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: 28/11/2017

To

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

Final Order No. A/71672-71673/2017-SM[BR] dated 27/11/2017

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
1	E/70035/2015	**Surindra Thermopack Ltd** E-24,south Side,gt Road,industrial Area GHAZIABAD UP
2	E/70036/2015	**Rakesh Kumar Jain** C/o Thermopack Pvt Ltd.e-24,south Side,gt Road,industrial Area GHAZIABAD UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-
4		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Ms. Rinki Arora (Adv.)(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

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, Opp ICICI Bank of Defence Colony 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 LAWCRUX 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 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex.Appeal Nos.70035,70036/15

Arising out of O/A Nos.GZB/EXCUS/000/APP/18/15-16 & GZB/EXCUS/000/APP/19/15-16 both dated 29.06.2015 passed by Commr. (Appeals) of Central Excise & S.Tax, Noida

M/s Surindra Thermopack Ltd.
Shri Rakesh Kr. Jain

...APPELLANT(S)

VERSUS

Commr. of Central Excise & S.Tax, Meerut II

RESPONDENT (S)

APPEARANCE

Ms.Rinki Arora, Adv. for the Appellant (s)
Shri Pradeep Kr.Dubey, Supdt. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 15. 11. 2017
DATE OF PRONOUNCEMENT : 27|11|2017

Final ORDER NO. 71672-71673/2017

Per Mrs.Archana Wadhwa :

The appellants are engaged in the manufacture of thermocol products use for packing and falling under Chapter 39 of the first schedule to the Central Excise Tariff Act, 1985. The Officers visited their factory on 11.03.2013 and detected shortages of 1800 Kg. in the stock of their raw materials i.e. expendable polystyrene involving duty of Rs.28,032/-. The appellants' representative attributed the said shortage to the negligence/carelessness of their staff. However, the appellants reversed the credit to the above extent.

2. It was Further found that the appellant was availing cenvat credit of duty paid on the invoices issued by M/s Capricon Stypack (India) Pvt. Ltd., a registered manufacturer. Investigation conducted at the end, revealed that the said Unit was not engaged in the manufacturing activity for the last two year. However, the statement of their employee recorded on 25.03.2013, revealed that though the factory was closed for some time, but they again started working from 15.02.2013. From the above, the Revenue entertained a view that the invoices issued by the said input manufacturer, are not proper eligible documents for the purpose of cenvat credit availed by the appellants and accordingly, initiated the proceedings for denial of cenvat credit of Rs.2,24,556/-. The said proceeding stands culminated into an order passed by the lower authorities. Hence the present appeal.

3. As regards shortages, I find that the issue is no more res-integra and has been settled by the Hon'ble High Court of Allahabad in the case of Commr. Vs. Minakshi Castings : 2011 (274) ELT 180 (All.) laying down that mere shortages, in the absence of any corroborative evidence, cannot lead to findings of the clandestine removal. I find that the demand in the present case is only based upon the shortages and in view of the law declared by the Hon'ble High Court of Allahabad, cannot be upheld.

4. As regards denial of credit on the ground that the input supplier was not having complete machineries to manufacture the goods, I find that the appellants have taken a categorical stand that the invoices in question contained the duty paying particulars and the consideration

for the goods, was paid to the supplier by Account Payee Cheque. There is also no other alternative source of the procurement of raw materials shown by the Revenue, in which case, denial of credit was not justified.

5. I find that the issue stands considered by the Tribunal in the cases of Commr. of Central Excise & Customs, Kanpur Vs. Juhi Alloys Ltd. : 2013 (296) ELT 533 (Tri-Del.), which has been upheld by the Hon'ble High Court of Allahabad in the case of Commr. of Central Excise & Customs & Service Tax Vs. Juhi Alloys Ltd. : 2014 (302) ELT 487 (All.), wherein it has been observed by the Hon'ble High Court that it would be impractical to require the assessee to go beyond the records ~~manufactured~~ maintained by the first stage dealer and to find out as to whether the duty payments were being made by them or not. To the similar effect is the Hon'ble Punjab & Haryana High Cout's decision in the case of Commissioner of Central Excise, Ludhiana Vs. Talson Mills Store : 2015 (315) ELT 415 (P & H). In the present case, it is the not the Revenue's contention that the duty was not shown to have been paid in the invoices. Further all the payments were made by the appellants by Account Payee Cheque. In such a scenario, the law declared in the above decision is fully applicable to the facts of the present case. I find no justification for confirmation of duty on the said account, the same is accordingly set aside along with setting aside the penalties imposed on the main unit as also on the second appellant, Shri Rakesh Kumar Jain.

6. In view of the foregoing, the impugned orders are set aside and both the appeals are allowed in toto.

Pronounced in the open Court on 27/11/17

Sd/-
(Archana Wadhawa)
Member(Judicial)

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