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: 20/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71412-71413/2017-SM[BR] dated 14/11/2017

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/MISC/70308/2017	E/70645/2017	**Nippon Tubes Ltd** Khasran No.-10049,bisrakh Road, Vill-chapraula GAUTAM BUDH NAGAR UP
2	E/MISC/70309/2017	E/70646/2017	**Ganesh Kumar Aggarwal Director** C/o Nippon Tubes Ltd, Khasran No.-10049,bisrakh Road, Vill-chapraula GAUTAM BUDH NAGAR UP
			Name and Address of Respondent
3			C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
4			C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

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

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

MA (EH)-70308,70309/17
& Ex.Appeal Nos.70645,70646/17

Arising out of O/A No.GZB-EXCUS-000-APP-534-535-17-18 dated 20.06.2017 passed by Commr. (Appeals) of Central Excise, Customs, Meerut II.

M/s Nippon Tubes Ltd.
Shri Ganesh Kumar Aggarwal, Director

...APPELLANT(S)

VERSUS

Commr. of Central Excise & S. Tax, Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Advocate for the Appellant (s)
Md. Altaf, Asstt. Commissioner (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 14. 11. 2017

Final ORDER NO.71412 – 71413/2017

Per Mrs.Archana Wadhwa :

After hearing both sides, I find that the appellant is engaged in the manufacture of pipes, tubes of various sizes, grades and thickness out of H.R.Coils. Their factory was visited by the Central Excise Officers on 17.12.13, who conducted various checks and verifications. As a result of stock taking, certain shortages were detected in the raw materials as also in the final product. The said shortages were taken note of by way of Panchanama . The Director of the Company also accepted such shortages.

2. On the above basis, proceedings were initiated against the appellants, by way of issuance of show-cause notice dt. 07.01.2015 raising demand of duty of Rs.9,72,721/- in respect of final product and Rs.5,34,618/- in respect of inputs on the allegation of the clandestine removal.

3. During Adjudication, the appellant contested the said findings by submitting that shortages detected by the officers, were pscudo and not real inasmuch as there were no inventory drawn by the Revenue for such shortages. It was also contended that apart from the shortages, there is virtually no other evidence on record to show any clandestine removal. Even the statement of the Director has admitted only shortages, but no clandestine removal of the goods.

4. The original adjudicating authority did not find favour with the above pleas and confirmed the demand, as proposed in the inotice along with confirmation of interest and imposition of penalty. The said order of the original adjudicating authority stands upheld by the Commissioner (Appeals) . Hence the present appeal.

5. After hearing both sides, I find that there is no dispute about the fact that the Revenue's entire case for clandestine findings against the appellants, is based only upon the shortages detected at the time of their visit. The matter has not been further investigated by the Revenue and no evidences of such clandestine manufacture and clearance, stands produced by them on record. The Hon'ble Allahabad

High Court in the case of Commr. of Central Excise, Kanpur Vs. Minakshi Castings : 2011 (274) ELT 180 (All.) has upheld the Tribunal's decision laying down that the shortages detected at the time of visit of the officer cannot by itself lead to the findings of clandestine removal. The said decision stands followed by the Tribunal in the cases of (i) Commr. of Central Excise, Meerut I Vs. Sarvottam Rolling Mills (P) Ltd. : 2013 (297) ELT 385 (Tri.-Del.) & (ii) Behariji Marketing : 2015 (317) ELT 298 (Tri.-Del.). At the stage, I may also take note of the decision of the Hon'ble Punjab & Haryana High Court's decision in the case of Commr. of Central Excise & Service Tax, Ludhiana Vs. Anand Founders & Engineers : 2016 (331) ELT 340 (P & H) laying down to the same effect that the shortages cannot lead to conclusion of clandestine activities unless further investigations are conducted to indentify the buyers or suppliers of the raw materials.

6. By following the above decisions, I find no merit in the Revenue's stand. Accordingly, the impugned orders are set aside and both the appeals are allowed with consequential relief to the appellants.

7. Miscellaneous Applications also get disposed off.

Dictated and pronounced in the open Court

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
05/12/17
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