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: 28/09/2016

To

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

Final Order No. A/70892-70895/2016-EX[DB] dated 15/09/2016

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/70125/2015	KATYAL INDUSTRIES 10,KM STONE,MATHURA ROAD AGRA UP
2	E/70126/2015	CAPSTAN RUBBER INDIA C-6 SITE-A, UPSIDC,INDUSTRIAL AREA,SIKANDRA AGRA U.P.
3	E/70127/2015	SHAKTI RUBBER CORPORATION 9TH KM STONE, AGRA MATHURA ROAD AGRA U.P.
4	E/70131/2015	CAPSTAN RUBBER INDIA UNIT II C-2, SITE-A, UPSIDC, INDUSTRIAL AREA, SIKANDRA,AGRA U.P.

O/C

27/10/16

ISSUED ON

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

Name and Address of
Respondent

C.C.E. & S.T-Agra
COMMISSIONER OF
CUSTOMS, CENTRAL EXCISE
& SERVICE TAX113/4,
SANJAY PLACE,
AGRA
U.P.-282002

Other Appellants and Respondents as per Annexure

Copy To
6Advocate(s) / Consultant(s):

SH K.K.ANAND,ADV
A-103, DEFENCE COLONY
NEW DELHI

7 Bar Association, CESTAT, Allahabad

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

15 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

16 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

17 C.D.R. ~~18 Office Copy~~ ~~19 Guard File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/70126, 70131, 70125 & 70127/2015-EX[DB]

(Arising out of Orders-in-Original Nos.AGA-EXCUS-000-COM-009-008-010-011-15-16 dated 26/08/2015 all passed by Commissioner of Central Excise & Customs, Agra.)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Capstan Rubber India, Capstan Rubber India Unit-II, Katyal Industries & Shakti Rubber Corporation.

Appellants

Vs.

Commissioner of Central Excise & Service Tax, Agra.

Respondents

<u>Appearance:</u>

Shri K.K. Anand, Advocate &
Ms Surabhi Sinha, Advocate — for Appellants
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondents

<u>CORAM:</u>

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

Date of Hearing & Pronouncement:-
15/09/2016

Final ORDER NO.....70892 - 70895/2016

Per: Anil G. Shakkarwar

Above stated four appeals have common issue and the period is same in the present appeals. Therefore, they are taken together for decision.

2. For the sake of convenience the facts related to Appeal No. E/70126/2015 are given hereunder. The facts in other appeals are also similar. The appellants are manufacturer of Rubber Sheets and they claimed classification of goods manufactured by them to fall under Tariff Item No. 40082110 of schedule to Central Excise Tariff Act, 1985. It appeared to Revenue that the goods manufactured by the appellants need to be examined for the purpose of correct classification. Therefore, the samples of Rubber Sheets manufactured by appellants were drawn under a Panchnama dated 29-07-2010 and under test memo the samples were not sent for testing to Chemical Examiner, CRCL, New Delhi and Director, FDDI, Noida. The test memo contains following points to be determined ~~remained~~ by the said laboratories :-

(i) How the sample is categorized – Cellular/ Non-cellular/Others;

(ii) Whether the sample contain RESIN as one of the constituent; and

(iii) Whether the sample is Resin Rubber Sheet.

On the basis of the report dated 05-08-2011 received from Director, FDDI, Noida Revenue claimed that the correct classification of the goods manufactured by appellants was 40082910 attracting 16% ad-valorem duty. Therefore, appellants were issued with a Show Cause Notice dated 27-04-2011 calling upon the appellants to show cause as to why the amount of Rs.8,10,59,603/- should not be recovered from them in terms of Section 11A of the Central Act, 1944. The said Show Cause Notice also had proposals for interest and penalty. On same grounds the other Show Cause Notices were issued to the appellants stated above the details are as follows:-

(1) Appeal No. E/70126/2015: M/s Capstan Rubber India were issued with total demand of duty Rs.17,65,44,819/- for the period from 2006-07 to March, 2015.

(2) Appeal No. E/70131/2015: M/s Capstan Rubber India Unit-II were issued with a duty demand of Rs.49,91,022/- for the Financial Year2006-07 to March, 2013.

(3) Appeal No. E/70125/2015: M/s Katyal Industries were issued with a duty demand of Rs.6,00,79,284/- from the period from 2006-07 to March, 2014.

(4) Appeal No. E/70127 M/s Shakti Rubber Corporation was issued with a duty demand of Rs.3,17,13,534/- for the period from 2006-07 to September, 2014.

