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: 30/11/2017

To

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

Final Order No. A/71698/2017-EX[DB] dated 13/07/2017

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/ROA/70015/2017	E/70034/2015	**C D Engineering Co** C-199, B S Road Indl Area GHAZIABAD UP
			Name and Address of Respondent
2			C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

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

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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/70034/2015-EX[DB] With
ROA Application No. E/ROA/70015/2017

(Arising out of Order-in-Appeal No. GZB/EXCUS/000/APP/31/2015-16 dated 15/07/2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut-II Noida)

M/s C. D. Engineering Co. — **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad — **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, — for Appellant
Shri Rajeev Ranjan, Joint Commissioner, (AR) &
Shri Pawan Kumar Singh, Superintendent (AR), — for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 13/07/2017

FINAL ORDER NO. 71698/2017

Per: Anil Choudhary

Heard on Miscellaneous Application for Restoration of Appeal. It is explained by the ld. Counsel that although he, for some personal reasons, could not come to Allahabad to attend the hearing and accordingly, he requested his colleague for making request in the court and to pray for adjournment. The said colleague who busy in some other matter before the Hon'ble Allahabad High Court and after finishing the hearing he reached but by that time the appellant's appeal had already been dismissed for default. It

Acn

is further seen that pursuant to dismiss for default by order dated 16/08/2016. The appellant has filed the Application for Restoration of Appeal on 13/01/2017 but within a few days of service/order in December, 2016. Accordingly, we restore the appeal in the interest of justice to its original number.

2. With the consent of the partis, we have taken up final hearing of the appeal and heard the submissions of both the parties and perused the facts on record.

3. The present appeal is against order dated 24/12/2014 passed by Commissioner (Appeals), Meerut-II, Noida. The brief facts of the case are that the appellants are engaged in the manufacture of machined forging of non-alloy steel and stainless steel, liable to Central Excise duty. They have cleared flanges to Northern Area Development Project, on shore, undertaken by Claim Energy India Pvt. Ltd. under International competitive bidding. They claimed exemption under Notification No. 6/2006-EX dated 01/03/2006 read with Notification No. 21/2002-CUS dated 01/03/2002. The Revenue initiated proceedings against the appellant for denial of such exemption. Show cause cum demand notice dated 28/02/2013 was issued to them. After due process the case was adjudicated by the Original Authority vide order dated 23/07/2014. On appeal, the Commissioner (Appeals) vide his order dated 16/09/2013 partly upheld the said order. The appellant preferred further appeal before this Tribunal, which vide Final Order No. 54160/2014 dated 13/10/2014 allowed

the appeal by way of remand to the Appellate Authority. The Appellate Authority vide impugned order has upheld the demand of Rs.5,70,349/- along with interest. He, however, dropped the penalty. Aggrieved by this order the appellant is before us.

4. The learned Counsel for appellant submitted that they are rightly eligible for the exemption claimed as per above Notifications. In their own case the Commissioner (Appeals) in his earlier order dated 16/09/2013 allowed the said exemption to them. The impugned order otherwise is contrary to the earlier order without any valid reasons. He further submitted that they have supplied the said flanges to the eligible persons (Contractor/Sub-contractor) and produced certificate to that effect. The impugned goods are covered by Sl. No. 24 of the list 12 attached to Notification No. 21/2002-CUS. This has been clearly upheld by the Commissioner (Appeals) in his earlier order dated 16/09/2013. Further, regarding production of certificate from DGHC, the learned Counsel submitted that the same is not required for domestic manufacturers supplying against international bid. He relied on Tribunal's decision in Final Order No. 70124/2015 dated 17/12/2015 passed by this Tribunal in their own case on merits that for claiming exemption under Notification No. 6/2006 dated 01/03/2006, there was no need for production of certificate from Project Authority, which was required only in case of imported goods. He, further, pleaded that the

reason on the basis of which learned Appellate Authority rejected the appeal was not therein the Show Cause Notice. Also relied on the case of Kent Introl Pvt. Ltd. *Versus* CCE, Nashik reported in 2014 (301) E.L.T. 84 (Tri. – Mumbai).

5. Learned A. R. reiterated the findings of the impugned order and submitted that the flanges are not covered by the list of items eligible for exemption. The appellant also did not produce certificate of DGHS as one of the Contractor/Sub-contractor.

6. We have heard both the sides and examined appeal records. The point for decision was the eligibility of the appellant for exemption for flanges under the above mentioned notifications. The admitted facts are that they supplied these items as per 'international competitive bidding' to the Contractor/Sub-contractor executing project as per requirement. The question whether the product is covered in the list 12 has been examined and decided by the lower Appellate Authority in party's own case earlier. No reason has been given in the impugned order for differing from such findings. Regarding the requirement of certificate from DGCH, we find the said issue was decided by the Tribunal in appellants own case (supra). The Tribunal held that the condition No. 29 referred to in Notification No. 21/2002 is to be complied by importers of goods and do not apply to domestic manufacturers. Therefore, when there was no requirement of producing Project Authority Certificate, the

reasoning given by the Appellate Authority, is otherwise out of context, is not sustainable.

7. Having considered the above discussion, we find that the impugned order is not legally sustainable and accordingly set aside the same. The appeal is allowed with consequential relief.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
04/01/18
Asstt. Registrar
C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001