FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
EXCISE APPEAL BRANCH

Dated: 20/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70261-70262/2016-EX[DB] dated 14/06/2016

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/1060/2007	**SUPER CASSETTES INDUSTRIES LTD.** G-3 TO 6, 20 & F-65, SECTOR-11, NOIDA.
2	E/1061/2007	**SHRI SUNIL WADHWANI, DIRECTOR** M/S SUPER CASSETTES INDUSTRIES LTD., PLOT NO.1, FILM CITY, SECTOR-16A, NOIDA-201301 (U.P.)
		Name and Address of Respondent
3	C.C.E. NOIDA C-56/42, SECTOR-62, NOIDA-201307	

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s): SH V.L KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI

6 Bar Association, CESTAT, Delhi

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham Pitamah Marg, 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

15 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

16 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

E/1060/2007-EX(DB), E/1061/2007-EX(DB)

Dated of Hearing/decision: 10/6/2016

[Arising out of Order-in-Appeal No. 8-9/CE/NOIDA/2007 dated 25.01.2007 passed by Commissioner of Central Excise, NOIDA]

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Super Cassettes Industries Ltd.,
Shri Sunil Wadhwani, Director — Appellant

Vs.

C.C.E., NOIDA — Respondent

Appearance:
Present for the Appellant: Shri Atul Gupta, Advocate
Present for the Respondent: Rajeev Ranjan (Joint Commissioner)

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

<u>Final Order No.</u> 70261-70262/2016

Per: Anil G. Shakkarwar

The above appeals are filed by M/s Super Cassettes Industries Ltd. and its Director against Order-in-Appeal No. 8-9/CE/NOIDA/2007 dated 25/01/2007 passed by Commissioner (Appeals) Meerut-II (NOIDA).

2. Brief facts of the case are that the appellants are manufacturers of Recordable Compact Disc. For the manufacture of said product they use one of the inputs called Silver Target on which CVD is paid. In the process of manufacture of said Compact Disc., the Silver from Silver Target gets depleted. When Silver Target cannot be further used it is removed from the production line ~~live~~ and sold on invoices with a description of goods as Silver bullion.

3. Appellants ~~They~~ were issue with Show Cause Notice No. IV-CE(9)CP/101/03/1427 dated 05.8.2007 wherein the department contended that said silver bullion remnant of silver targets is scrap of silver classifiable under Chapter Subheading No. 7101.80 attracting 16% rate of duty and alleged that the appellant mis-classified the same under Chapter Subheading No. 7101.31 which attracts NIL Rate of Duty. The said show cause notice had proposed demand of Central Excise duty for Rs. 10,32,405/- with other proposal of penalty. The said show cause notice was adjudicated through Order-in-Original No. V(15)Adj./Noida/SCI/57/04 dated 28.11.2005 wherein the original authority held that the said Silver Targets cannot be re-used as such and therefore they become waste and ~~western~~ scrap of silver and confirmed the demand and equal penalty was imposed on the appellant and penalty of Rs.2,58,101/- on Shri Sunil Wadhwani, Director who is also another appellant in his present appeals. Aggrieved by said Order-in-Original dated 28.11.2005 appellants preferred appeal before Commissioner (Appeals). Ld. Commissioner (Appeals) decided the said appeal through impugned order wherein he has held that the remnant of Silver Targets was containing Silver of 97% to 98% on the basis of test conducted ~~contended~~ by the Department and it is

worn out. Therefore, he has upheld the Order-in-Original. However, he has directed that the sale proceeds should be treated as cum duty value and duty liability needs to be reworked.

4. The contention of the appellant before us is that the observation of Ld. Commissioner (Appeals) that the test was con~~tend~~ducted by Revenue and it was found that Silver cont~~ended~~ained was 97% to 98% is not based on facts. ~~Infect~~ In fact during the investigation the department officers contacted the purchasers and purchasers have stated that worn out Silver Targets purchased by them ~~was~~ were having purity of silver as 99.99% and same is stated at Para 4.1, 4.2 and 4.3 of the said show cause notice.

5. The ld. Counsel for appellants has contended that there is no basis to classify the said worn out Silver Target under chapter sub-heading 7101.80 which has purity of 99.9% and which are not subject to any process and during the manufacturer of Compact Disc. silver from the said silver target gets depleted and the classification of new silver targets and Silver Targets after depletion of silver from it cannot be different. The worn out Silver Target is rightly classifiable under chapter sub heading No. 7101.31 attracting NIL rate of duty. He has also relied on this Tribunals decision in the case of UEN (I) Ltd. Vs. CCE, Cochin reported at 1997 (94) E.L.T. 268 (Tribunal).

6. The Ld. Departmental Representative ~~was~~ has contended that worn out Silver Targets cannot be once again used as Silver Targets. Therefore, it is a Waste and Scrap and is classifiable under chapter sub-heading No. 7101.80.

7. We have considered the rival contentions. We find that the facts in the present case are similar with the facts in the case of OEN (I) Ltd. Vs. CCE Cochin (supra). In the said case the silver strips were subjected to the process of punching out of silver in the manufacturer of electro mechanical electronic components. The process involved punching of Silver Strips and at the end punched out Silver Strips was remnant. This Tribunal ~~is~~ had held that in the said case the remnants of silver strips have lost only their original shape and the remaining portion after being punched had not lost the purity and therefore is classifiable under chapter subheading No. 7101.31. It was also held that scrap is normally understood in common parlance as waste having less or no intrinsic value and that the said punched Silver Strips on re-melting and re-rolling are converted again into Silver Strips. Therefore, remnants of silver strips are not waste and scrap. We find that the said case is squarely applicable in the present appeal. Therefore, we hold that worn out Silver Targets are classifiable under chapter subheading No. 7010.31 attracting NIL rate of duty. We, therefore, set aside the impugned order and allow the appeal with consequential relief. We also allowed the appeal filed by Shri Sunil Wadhwani. No costs.

(Dictated and pronounced in the open Court)

(Anil G. Shakkarwar)	(Anil Choudhary)
Member (Technical)	Member (Judicial)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
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38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001