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: 15/02/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70319/2018-EX[DB] dated 18/01/2018

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/Stay/61824/2013	E/60626/2013	**B N Pack** (prop.bn Sponge Iron P.ltd)bn-43-52,cn 76-90,mg Road Ind.area Phase-iii GHAZIABAD U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

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/60626/2013-EX[DB]

(Arising out of Order-in-Appeal No. MRT/EXCUS/002/APP/142 & 143/2013-14 dated 30/09/2013 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

M/s BN Pack **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent

CORAM:

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

Date of Hearing : 18/01/2018
Date of Decision : 18/01/2018

FINAL ORDER NO. 70312/2018..........

Per: Ashok Jindal

The appellant is in appeal against the impugned order.

2. The brief facts of the case are that the appellant is engaged in the manufacture of Corrugated Boxes of their own and in some cases they are doing job work on behalf of principal manufacturer. The case of the Revenue is that as principal manufacturer has supplied papers to the appellant for making corrugated boxes which were cleared to the principal manufacturer without payment of duty. The

principal manufacturer did not pay duty on their goods as their goods were exempted as the principal manufacture is availing exempted, therefore, the appellant was required to pay duty on manufacture of corrugated boxes. In these terms, the show cause notice for the period from October, 2008 to August, 2009 was issued by invoking the extended period of limitation on 01.12.2010. The matter adjudicated the demand of duty alongwith interest was confirmed and equal amount of penalty was also imposed. Against the said order, the appellant is before us.

3. Learned counsel for the appellant submits that although the activity under taken by the appellant amounts to manufacture but on job work activity they were paying service tax and the same has been accepted by the Revenue. It is submitted that the extended period of limitation cannot be invoked as the Revenue never raised any objection for paying service tax by the appellant instead of duty. In that circumstances, the demands are not sustainable. He also submitted that Adjudicating Authority has adjusted the amount of service tax paid by the appellant from the impugned demand.

4. On the other hand learned AR supported the impugned order.

5. Heard both sides and considered the submissions. We find that it is an admitted fact that activity under taken by the appellant amounts to manufacture but instead of paying duty on their goods, the appellant is paying the service tax and the same has been accepted by the Revenue. For one activity and two demands cannot be raised against the appellant i.e. service tax as well as central excise duty. If Revenue has accepted service tax from the appellant, the Revenue cannot issue a show cause notice for demand of duty, the same view was taken by the Tribunal in the case of K.R. Packaging vs. Commissioner of Central Excise & Service Tax, Meerut-I reported in 2017 (51) S.T.R. 438 (Tri. Del.).

6. We further take a note of the fact that the show cause notice has been issued by invoking the extended period of limitation. As stated hereinabove as the appellant was paying service tax and the said activity was known to the Department. In that circumstances, the extended period of limitation is not invokable, therefore, we hold that the show cause notice fails on limitation.

7. In view of these observations, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in Court)

Sd/-

Anil G. SHAKKARWAR

(MEMBER TECHNICAL)

Sd/-

ASHOK JINDAL

(MEMBER JUDICIAL)

प्रमाणित प्रति/Certified True Copy

05/03/18

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

Ankit