FAX : 0532-2400149

REGISTERED / AD

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

Dated: 10/06/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70254/2016-CU[DB] dated 30/05/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/503/2010	KIRTY INTERNATIONAL A-22, SECTOR-57 NOIDA,U.P. 201301
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-NOIDA C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH-201307 (x)

with a copy of order, to be served to the appellant.

Copy To

3 Advocate(s) / Consultant(s):

Nitin Sen , Advocate OF Lexcellence
1490, SECTOR-37,
NOIDA,UTTAR PRADESH
201303

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, 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

Asstt. Registrar

Appeal Name and Address of Appellant

/503/2010 **KIRTY INTERNATIONAL**
A-22, SECTOR-57
NOIDA,U.P.
201301

Name and Address of
Respondent

C.C. & C.E. & S.T.-NOIDA
C-56/42,.SECTOR 62,
NOIDA,UTTAR PRADESH-201307 (x) with a copy of order, to be served to the appellant.

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Asstt. Registrar

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

Cus. Appeal No.503/10

Arising out of O/A No.157/APPL/NOIDA/09 dated 17.05.2010 passed by Commr. of Customs, Central Excise, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3. Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4. Whether Order is to be circulated to the Departmental Authorities?	: Yes

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M/s Kirty International
APPELLANT(S)

VERSUS

Commissioner of Customs, Noida
RESPONDENT (S)

APPEARANCE

None for the Appellant (s)
Shri D. K. Deb, Asstt. Commr. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 30. 05. 2016

Final ORDER NO. 70254/2016

Per Mr. Anil Choudhary :

The appellant-importer, is in appeal being aggrieved by the impugned order, by which it has been held that the appellant has ~~noted~~ made mis-declaration in the bill of entry resulting into under valuation of the consignment along with confirmation of order of confiscation and penalty.

2.1 The brief facts are that the appellant is a merchant-importer and had imported a consignment of "High Speed Steel Scrap" (~~Stock lot~~ Tools) weighing 18.00 MT from M/s Daiichi Motors, Dubai, U.A.E. and accordingly, had filed the B/E No.501649 dated 17.07.2009 seeking clearance of the same under Customs Tariff Heading 7204 29 90. The goods were subjected to 100% examination twice by the Govt. approved Chartered Engineer. The examinations of the said lot of "High Speed Steel Scrap" led to revelation that the consignment consist of three types of items, valued at different Fair Market Price (FMP) by the Chartered Engineer as under :

(a) Old & used (Damaged) HSS Tools-4750 Kgs. valued @ Rs.58/- per kg.

(b) Old & used HSS Tools-7600 Kgs. valued @ Rs.115/- per kg.

(c) New Butt Weld Tools 1650 pcs.-5700 Kgs. valued @ Rs.1375/- per piece.

2.2 Thus the description,classification, quantity & value of items mentioned as at (b) & (c) were found to be mis-declared. Accordingly, a show-cause notice was issued to the appellants proposing enhancement in the value and confiscation of goods at Sl.No.(b) & (c) above besides initiating the penal proceedings for mis-declaring and undervaluing the goods. The adjudicating authority after considering the submissions made by the importer during the course of personal hearing, enhanced and re-determined the declared value of goods in respect of "old & used HSS Tools" and "New Butt Weld Tools in Prime Quality" and ordered for re-assessment of these goods as per Section 17 (4) of the Customs Act, 1962 under Chapter Heading No.8207 90 90 attracting duty @ 10% + 2% + 1% (Basic) plus 8% + 2% + 1% (CVD) plus 4% SAD. He also confiscated the said goods under Section 111 (d) & (m) of the Customs Act, 1962 and imposed redemption fine of Rs.2,00,000/- and penalty of Rs.1,00,000/- under Section 125 & 112 (a)(ii) respectively of the Customs Act, 1962. Hence, the present appeal by the appellant.

3. Being aggrieved, the appellant preferred the appeal before the ld.Commissioner (Appeals), who has pleased to reject the appeal upholding the findings in the Order-in-Original.

