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: 10/08/2016

To

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

Final Order No. **A/70660/2016-SM[BR]** dated **09/08/2016**

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/MISC/70303/2016, C/MISC/70304/2016	C/70555/2016	**MALHOTRA RUBBERS LTD** A-1/2, PLOT NO. 10 TO 12, SITE., B, SURAJPUR INDUSTRIAL AREA,GREATER NOIDA U.P,201308
		Name and Address of Respondent
2		C E & ST-Noida Ii OFFICE OF THE COMMISSIONER CENTRAL EXCISEHOTEL FORMULE 1, WEGMANS BUSINESS PARK, KP-III, GREATER NOIDA GOTAM BUDH NAGAR U.P.-

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

Priyadarshi Manish,Adv
437,MATHURA ROAD, (BEHIND BHOGAL BUS STOP) JANGPURA ,
NEW DELHI-110014

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 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

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

C/MISC/70303/2016
Appeal No. C/70555/2016-CU[SM]

Arising out of O/O No. 02/CCOMMISSIONER/NOIDA/CUS/2016 dated 11.04.2016 passed by Commissioner, Customs, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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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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Malhotra Rubbers Ltd. ...APPELLANT

VERSUS

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

APPEARANCE

Shri Priyadarshi Manish & Rahul Ranjan, Advocates for the Appellant
Shri Ashok B. Kulgod, (Asstt. Commr.) (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 09. 08. 2016

Final — ORDER NO. 70660/2016

सीमा शुल्क उत्पाद शुल्क एवं सेवा कर अपील अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

The appellant is a manufacturer of rubber tyres and also exports the manufactured tyres. The appellant also been granted star export house status by the DGFT. The appellant has also been granted licence by the DGFT under Advance Authorization Scheme (DEEC) for the import of natural rubber, beside Synthetic Rubber, Carbon Black, Nylon Tyre Cord Fiber (dipped), Bead Wire, Zinc Oxide, Furnace oil etc. The appellant regularly imports the abovementioned inputs for the manufacture of rubber tyres. In normal course of business in pursuance of purchase order dated 7/5/2015, the appellant placed order for natural rubber (SVR-10) on 'Vietnam Rubber Investment Corporation, Vietnam'. The goods were dispatched against the purchase order and the appellant, filed bill of entry No. 9843394 dated 9/7/2015 wherein the goods natural rubber had arrived from the said supplier namely Vietnam Rubber Investment Corporation, Vietnam, contained in 03 containers. As per the documents and as per the commercial invoice, the goods were declared as natural rubber SVR-10, as per sales contract dated 7/5/2015, net weight 63 MTS valued totally at 97,020 USD. The goods were accompanied by test certificate/inspection certificate wherein the goods were tested before dispatch in the laboratory authorized by Rubber Research Institute of Vietnam, which states the date of test as 22/5/2015. The goods tested being natural rubber SVR 10, 60 MTS rubber of SVR-10. Further certifying that the goods are as per sales contract dated 7/5/2015 of

Vietnam Rubber Investment Corporation, wherein the parameters namely- i) Dirt Content, ii) Ash and iii) Plasticity Retention Index (PRI) are within the prescribed limits. The test report further states that all tests on the samples submitted are carried out according to Vietnamese standard TCVN 3769-2004, which test method is equivalent to ISO-2000.

2. The bill of entry No. 9843394 dated 9/7/2015 was assessed and clearance for the goods allowed subject to 'no objection certificate' from the Rubber Board. However, testing of samples drawn from the 3 containers, the Rubber Board vide its report dated 3/8/2015 found that the samples do not conform to the specifications of rubber, raw, natural (Grade ISNR 10) as per IS:4588:1986. Accordingly the Rubber Board vide their letter dated 4/8/2015 refused to issue NOC. Thereafter, the appellant importer negotiated with their exporter in Vietnam who agreed for taking back the goods and accordingly in December, 2015 the parties entered into an agreement wherein the said exporter undertook to replace the goods and also to bear the detention and other charges incurred by the appellant. It is further evident from the impugned order, in the findings recorded by the learned Commissioner, that the exporter namely Vietnam Rubber Investment Corporation replaced all the 3 containers with matching quantity and on such replacement there was no dispute and the said containers were allowed to be cleared. The appellant sought permission for the re-export of the rubber imported by the bill of entry

