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: 07/03/2018

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. **A/70525/2018-EX[DB]** dated **12/02/2018**</u>

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/2155/2012	**Ginni Filaments Ltd** 110 Km Stone, Delhi-mathura Road,chhata, Distt-Mathura(up)281401
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3<u>Advocate(s) / Consultant(s)</u>:

S. C. Kamra & G.K. Mahajan
(Advocates)
B-2/210 (Basement)
Safdarjung Enclave,
New Delhi
Delhi
110029

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/2155/2012-EX[DB]

(Arising out of Order-in-Appeal No. 214-CE/LKO/2012 dated 19/04/2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Ginni Filaments Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri S.C. Kamra & Shri G.K. Mahajan, Advocates for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR) &
Shri Pawan Kumar Singh, Supdt (AR) for Respondent

CORAM:

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

Date of Hearing : 12/02/2018
Date of Decision : 12/02/2018

FINAL ORDER NO.-70525/2018.........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 214-CE/LKO/2012 dated 19/04/2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow.

2. The brief facts of the case are that the appellants were 100% EOU Unit and manufacturer of Cotton Yarn. The appellant availed facility under Notification No.123/81-CE

dated 02.06.81 in respect of H.S.D. Oil. Under the said notification, a 100% EOU unit is eligible to procure excisable capital goods, components, raw materials, consumables, spares and packaging materials when brought in connection with the manufacture and packaging into a 100% EOU without payment of Central Excise duty. It appeared to revenue that H.S.D. Oil did not stand the test of raw material for manufacture of cotton yarn, since the same was utilized in generation of electricity and therefore, several show cause notices were issued to the appellant for recovery of Central Excise duty involved in H.S.D. Oil brought into 100% EOU by the appellant. Through the Order-in-Original dated 11.05.2011, 14 such show cause notices for the period from March, 1991 to September, 1997, through which Central Excise duty of Rs.1,94,71,860/-demanded, were adjudicated. The Original authority relying on clarification issued by CBEC vide F.No.85/2/87-CX3 dated 21.07.1987 and decision of this Tribunal in the case of Collector of Central Excise Vs M/s Kundremukh Iron Ore Co. Ltd. reported at 1988 (36) ELT 626 (Tribunal), dropped the proceedings and held that the appellants were entitled for bringing in H.S.D. Oil without payment of Central Excise duty under the said Notification No.123/81-CE. Aggrieved by the said order, revenue preferred appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) through the impugned Order-in-Appeal modified the said order by holding that prior to

04.01.1995 the benefit of Notification No.123/81-CE was not allowable on H.S.D. Oil to the appellant. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for appellant, who has submitted that the original authority has dropped the proceedings relying on this Tribunal's decision in the case of Collector of Central Excise Vs M/s Kundremukh Iron Ore Co. Ltd. (supra) and revenue had preferred appeal against the said order before the Hon'ble Supreme Court and Hon'ble Supreme Court had dismissed the Civil Appeal bearing No.4151/1988 filed by revenue as reported at 1997 (89) ELT A-112 (SC). Further, he has submitted that the Tribunal's decision in appellant's case has reached finality and therefore, the impugned Order-in-Appeal is not sustainable.

4. Heard the learned A.R. for revenue who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, we find that in the case of M/s Kundremukh Iron Ore Co. Ltd. (supra) the point of dispute was whether H.S.D. Oil utilized by the manufacturer as fuel for generating electricity which was used for operation of dumpers can be held to be brought in connection with the manufacturer of articles into an approved undertaking and it was held that considering the use of words "brought in connection with the

manufacture of articles" used in the Notification No.123/81-CE makes all such goods which are brought into 100% EOU in connection with manufacturer eligible for said notification. In the present case, there is no dispute that H.S.D. Oil was brought for manufactur~~ing~~e in 100% EOU and therefore, the appellants during the period of dispute were eligible for availment of benefit under Notification No.123/81-CE dated 02.06.1981. We, therefore, set aside the impugned Order-in-Appeal and restore the Order-in-Original dated 11.05.2011.

6. In above terms, appeal filed by the appellant is allowed. The appellant shall be entitled for consequential relief, as per law.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Certified True Copy
14/03/18
सहायक रजिस्ट्रार/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