4. The appellant is absent in spite of notice and was also absent on the earlier date i.e. 02.05.2016, when the notice was issued by way of last chance. It is seen that the notice was issued to the appellant as well as to their Counsel, Mr.Nitin Sen. The notice issued on the ld.Counsel, is served, but the notice issued on the appellant, has been returned un-served with postal remarks "Addressee not found at the given address".

5. We find that in column 6 of the appeal memorandum, the address of the appellant had been given, accordingly, the notice was

sent to the said address and as such, in absence of any request for adjournment, the appeal is taken up for hearing *ex-parte*.

6. Heard the ld.A.R. for the Revenue and perused the records.

7. The issue in this appeal is whether the impugned order is cryptic as the Court below have ignored the material on record, in favour of the appellant. We find that after filing the B/E by the importer on 17.07.2009, the consignment of "High Speed Steel Tools Scrap" was subject to 100% inspection after destuffing container by the Chartered Engineer cum Government registered Valuer, Mr.R.K.Khera. As per his report, the said container/consignment contains mixed lot of new, usable and damaged machine tools. All tools were stated to be loosely placed in pellets/plastic trays one over the other without any individual packing except 6 pellets of new tools wrapped in paper and in turn packed in card board packing. Accordingly, 5 (five) pellets or 4750 kgs of total consignment of 18 MT were taken as scrap as tools of this category, was found to be damaged. 8 (eight) pellets or 7600 Kgs. Contain tools, which are used and remaining 1650 tools weighing 5700 Kgs. In 6 pellets are new. He further found that none of the tools are re-conditioned, consignment is otherwise neat and clean without ingress of any foreign material and except for machine tools , no other item is found in a container. This report was in supersession of the earlier report of Mr.Khera dated 28.07.2009, which were based on visual examination without destuffing of the container. Accordingly, the suggested value was :

(a) For used/damaged/rusted industrial tools weighing 4750 Kgs consisting of 5 pellets @ Rs.58/- per Kg amounted to Rs.2,75,500/- ;

(b) For used industrial tools made as HSS Metals weighing 7600 Kgs of tools consisting of 8 pellets @ Rs.115/- per Kg amounted to Rs.8,74,000/-

(c) For packed tools in card board cartons 1650 tools of butt weld end mill weighing 5700 Kgs @ Rs.1375/-/- each amounted to Rs.22,68,750/-.

Such valuation on being disputed by the appellant-importer, the Authority again called for a second opinion from Mr.Sanjeev Kumar, Valuer, Positech Solutions, who after inspection vide his report dated 22.08.2009 opined that the consignment consists of mostly used or surplus new tools. These tools cannot be sold in the market as the new tools on price list value, as most of them are non-standard tools and cannot be used on Indian machines. In this opinion, the value of the goods is Rs.160/- to Rs.200/- per Kg. in the open market. From the perusal of the order-in-original, we find that the Additional Commissioner adjudicating the SCN, has conveniently ignored the second report obtained by the Revenue from Mr.Sanjeev Kumar, Valuer. No reasons have been assigned for rejecting/ignoring the said report. We further find that the appellants had raised grounds before the ld.Commissioner (Appeals) that the consignments consisted of scrap tools, rejected waste and out of size tools, which were not usable anywhere. This was confirmed by the Chartered Engineer, Mr.Sanjeev Kumar, who had given opinion at the instance of the Customs Department. We find that in the impugned order-in-appeal, the ld.Commissioner (Appeals) has failed to consider the grounds and have not recorded any findings on the same. Thus, we hold that the impugned Order-in-Appeal & Order-in-Original, are both cryptic and are in violation of principles of natural justice. Accordingly, we set aside the impugned order and allow the appeal. Thus, we hold that the declaration made in the B/E No.501649 dated 17.07.2009 filed by the appellants, does not suffer from ~~his~~ any mis-declaration. The appellant will be entitled to consequential benefit in accordance with law.

8. Registry is directed to serve the copy of this order on the appellant through the jurisdictional Commissioner.

(Operative part of the order was pronounced in the open Court)

-Sd- -Sd-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(A.CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy
24.6.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपीलीय अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001