dross and ~~scheming~~ skimming which are the waste products.

7. Thus the appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated & Pronounced in Court)

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

Lks

प्रमाणित प्रति/Certified True Copy
01/01/18
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