FAX : 0532-2400149

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

Dated: 22/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70846/2016-SM[BR] dated 30/08/2016

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/52434/2015	GNAPATI TYRES SERVICE 2050/1, OLD TYRE MARKET, SECTOR-45, BURAIL, CHANDIGARH 160047
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH- 201307

Copy To

3Advocate(s) / Consultant(s):

SH GOPAL VERMA,ADV
112, ASHOK NAGAR
ALLAHABAD

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 CD.R. ~~16~~ Office Copy ~~17~~ Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No. C/52434/2015-CU[SM]

Arising out of Order-in-Appeal No. NOI/CUSTM/OOO/APP/406/2014-15 dated 23.03.2015 passed by Commissioner Appeals(2), Customs and Central Excise, Noida.

For approval and signature:

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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Ganpati Tyres Service ...APPELLANT

VERSUS

C.C. & C.E. & S.T-Noida ...RESPONDENT

APPEARANCE

Shri Gopal Verma, Advocate for the Appellant
Shri Rajeev Ranjan, (Joint. Commr.) (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 30. 08. 2016

FINAL ORDER NO. 70846/2016

Per Mr. Anil G. Shakkarwar :

The appellant filed Bill of Entry No. 3427406 dated 01.10.2013 for clearance of old and used tyres claiming classification under CTH 40122020 for 4,685 numbers of goods with assessable value declared as Rs.13,60,797.40/-. It appeared to Revenue that old and used tyres fall under schedule III Part B- List of Hazardous Wastes Applicable for Import & Export of Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008 at Basel No. B-3140 with description as Waste of Pneumatic Tyres which can be imported with the permission of Ministry of Environment and Forest. After adjudicating of the matter, the Original Authority issued Order-in Original No. 23/JC/CUS/ICD-DD/2014 dated 31.12.2014 holding that the appellant has imported the used tyres or second hand old and used tyres categorized as hazardous goods under said Rules, 2008 without obtaining the required authorization from DGFT and without obtaining the valid permission from Ministry of Environment and Forest. The Original Authority, therefore, ordered confiscation of the goods imported under Section 111(d) & (o) of the Customs Act, 1962 and gave an option to redeem the goods on payment of redemption fine of Rs.2,75,000/- under Section 125 of the Customs Act, 1962 and ordered re-export of the same goods and also imposed penalty of Rs.1,35,000/- on appellant under Section 112 (a) of Customs Act, 1962. Aggrieved by the said Order-in-Original, appellant preferred appeal before Commissioner (Appeals), Noida who passed Order-in-Appeal No. NOI/CUSTM/000/APP/406/2014-15 dated 23.03.2015 holding that he did not find any infirmity in the Original Authority's order for confiscation of goods, imposition of redemption fine and order for re-export of the goods, and accordingly, rejected the appeal.

2. Aggrieved by the said Order-in-Appeal dated 23.03.2015, the appellant is before this Tribunal on the following grounds :-

(A) In terms of Exim Code 401232020 of the ITC (H.S.) classification second hand tyres are allowed to be imported subject to the condition that the CIF value is equal to or more than USD 25 per piece. Therefore, this being the only condition imposed for imposition of second hand tyres, the observation of Original Authority that the import of old and used tyres requires special import license is contrary to the provision of Foreign Trade Policy.

(b) It is undisputed fact as established from the examination report of the Customs Officers that the consignment in the instant case comprised old and used tyres in reusable condition having substantial residual life and not scrap of tyres.

(c) Consignment being of old and used tyres does not get covered by provision of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008.

Appellant further relied on the final order by this Tribunal in the case of M/s. Jibran Overseas vs. C.C., Ghaziabad in Customs Appeal No. 54848 of 2014 and submitted that this Tribunal vide his final order No. 51473 of 2015 dated 08.04.2015 has dealt with goods under similar circumstances and held that the goods under similar circumstances did not get hit by mischief of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 in the sense that their import did not require permission of MoEF, absolute confiscation thereof is not warranted. It was also held that the goods were allowed clearance on redemption fine of 15% of the assessable value and penalty of 10% of the of the assessable value.

3. The learned counsel for the appellant took me through the relied upon final order No. 51473 of 2015 dated 08.04.2015 in the case of M/s. Jibran Overseas vs. C.C., Ghaziabad passed by Division Bench of this Tribunal and compared their case with the relied upon case laws under similar facts and circumstances and urged that the said case law is squarely applicable to their present case.

4. Learned D.R. relied upon the impugned Order-in-Original and Order- in-Appeal.

5. I have carefully gone through the case records and relied upon case law, I find that ordering of confiscation and again ordering re-export of confiscated goods is contrary to each other. On absolute confiscation, the goods became property of Government of India and appellant does not have any authority to export the same. I find that the relied upon case is squarely applicable in the present case I therefore, modify the Order-in-Appeal and Order-in-Original to following extent :-

(i) I uphold the confiscation of the goods under Section 111(d) of Customs Act and allow the redemption of the same on fine of 15% of the assessable value.

(ii) I uphold the imposition of penalty on the importer under Section 112 of the Customs Act, 1962 to the extent of 10% of the assessable value; and

(iii) I uphold that the applicable duty on the assessable value shall be payable if the goods are taken/released on payment of Customs duty, redemption fine and penalty. The goods shall be released by completing customs formality within two weeks of payment of customs duty, redemption fine and penalty.

6. The appeal is allowed partially in above terms.

(Order was dictated in the open Court)

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

patel/-

प्रमाणित प्रति / Certified True Copy

24.10.16

Asstt. Registrar

C.E.S.T.A.T.

38, M. G. MARG, ALLAHABAD-211001