FAX : 0532-2400149

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

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70954-70955/2016-EX[DB] dated 28/09/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/52219/2014	SUNRIDGES SPORTING GOODS PVT LTD C-32-33, UDYOG PURAM DELHI ROAD, MEERUT,UP 250103
2	E/52220/2014	VIRENDER SAREEN MANAGING DIRECTOR SUNRIDGES SPORTING GOODS PVT LTD C-32-33, UDYOG PURAM DELHI ROAD,MEERUT UP-250103
		Name and Address of Respondent
3		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Other Appellants and Respondents as per Annexure

Copy To

4Advocate(s) / Consultant(s):

S. K. Pahwa,Adv
D-75, AMAR COLONY,
LAJPAT NAGAR - IV,
NEW DELHI,
110024

5. Bar Association, CESTAT, Allahabad

27/10/16

ISSUED ON

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

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

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

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

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

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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/52219-52220/201 4EX[DB]

(Arising out of Order-in-Original No. 04/Commr./MRT-I/2014 dated 09/01/2014 passed by Commissioner of Central Excise & Customs, Meerut-I)

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

M/s Sunridges Sporting Goods Pvt. Ltd., Virender Sareen Managing Director Sunridges Sporting

Appellant

Vs.

Commissioner of Central Excise & Service Tax, Meerut-I

Respondent

Appearance:

Shri S.K. Pahwa, Advocate &
Shri Rohan Pahwa, Advocate — for Appellant
Shri Sumanta S. Chattopadhyay, Superintendent, (AR), — for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 28/09/2016

FINAL ORDER NO. 70954-70955/2016

Per: Anil G. Shakkarwar

The present two appeals are filed by M/s Sunridges Sporting Goods Pvt. Ltd. & Virender Sareen Managing Director of Sunridges Sporting against Order-in-Original No. 04/Commr./MRT-I/2014 dated 09/01/2014 passed by Commissioner of Central Excise & Customs, Meerut-I.

2. The brief facts of the case are that the appellants are engaged in the manufacture of goods which are used for 'sports purposes'. The goods in dispute are, Batting Gloves, Wicket Keeping Gloves, Batting Inners & Wicket Keeping Inners. The contention of the appellants is that the said goods are Classifiable under Chapter Heading No. 9506 of schedule to Central Excise Tariff Act, 1985. It appeared to Revenue that as per Chapter Note No. 1(u) of Chapter 95 of Central Excise Tariff Act, 1985, the said goods are excluded from Chapter 95. Therefore, Revenue issue a Show Cause Notice dated 26-03-2013 by invoking extended period proposing to classify the said goods under Tariff Item No.4203 2110 of said schedule. Through the same Show Cause Notice, they demanded Central Excise duty, amounting to Rs.2,08,64,843/- for the period from March, 2011 to March, 2012. The said Show Cause Notice mentions that the appellants have paid Central Excise duty of Rs.49,56,524/-

along with interest of Rs.4,67,354/- pertaining to the period from March, 2011 to March, 2012 and there was a proposal in the said Show Cause Notice to appropriate the same. There were proposals for interest and penalty on Director in the said Show Cause Notice. The Show Cause Notice was adjudicated through impugned Order-in-Original No. 04/Commr./MRT-I/2014 dated 09/01/2014, wherein the demand was confirmed to the extent of Rs.1,79,67,444/-. Further Rs. 49,56,524/- paid by the appellants under protest were appropriated and equal amount of penalty was imposed. Further, the appellant, Virender Sareen Managing Director of Sunridges Sporting, was imposed with a penalty of Rs. 15 lakh as personal penalty.

3. Aggrieved by the said Order-in-Original No. 04/Commr./MRT-I/2014 dated 09/01/2014, the appellants preferred appeal before this Tribunal.

4. Heard the Ld. Counsel. The Ld. Counsel has submitted that the facts of the case are similar to the facts of the case in the case of M/s Sanspareils Greenlands Pvt. Ltd. *Versus* Commissioner of Central Excise, Meerut decided through Final Order No. 70605-70606/2016 wherein similar demand for which a Show Cause Notice dated 25-06-2013 was issued was decided by this Tribunal and the said Show Cause Notice in the said appeal was held to have been hit by limitation. The Ld. Counsel for the appellants, further, submitted that in the present case the demand up to month of February, 2012 is

hit by limitation and they have paid Central Excise duty at full rate for the month of March, 2012, under protest and he has made statement in the Court that he is withdrawing that protest. The ld. Departmental Representative has argued that the Show Cause Notice is for dispute on classification and even if the Show Cause Notice survives for one month, the classification of goods for determination of duty is required to be decided.

5. We have taken rival contentions into consideration. We find that the issue is fully covered by our earlier decision in the case of, M/s Sanspareils Greenlands Pvt. Ltd. *Versus* Commissioner of Central Excise, Meerut decided through Final Order No. 70605-70606/2016, we had held that the said demand was hit by limitation. It was also held for the said case that in view of classification of the impugned goods under Chapter Heading No. 9506 in All Industries Rate of Drawback issued through Notification No. 103 of 2008-Cus (NT) dated 29-08-2008 and also through Notification No. 68/2011-Customs (NT) dated 22-09-2011, the said goods have been classified under Chapter Heading No. 9506. Even if the classification issued is not finalized the demand in the present case gets hit by limitation for the period up to February, 2012. For the month of March, 2012 the appellant has paid duty at full rate therefore, under Section 11A (2B) of Central Excise Act, 1944, the Show Cause Notice issued for the month of March, 2012 does not survive. We, therefore, do

not go into the issue of classification and we hold that demand up to the period of February, 2012 is hit by limitation and for demand for the month of March, 2012 the Show Cause Notice does not survive in view of Section 11A (2B) of Central Excise Act, 1944. In above terms both the appeals are allowed. The appellants shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
26.10.16
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