3. All the above stated Show Cause Notices were adjudicated through different Orders-in-Original. The Show Cause Notice issued for Rs.49,91,022/- in Appeal No. E/70126/2015 M/s Capstan Rubber India was adjudicated through Order-in-Original No. AGA-EXCUS-000-COM-009-15-16 dated 26-08-2015, the appellant contended before the Original Authority that test report issued by Indian Rubber Manufacturers Research Association (IRMRA) dated 29-03-2011 does not give percentage of physical and chemical properties of the goods tested and that the report states that the material found to contain Resin (High Styrene Resin). Further, they contended that the entire case of the Department is based on the report given by Director, FDDI, Noida dated 05-08-2010. They, further, contended that in compliance to the directions of Hon'ble High Court of Allahabad the testing was done at CRCL, New Delhi. The said report is dated 08-05-2013 wherein CRCL has reported that the sample is Non-cellular category, sample contains resin as one of its constituents & sample is resin based rubber sheet, and contended that the CRCL does not have facility of testing facility of resin. They have further contended before Original

Authority that the goods manufactured by them are Non-cellular rubber and should be correctly classified under 400821 as Non-cellular rubber and not under 400829 as others. They, further, contended that the onus to prove that the goods fall under Tariff Item No. 4008290 lies on the Department. ~~Though~~ Through, the letter dated 06-08-2015 the appellants requested for Cross-examination of concerned persons connected with rendering of laboratory report. The Original Authority did not consider the request for Cross-examination and stated the classification of the said goods on the basis of test report given by CRCL, New Delhi as well as IRMRA, Thane to be filed under Tariff Item No. 40082910 and confirmed the demand and imposed equal penalty and ordered to pay the interest. Similar such orders were passed in respect of respective Show Cause Notices in other appeals.

4. Aggrieved by the said Original Order the appellants have preferred appeals before this Tribunal. The appellants contended that the test reports have been misinterpreted by the Department and both the test reports categorically states that the Rubber sheets are of Non-cellular category. They have further contended that it is proved that the Rubber sheets is made of Non-cellular rubber and is used in the manufacture of Soles, heels or soles and heels combined for footwear and it must be classified under Heading No. 400821 and it cannot be classified under Heading No. 400829 since

Cellular or Non-cellular rubbers cannot be classified under Heading No. 400829. They have further contended that there were discrepancies in the test reports and the Cross-examination of concerned authorities was required to clarify the inconsistency in the report and the same were denied by the original Authority.

5. Heard the ld. Counsel, the ld. Counsel has taken us through various test reports which are subject matter in the proceedings. A Test Report available on page No. 348 of Appeal Paper Book which is also relied upon document for issue of Show Cause Notice is the test report dated 05-08-2010 and issued by Footwear Design & Development Institute, Ministry of Commerce & Industry, Government of India. The test report indicates that the samples were Non-cellular Sheet and they contain resin and the sample is identified as resin Rubber Sheet. Another report is relied upon documents which is a report dated 14-09-2010 issued by CRCL, New Delhi which states that the sample is Non-cellular Rubber or others could not be ascertained. One more report is relied upon document from issue of Show Cause Notice which is report dated 29-03-2011 issued by IRMRA, Ministry of Commerce & Industry. The said reports states that the sample is Non-cellular and it is found to contain resin. Further, a report relied upon for adjudication is report dated 08-05-2013 issued by CRCL, New Delhi wherein it was

reported that the sample was Non-cellular category and sample contains resin as one of the constituent and the sample is resin based rubber sheet.

6. Heard the ld. D.R. who has supported the impugned Orders-in-Original.

7. Heard the rival contentions. We find that the reliance is placed on various test reports. The ld. Counsel for the appellants has emphasized that the test report dated 08-05-2013 gives a report that the both samples are Non-cellular as well as resin based rubber sheet. Non-cellular Rubber Sheet falls under Chapter 400821 whereas resin based rubber sheet falls under Chapter 40082910. We understand that further clarification on said discrepancy in the test report is needed. The appellants sought Cross-examination of the concerned authorities concerned with the testing of the samples and the same was found to be not allowed by the Original Authority. Therefore, it appears that complete opportunity to represent the cases was not given by the Original Authority. The Original Authority is required to give complete opportunity of presenting the case and then adjudicated the matter. We considered that the principles of natural justice have not been followed by the Original Authorities in these appeals. Therefore, we remand the matter back to the Original Authority who shall give opportunity of presenting their case to the appellants once again and provide opportunity to cross-

examine any of the witnesses that appellants desires to cross-examine required for arriving at just and fair conclusion in the matter. With these directions, we remand all the matters back to Original Authority. The appeals are allowed by way of remand.

(Dictated and pronounced in Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
25.10.16
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