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: 17/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71065/2016-SM[BR] dated 11/11/2016

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/70479/2016	C/70947/2016	KHURANA BEARINGS OPP. JAGRAON BRIDGE,G.T. ROAD LUDHIANA ,PUNJAB 141008
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA,UTTAR PRADESH- 201307

Record copy
29/11/16

Copy To

3 Advocate(s) / Consultant(s):

RAJESH CHIBBER
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

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

ISSUED ON
25-11-16

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

MISC Application No.C/MISC/70479/2016
WITH
Appeal No.C/70947/2016-CU[SM]

Arising out of Order-in-Original No.11/Pr. Commissioner/Noida-CUS/2016-17 dated 23.09.2016 passed by Pr. Commissioner of Customs, Noida Customs Commissionerate.

For approval and signature:

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

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

M/s Khurana Bearings

...APPELLANT(S)

VERSUS

Pr. Commissioner of Customs & Central Excise & S.T., Noida

...RESPONDENT (S)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant (s)
Shri Rajeev Ranjan, Jt. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 11.11.2016

FINAL ORDER NO.- 71065/2016

Per Mr. Anil G. Shakkarwar:

The learned counsel for the appellant has presented the grounds of Misc. Application for early hearing that the appeal is in respect of a live consignment, presently located in the Customs area and therefore, prayed for early hearing of appeal. He further prayed that the main appeal may be taken up for hearing and decision along with Misc. Application. In view of the facts that the appeal is in respect of a live consignment, MA is allowed and with the consent of Ld. DR for the Department, appeal is taken up for decision.

2. The brief facts of the case are that the appellant had filed Bill of Entry No.6216790 dated 02.08.2016 with Commissioner of Customs, NOIDA Customs Commissionerate for assessment and clearance of different types of Boll Bearings imported from China. The goods were subjected to First Check System of assessment. On first check, the customs Authorities found that the declarations on the imported goods for the purpose of compliance with the provision of Legal Metrology (packaged commodities), Rules 2011 had certain shortcomings as compared to requirements notified through Notification No.44(RE-2000)/1997-2002 dated 24.11.2000. Therefore, the appellants were issued with a show cause notice dated 24.08.2016. There was a proposal for confiscation of the imported goods under Section 111(d) of the Customs Act, 1962 and proposal for imposing of penalty on the importer under Section 112(a) of

Customs Act, 1962. The importers/appellants have submitted before the Original Authority that the provisions of said Notification dated 24.11.2000, were required to be fulfilled when the goods are imported for the purpose of retail sale. However, the goods imported by them were for industrial consumers and such goods which are intended for consumption by industrial consumers, there was no requirement to satisfy the requirements of such notification dated 24.11.2000. They have also argued that the importer has acted bona fide in the normal course of business and, therefore, the goods are not liable for confiscation nor the importer is liable for imposition of penalty. They also stated that Public Notice No.16/2013 dated 15.10.2013 issued by Commissioner of Customs (import & general) provided the facility of labeling of the goods before payment of duty and requested that further proceedings may be dropped and goods may be cleared. They also relied on the decision of this Tribunal in the case of Keshan Corporation Vs. Commissioner of Customs (PORT), Kolkata reported at 2004 (173) E.L.T. 524 (Tr.-Kolkata). Through Order-in-Original No.11/Pr. Commr./Noida-Cus/2016-17 dated 23.09.2016, the Original Authority decided the said show cause notice dated 28.04.2016, and ordered for confiscation of the goods involved in said Bill of Entry dated 02.08.2016 and imposed redemption fine of Rs.12 lakh under Section 125 of Customs Act, 1962. He further imposed penalty of Rs.4 lakh on the importer. Aggrieved by the said Order-in-Original, the appellants are before this Tribunal.

3. The learned counsel has argued that in the said case of Keshan Corporation, this Tribunal in para 8 has held that the compliance of the requirements of said notification dated 24.11.2000 was to be ensured before the goods are cleared for home consumption and since such requirements have to be complied with prior to actual clearance of goods, there is no violation of the provisions in terms of said notification before the clearance of the goods. It has further held that confiscation also was not warranted. Therefore, the question of redemption fine does not arise.

3.1 The learned counsel for the appellant has further urged that the reasons stated by the Original Authority for not complying the decision of this Tribunal in the said case is given at para 10.4 of the said reason is not sustainable. Therefore, he has requested to allow the appeal.

4. Heard the Ld. DR, who has supported the impugned Order-in-Original.

5. Having considered the rival contentions and having perused the appeal paper book, I find that there were certain requirements specified by the notification dated 24.11.2000, not complied with by the importer/appellant. However, the importers were eligible to rectify those shortcomings to fulfill the requirements of said Notification dated 24.11.2000 by applying Public Notice

No.16/2013, referred to earlier and if the importers are allowed to rectify the shortcomings in the information, required as per said notification No.24.11.2000, before the goods are cleared from Customs Control, there would not be any violation requiring the goods to be confiscated and redeemed. I also find that the justification, stated by Original Authority, for not applying the ratio of the case law relied on by the appellant before him in the said case of Keshan Corporation is that the purchase orders were never placed on record by noticee, before the personal hearing nor at the time of filing of Bill of Entry nor subsequent to that and the same appeared to him as afterthought. I do not find such reason to be sufficient to refuse to follow the Final order deciding issue passed by this Tribunal in the said case of Keshan Corporation. In view of the above, I set aside the impugned order and direct Principal Commissioner of Customs Noida, Customs Commissionerate to allow the importer to fulfill the requirement for compliance of Notification No.44 (RE-2000)/1997-2000 dated 24.11.2000, by pasting stickers on the goods imported when the goods are still under the control of Customs before their clearance and after satisfying that the said requirements have been fulfilled, allow the clearance of goods on payment of appropriate duty of Customs. The appellant shall present a copy of this order within two weeks on receipt by them and within next two weeks should complete the requirement of pasting the said stickers on the imported goods and subsequently within a two week, Commissioner shall allow the clearance of the said goods after appropriate sticker being pasted on the package of said goods, subject to payment of required Customs duty. With these directions, the Appeal is allowed. The MA stands disposed of. The appellant shall be entitled for consequential relief as per law.

Order be given Dasti.

(Dictated & pronounced in the open Court)

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

Mishra

सत्यापित प्रति / Certified True Copy
38, M. G. MARG, ALLAHABAD-211001