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REGISTERED / AD

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

Dated: 01/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70415/2017-SM[BR] dated 28/04/2017

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/70657/2016	**Om Merchants Exports Pvt Ltd** Ff-44, First Floor, Laxmi Nagar, EAST DELHI DELHI 110092
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

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3Advocate(s) / Consultant(s):

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Palace, 35-C, Rampur Garden, Civil
Lines, Bareilly, UP
Bareilly
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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/70657/2016-CU[SM]

(Arising out of Order-in-Appeal No. 09/CUS/ALLD/2015 dated 07/10/2015 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

M/s Om Merchants Exports **Pvt. Ltd.** — **Appellant**

Vs.

Commissioner of Customs, Lucknow, — **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant, — for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial

Date of Hearing: 14/12/2016

Date of Decision: 28/04/2017

FINAL ORDER NO...70415/2017......

Per: Anil Choudhary

The issue in this appeal filed by the appellant-assessee is, whether in the case of Town seizure for non-notified goods (readymade garments) under Section 123 of the Customs Act, 1962, whether it is the onus of Revenue to prove that the goods are smuggled and whether the order of confiscation with redemption fine and further penalty of Rs.5 lakhs under Section 112(a) of the Customs Act, 1962, is sustainable.

2. The brief facts are that on the basis of intelligence, DRI, Lucknow Regional Unit intercepted a consignment of readymade garments, which had been booked under Railway

Parcel way Bills No. 146537 & 146540 dated 07/03/2013 for transportation from Kolkata to New Delhi by Train No. 12313, being 52 parcels packed in HDPE packets. The Officers of DRI, Lucknow intercepted the consignment on 8th March, 2013 at Kanpur and pursuant to handing of detention memo to Chief Parcel Supervisor, Kanpur Central, were unloaded at Kanpur Central railway station from the train and brought to the Parcel Office at the station. On preliminary examination, it appeared that the said 52 packets of HDPE were containing readymade garments of foreign origin. The goods were left in the safe custody of the Parcel Office at Kanpur railway station till 18th March, 2013 and thereafter, the DRI officers took possession from the Railway Authorities and brought the goods to their office at Lucknow. Details as to consignor and consignee were sought from Senior Divisional Commercial Manager, Eastern Railway (Sealdah), vide letter dated 22nd March, 2013. But no communication was received from railway. After sometime on 14th July, 2013. A written communication was received by DRI from appellant – M/s Om Merchants Pvt. Ltd., New Delhi regarding the ownership of 52 packets of readymade garments, without support of any documents showing licit import or procurement of the said goods. On receipt of the said communication the appellant was summoned to appear with all necessary documents in support of their claim. The appellant had sought adjournment and another date was fixed on 6th August, 13, but summons issued were returned undelivered with the remark – shop was found close on 2nd August, 2013 & 3rd August, 2013. No one appeared before the authority in the meantime. During examination of the said goods, the pink copy of Parcel way Bills dated 7th March, 2013, issued by Railways was found in one packet from the respective lots. On both the PW Bills the description of the goods being transported was mentioned as readymade garments. The name of the consignor and consignee was mentioned as M/s Om Merchants Pvt. Ltd. The address of M/s Om Merchants Pvt. Ltd. mentioned on PW Bills were found different from the address mentioned on the letterhead by the appellant for correspondence with the DRI. Further written communication dated was received on 02nd September, 2013 from the appellant by DRI, wherein they submitted that the seized goods were legally imported by them under the bill of entry dated 8th November, 2012 and another Bill of Entry dated 18th October, 2012 and out of which 52 lots were supplied in the Indian market, copies of Bill of Entry were enclosed. It further stated that 57 packets of readymade garments from the said imported lots were dispatched in favour of M/s GTB Traders, New Delhi through railway R. R. No. A2270395 & A2270398, but the railway authority booked only 52 bags and in this regard partial delivery certificate was issued. Hence commercial invoice vide OMP/0059/2012-13 dated 5th March, 2013 was made for 52 bags. In the tax invoice dated 5th March, 2013 submitted by

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the appellant, buyer was mentioned as M/s GTB Traders, New Delhi, whereas on the face of carrier documents (RR/PW Bill No. 146537) consignor and consignee of the goods were same i.e. the appellant – M/s Om Merchants Pvt. Ltd. It appeared to Revenue that on the basis of documents submitted by appellant, the same do not cover the seized goods and on the belief that the said readymade garments one of Bangladesh origin valued at Rs.15,30,225/- have been illegally imported into India from Bangladesh through off route in violation of Notification No. 63/94–CUS (NT) dated 21st November, 1994, as amended, issued under Section 7(1) (c) of the Customs Act, 1962 and, therefore, were liable to confiscation. Accordingly, Show Cause Notice dated 3rd September, 2013 was issued to the appellant with proposal to confiscate the seized goods and impose penalty. It is further alleged in the Show Cause Notice that in the Bills of Entry and the suppliers commercial invoice the goods were declared to be of inferior quality, whereas the seized goods appeared to be of good quality and of renowned brands. Further alleged that the seized goods could not be co-related with the imported goods, as the supplier's invoices and packing list do not mention the name of the brands, size, etc. of the garments. It was also alleged that the appellant did not produce any behati and/or documents supporting transportation of goods from land customs station to Sealdah (Kolkata).