No. 9843394 dated 9/7/2015. It appeared to revenue that the appellant is liable for violation of the provisions of the Act, including provisions of Section 11 of the Rubber Act and standing orders issued therein readwith Rule 48 of the Rubber Rules, 1955. Thus, the goods appeared liable for confiscation under Section 111 (d) and (m) of the Customs Act. Further the appellant appeared liable for penalty under Section 112(a) of the Act. The appellant vide their letter dated 14//3/2016, waived the condition of show cause and requested for personal hearing, to expedite the matters, so as to minimize the detention charges of the containers in Port. The appellant was heard on 4/4/2016 and their contentions were considered. The learned Commissioner vide the impugned order has been pleased to ordered confiscation of the consignment of natural rubber under Section 111(d) and (m) of the Act and further gave the option to redeem on payment of Rs.12,00,000/- as redemption fine and on fulfillment/payment of such condition allowed the goods to be re-exported. Further fine of Rs.4,00,000 have been imposed on the appellant under Section 112(a) of the Act. The learned Commissioner observed that the consignment have been imported in violation of the provisions of the Rubber Act and the Rules thereunder, as the samples tested have failed to meet the standards fixed. Further observed that the rubber is not found of requisite quality by the Rubber Board. The case of mis-declaration on the part of the appellant is established and accordingly ordered confiscation and also imposed penalty.

3. Being aggrieved, the appellant is before this Tribunal. The learned counsel urges that they are regular importers, importing several containers each year of natural rubber. It is nowhere found that the appellant have deliberately imported or placed order for natural rubber not meeting the grade SVR-10, as prescribed by the Rubber Board. He further points out from the test report that out of the 3 parameters, in the case of samples from one container all the three parameters have failed, whereas in report of other two containers, the two parameters for them were found to be completed and based on only the parameter PRI (Plastic Retention Index) was found to fail. Thus, under the circumstances there is no case of mis-declaration made out against the appellant. Further, the concerned exporter from Vietnam had accepted the error and have replaced the containers, which is an admitted fact. Under such circumstances, the confiscation of the goods and imposition of redemption fine and penalty are bad and fit to be set aside. The counsel for the appellant relies on the ruling of co-ordinate Bench of this Tribunal in the case of Zenith Rubber & Plastic Works Vs. Commissioner of Customs reported in 2010 (262) E.L.T. 272, wherein under similar facts and circumstances the imported rubber did not conform to the BIS Specification prescribed with respect to PRI. This Tribunal had held that the importer had taken all precautions before import and no mala-fide have been found against him. Further no case is made out that the appellant was aware of the deficiency in the goods, hence no case of mis-declaration is made out and accordingly held the goods are not

liable for confiscation and accordingly set aside the redemption fine and penalty imposed.

4. The learned D.R. for revenue relies on the impugned order. He further relies on the ruling of Hon'ble Supreme Court in the case of Pine Chemical Suppliers Vs. Collector of Customs wherein it has been held that question of mens rea is not relevant for the liability to confiscation and penalty, but only for quantum of fine and penalty imposable. The learned A.R. also relies on the ruling in the case of Union of India Vs. Sankar Pandi 2003 (157) E.L.T. A87 (S.C.), wherein the Apex Court has granted SLP against judgment of Hon'ble Madras High Court wherein it was held that redemption fine is not payable for improper importation, when goods are re-exported by importer but penalty was imposable for violation of Customs Act, 1962.

5. Having considered the rival contentions, I find that under the facts and circumstances, no case of mis-declaration, suppression or contumacious conduct is made out against the appellant importer. In the case of an importer where several containers are imported of the same raw material, over a period of time, some discrepancy found in two or three containers, it cannot be said that there is any mala fide or mis-declaration on the part of the importer. I further find that the appellant have taken all precautions before the importation and have given proper description of the goods to be imported in the purchase

order. Further, the consignment was accompanied by test report from a duly authorized laboratory in the country of exporter. The appellant have filed bill of entry based on the document of importer and as such, no case of mis-declaration is made out. Accordingly, I set aside the order of confiscation. Accordingly, the redemption fine and penalty are also set aside. Thus, the appeal stands allowed and the impugned order is set aside. The appellant is held entitled to re-export the goods under dispute. The Customs authority shall allow the goods to be exported forthwith within a period of three days, from receiving a copy of this order. Copy of this order be given Dasti.

The misc. application also is disposed of.

(Order was dictated

Sd/-
(Anil Choudhary)
MEMBER (Judicial)

Patel/-

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
35, एम. जी. मार्ग, इलाहाबाद-211001
35, M. G. MARG, ALLAHABAD-211001