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: 29/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71173/2016-SM[BR] dated 09/12/2016

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/533/2011	SHRI R.K. GUPTA C/O M/S FALCON FREIGHT, DCF MARKET, COURT ROAD, MORADABAD.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To

3Advocate(s) / Consultant(s):

Lasa Consultancy (P) Ltd.
C-15, 16, HARTHALA INDUSTRIAL
AREA, KANTH ROAD,
MORADABAD,
UTTAR PRADESH

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 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 Guard File

Asstt. Registrar

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

Appeal No.C/533/2011-CU[SM]

Arising out of Order-in-Appeal No.10/CUS/MRT-II/2011 dated 31.05.2011 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II.

Shri R.K. Gupta C/O

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut-II

...RESPONDENT (S)

APPEARANCE:

Shri S.K. Mathur & Shri M.B. Mathur, Advocates for the Appellant (s)
Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 09.12.2016

FINAL ORDER NO.- 71173/2016

Per Mr. Anil G. Shakkarwar:

This appeal is filed by Shri R.K. Gupta, who was one of the noticee in the show-cause-notice dated 14.01.2008 issued to M/s The Village Art, Moradabad. The present appeal is against Order-in-Appeal No.10/CUS/MRT-II/2011 dated 31.05.2011 passed by Commissioner (Appeals), Meerut-II.

2. The brief facts of the case are that M/s The Village Art, Moradabad obtained advance license for import of Brass Scrap. The further investigation lead to the issue of a show-cause-notice, wherein it was alleged that said Brass Scrap was not used for manufacture of goods to be exported but was sold in the open market. The allegation in the said show-cause-notice also including that the appellant in the present appeal has helped the importer in selling

imported Brass Scrap in open market whereas the condition of import was that the said Brass Scrap should have been used for manufacture of goods to be exported. The said show-cause-notice was adjudicated through Order-in-Original No.05/ADC/M-II/2011 dated 24.01.2011, wherein Customs duty of Rs.19,88,133/- was confirmed against the Brass Scrap imported and said Brass Scrap was confiscated. Further, the present appellant, Shri R.K. Gupta was imposed with a penalty of Rs.10,00,000/- under Sections 112, 114, 114A & 117 of the Customs Act, 1962. The appellant preferred appeal before Ld. Commissioner (Appeals). The Ld. Commissioner (Appeal) disposed the said appeal through Order-in-Appeal No.10/CUS/MRT-II dated 31.05.2011 (impugned order), wherein the Ld. Commissioner (Appeals) who has elaborately gone through the contentions of Shri R.K. Gupta and reduced penalty to Rs.5 lakh. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

2. Heard the learned counsel for the appellant, who has argued that Shri Manoj Sikka in his statement dated 10.04.2004 agreed that he has sold the Brass Scrap in the market and in his subsequent statement on 11.04.2004, Shri Manoj Sikka stated that Shri R.K. Gupta i.e. present appellant has helped him in processing of their advance license application, did the licensing work with DGFT, the basic idea of procurement of advance license was also given by him and that for procurement of imported Brass Scrap funds were also managed by him. He further argued that the statement, dated 11.04.2004, was contradictory to the statement dated 10.04.2004.

He further relied on case Law in the case of Ashok Kumar Singh Vs. Union of India reported at 2000 (124) ELT 33 (All.).

3. The learned DR has contended that the admissibility of statement of co-accused for imposition of penalty under Customs Act has been elaborately discussed by Ld. Commissioner (Appeals) in para 4 of Order-in-Appeal.

4. Having considered the rival contentions and on perusal of record, I find that the appeal paper book is having a copy of statement of the appellant dated 10th January, 2008, wherein he has categorically stated that he had not role in the import of said Brass Scrap. I find from the ruling of Hon'ble High Court of Allahabad in above stated case that it was held that on the basis of statement of co-accused alone and in the absence of any other evidence, the lower court cannot proceed against an accused. In the present case, I find that the statements of Manoj Sikka and Shri R.K. Gupta are contradictory to each other. This situation may create suspicious about the role of Shri R.K. Gupta, however, suspicion cannot be the basis for punishment, and therefore, I hold that in the facts and circumstances of the case, Shri R.K. Gupta was not liable to impose with penalty. I, therefore, set aside the impugned Order-in-Appeal and allow the appeal.

(Dictated & pronounced in the open Court)

(Anil G. Shakkarwar)
Member (Technical)

Mishra

प्रमाणित प्रति / Certified True Copy
30/12