3. The Show Cause Notice was adjudicated on contest and vide order in original dated 20th December, 2013, the goods were held liable to confiscation, being of foreign origin readymade garments valued at Rs.15,30,225/- under Section 111 (b) of the Customs Act, 1962 with option to redeem on payment of fine Rs.3,80,000/- and further penalty of Rs.5 lakhs upon the appellant - M/s Om Merchants Pvt. Ltd. under Section 112 (a) of the Customs Act, 1962. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order have been pleased to reject the appeal confirming the order of confiscation and penalty.

4. Being aggrieved, the appellants are before this Tribunal. The ld. Counsel urges that it is not disputed that the appellant/importer had imported consignment of readymade garments from Bangladesh vide Bill of Entry dated 8th November, 2012 & 18th October, 2012. The goods were declared to be of inferior quality. The appellant had purchased the goods in lot. The main reason for order of confiscation by the courts below is that the goods did not match with the description in the two Bills of Entry. The consignment of the goods, as imported was a stock lot, and thus, in the Bill of Entry and in the commercial invoice the goods were declared to be of inferior quality. From the land customs station the goods were brought to appellant's, Kolkata Office/godowns, where they were inspected. The

garments, found fit for resale were separated from the defective goods and repacked. The repacked goods were then sent to Delhi. The Department has not conducted any sampling of seized goods and thus its contention that the goods are not of inferior quality is only presumptive and vague. Further, in view of the approximate matching of the goods with the Bills of Entry and in absence of any evidence led by Revenue in support of its allegation of smuggling, the whole Show Cause Notice is unsustainable. The goods were detained at Kanpur railway station, which is just a Town seizure. Further the goods being not notified goods under Section 123 of the Customs Act, 1962, the burden of proof that the goods are by way of illicit import or smuggled, lies on the Revenue, which it has failed to discharge. The evidences produced by the appellants, as regards import and the transport of goods, have been rejected by Revenue on flimsy grounds and as such the impugned order is vitiated and fit to be set aside. The learned counsel further states that putting of labels of reputed brands does not alter the situation, and it was the Revenue, which has failed to discharge the onus to *prima-facie* make out a case of smuggling. Further, pointing out from the Bill of Entry, the ld. counsel points out that the goods are subject to 70% abatement and only CVD is payable, which duty was paid at the time of import. The ld. counsel also stated that the Show Cause Notice is time barred as the goods were effectively seized by the customs authority on

18/19th March, 2013, when the possession was taken over from the Railway Authority and the goods were brought to the DRI Office at Lucknow. The Show Cause Notice has been served after more than 6 months in violation of Sections 124 read with Section 110 of the Customs Act, 1962. Accordingly, he prays for setting aside the impugned order with consequential benefits.

5. The ld. A. R. for Revenue have relied on the impugned order and also the findings in the Order-in-Original. He further points out to the finding of ld. Commissioner (Appeals), where it is observed that as per the Parcel way Bill dated 7th March, 2013, issued by Railways, found in one of the packets of the consignment, name of consignor and consignee was mentioned as M/s Om Merchants Pvt. Ltd., whereas the appellant in his defence submitted that in usual course 57 bags of readymade garments from the said consignment were dispatched in favour of M/s GTB Traders, New Delhi. Thus there being an anomaly in their version, the burden of proof shifted on the appellant. Further observed that from the date of detention of the goods on 8th March, 2013, nobody came forward to claim till 14th July, 2013 i.e. for about 3 months and accordingly the contentions of the appellants are not tenable. Further, observing that as no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner, as affirmed by the CEGAT

cannot be faulted as observed in the case of Commissioner of Central Excise *Versus* Vrindavan Beverages Pvt. Ltd. & Others 2007 5 SCC 388.

6. Having considered the rival contentions and on perusal of the facts on record, I hold that as the readymade garments in question, being not notified goods under Section 123 of the Customs Act, 1962, were freely importable. It is well settled that initial burden to prove smuggling of non-notified goods lies on the Department. I, further, hold that the appellants have given cogent explanation along with evidence of import of the goods, through licit route and the same have not been found to be untrue. Further, revenue have rejected the evidences produced, on flimsy ground which is not tenable. I find that the whole case of revenue is based on presumptions and no evidence have been led as to the allegation of smuggling. I further observe that if possessors of non-notified goods are asked to explain pocession, distinction between notified and non-notified goods gets blurred. The allegation in the impugned order that the appellants could not give proper evidence of transport of goods from the land customs stations to Kolkata, being a distance of 800 kms., does not lead to conclusion that the goods were imported without paying customs duty from outside India, through off route. I, further, hold that mere failure on the part of the appellant to produce some document to the satisfaction of the Customs Authority does not *ipso-facto* lead to inevitable conclusion that the

goods are smuggled. Accordingly, I hold the Show Cause Notice to be unsustainable. Accordingly, the appeal is allowed and the impugned order is set aside. The appellants are entitled to consequential benefits in accordance with law, including immediate release of their confiscated goods within a period of two weeks from the date of receipt or the service of this order, on the Customs Authority concerned. In case, the goods have been auction sold in the meantime, the appellant shall be entitled to the sale proceeds of the same, in accordance with law.

(Pronounced in Court on 28-04-2017)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy
08/05/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001