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: 07/08/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70726/2017-EX[DB] dated 10/07/2017

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/CROSS/113/2010	E/89/2010	**Commissioner of CUSTOMS-Meerut-ii** OPPOSITE SHAHEED SMARAK, DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH

Name and Address of Respondent

2

Chadha Brass Ltd.
Compound Chadha Palace, Prince Road,,,
MORADABAD
,UTTA R PRADESH244001

Copy To
3Advocate(s) / Consultant(s):

K. K. Anand, Advocate
A-103, DEFENCE COLONY,
NEW DELHI,
DELHI
110024

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
CROSS Application No. E/CROSS/113/2010
In APPEAL No. E/89/2010-EX[DB]

(Arising out of Order-in-Appeal No. 256-CE/MRT-II/2009 dated 30/09/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meertu-II)

Commissioner of Customs & Central Excise, Meerut-II **Appellant**

Vs.

M/s Chadha Brass Ltd. **Respondent**

Appearance:

Shri Rajeev Ranjan (Joint Commissioner) AR for Appellant
Shri K.K. Anand (Advocate) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 10/07/2017
Date of Decision : 10/07/2017

FINAL ORDER NO. 70726/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 256-CE/MRT-II/2009 dated 30.09.2009 passed by Commissioner of Central Excise (Appeals), Meerut II. The present appeal is filed by Revenue.

2. The brief facts of the case are that the respondent were engaged in the manufacture of Copper Sheets, Copper Circles, Brass Sheets and Brass Circles falling under Tariff Item Nos. 74091900 and 74092900 respectively of the First

Schedule to the Central Excise Tariff Act, 1985. The major inputs for manufacture were Copper Scrap, Brass Scrap and Zinc. The process of manufacture was that Copper/Brass Scrap was loaded in the furnace and Billets of Copper or Brass were manufactured the said Billets were rolled to produce untrimmed sheets and circles of Copper and Brass. Said untrimmed sheets and circles were further converted into trimmed sheets and circles of Copper and Brass and during the process waste of Copper and Brass emerged which was attracting nil rate of duty. Trimmed sheets and circles of Copper and Brass were attracting Central Excise Duty whereas Scrap of Copper and Brass was attracting nil rate of duty. Therefore, as provided under proviso to Notification No. 67/95 dated 16.03.1995 it appeared to Revenue that benefit of Notification No. 67/95 dated 16.03.1995 was not available to untrimmed sheets and circles of Copper and Brass. Therefore, the respondents were issued with a show cause notice dated 27.10.2008 for the period from October, 2007 to March, 2008 wherein there was a proposal for demand of Central Excise Duty of Rs. 10,69,721/- under Section 11A of Central Excise Act, 1944. There were other proposals for imposition of penalty on the respondent and their Executive Director, Shri I.S. Chadha. On contest the issue was decided through Order-in-Original dated 25.03.2009 wherein the Original Authority confirmed the demand along with interest and imposed equal penalty on respondents. Further the

Original Authority imposed personal penalty of Rs. 50,000/- on Shri I.S. Chadha. Aggrieved by the said order respondet preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) through impugned Order-in-Appeal dated 30.09.2009 decided the appeal. The learned Commissioner (Appeals) has framed the issue as follows:-

"The basic issue involved in the present appeals is whether untrimmed sheets/circles of Brass manufactured by the appellant are leviable to Central Excise Duty as it is an intermediate product arising in the course of manufacture of trimmed sheets/circles of Brass and waste Scrap of Brass attracting Nil rate duty being captively consumed and whether the same affects livability of duty on the said untrimmed Brass sheets."

The learned Commissioner (Appeals) has observed that the Original Authority had held the untrimmed sheets of Brass which were used for manufacture of trimmed sheets of brass intended for use in the manufacture of utensils/handicrafts were also found used in the manufacture of waste scrap of Brass which was captively consumed in the manufacturing cycle, under exemption and, therefore, the untrimmed sheets of Brass which actually found usage in manufacturing of waste scrap were liable to duty of excise. The learned Commissioner (Appeals) further observed that from the proviso to the said Notification No. 67/95 Original Authority inferred that final product should not be exempted from duty to entail the captively consumed goods to avail exemption and thus demand of duty was restricted to that portion of untrimmed brass sheets which went into the manufacture of waste and scrap at the last stage. Further learned Commissioner (Appeals) examined the relevant provisions of Notification No. 5/2006 and particularly Serial No. 41 of the same and observed that all the products covered under Heading 74.09 of First Schedule to the Central Excise Act, 1985, other than trimmed or untrimmed sheets or circles of Copper intended for use in the manufacture of utensils or handicrafts were subjected to Nil rate of duty subject to contention that if such goods were not produced or manufactured by the manufacturer who manufactures copper from copper ore or Copper concentrate and that all goods classifiable under Heading 74.09 are subjected to Nil rate of duty except for trimmed or untrimmed sheets or circles of Copper and that said heading also includes Brass sheets and strips. The learned Commissioner (Appeals) further observed that the legal status that emerged was that brass sheets trimmed or untrimmed were exempted from duty under the said Notification NO. 5/2006 and that Billets, sheets or circles were manufactured from waste and scrap of brass and not from Copper ore or concentrate. The learned Commissioner (Appeals) further took support from ruling of Apex Court in the case of M/s Mewar Bartan Nirman Udyog v/s CCE Jaipur reported at 2008 (231) ELT 27 (SC) wherein the Hon'ble Supreme Court has observed as under :-

"Items made from Copper attract duty at the rate of Rs. 3,500/- per MT whereas circles made from brass attract Nil rate of duty" and therefore, the learned Commissioner (Appeals) has held that the findings of the Original Authority that untrimmed sheets of brass attract Central Excise duty was set aside thus learned Commissioner (Appeals) set aside the Order-in-Original dated 25.03.2009. Aggrieved by the said order Revenue has filed this appeal.

3. The grounds of appeal filed by the Revenue states that Copper stated at Heading 74.09 includes refine copper and zinc based alloys called brass and further contended that Notification No. 05/2006 dated 01.03.2006 does not distinguish between refine copper and brass.

4. Heard the learned AR for the Revenue who is presented the ground of appeal.

5. Heard the learned counsel for the respondent who has submitted that the Hon'ble Supreme Court has already ruled in the case of M/s Mewar Bartan Nirman Udyog referred to above that copper and brass are two distinct commodities.

6. Having considered the rival contentions, on examination of ground of appeal wherein it is contended that copper and

brass one of the same commodity, we find that the Hon'ble Supreme Court of India in the above stated case of Commissioner of Central Excise, Jaipur v/s M/s Mewar Bartan Nirman Udyog reported at 2008 (231) ELT 27 (SC) has held that copper and brass are two different identifiable commodities. Therefore, we hold that the grounds raised by Revenue are not sustainable. We therefore, do not find any reason to interfere with the order passed by the learned Commissioner (Appeals). Therefore, we affirmed the impugned Order-in-Appeal No. 256-CE/MRT-II/2009 dated 30.09.2009 and reject the appeal filed by Revenue. The cross objection also stands disposed. The respondent shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

Anka

प्रमाणित प्रति/Certified True Copy
10/08/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001