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: 08/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70605-70606/2016-EX[DB] dated 28/07/2016

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/52410/2014	SANSPAREILS GREELANDS PVT LTD OPP.AIRPORT GANGOL ROAD, PARTAPUR,MEERUT U.P.
2	E/52411/2014	SHRI TRILOK ANAND DIRECTOR SANSPAREILS GREENLANDS PVT.LTD.OPP. AIRPRT, GANGOL ROAD, PARTAPUR,MEERUT U.P.
		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

4 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI

5 Bar Association, CESTAT, Allahabad

6 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

Appeal No.E/52410 & 52411/2014-EX[DB]

Arising out of O/O No.03/COMMR./MERT-I/2014 dated 09.01.2014, passed by Commissioner, Customs & Central Excise Meerut-I.

For approval and signature:

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

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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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M/s Sanspareils Greelands Pvt Ltd., Shri Trilok Anand Director
...APPELLANT(S)

VERSUS

Commissioner of Central Excise, & S.T., Meerut
...RESPONDENT (S)

APPEARANCE

Shri B.L. Narasimhan & Shri Vaibhav Dixit, Advocates for the Appellant (s)
Shri H.M. Dixit, Asstt. Commissioner (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT: 28.07.2016

FINAL ORDER NO. 70605-70606/2016

<u>Per Mr. Anil G. Shakkarwar:</u>

The present two appeals are arising out of a common impugned order. Therefore, they are being taken up together for disposal.

2. The appellants are holding Central Excise Registration and are engaged in the manufacture of goods, which are used for sports purposes. The goods under dispute, are Gloves, manufactured by the appellant, which are used for the purpose of sports. The appellants were under the impression that all the Gloves, manufactured and used for sports, are classifiable under Chapter heading No.9506 of Schedule to Central Excise Tariff Act, 1985. It appeared to Revenue that as per Chapter note 1(u) of Chapter 95 of said Schedule, Gloves used for sports, are not covered by said Chapter 95. So, Revenue issued a show cause notice dated 25.06.2013, by invoking the 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.1,40,90,293/- for the period from June, 2008 to February, 2012 under proviso to Sub-Section 1 of Section 11A of Central Excise Act, 1944, with other proposals for interest and penalty. It was also proposed to impose personal penalty on Shri Trilok Anand, Director of appellant-company.

3. The appellants contested the show cause notice on the grounds that as per Rule 3(b) of Rules of Interpretation of Central Excise

Tariff, the said goods need to be classified under different tariff items depending on the component which provide the goods essential character and, therefore, all the goods do not get classified under Tariff Item No.4203 2010. Further, they have contended that the said goods have been described to be falling under Chapter Heading 9506, in the All Industry Rate Schedule 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, and argued that as per the said information in the said All Industry Rate Schedule, they had genuinely believed that the said goods were falling under Chapter Heading No.9506, and accordingly, they have discharged duty and they have not contravened any provisions of Law or Rules made thereunder, and they did not have any intention to evade duty. Therefore, the show cause notice is hit by limitation. The said show cause notice was adjudicated through Order-in-Original No.03/Commr./MRT-I/2014, dated 09.01.2014, wherein the Original Authority has classified the goods manufactured by appellants under Tariff Item No.4203 2110, and confirmed the demand and imposed equal penalty. The said order directed for payment of interest. It also appropriated the Central Excise duty to Rs.52,72,235/- and interest of Rs.4,84,690/-. Further, through the said order, a penalty of Rs.10 lakhs was imposed on Shri Trilok Anand, under Rule26 of Central Excise Rules, 2002.

4. Aggrieved by the said Order-in-Original dated 09.01.2014, appellants are before us. The main ground for appeal is that the decision of the Original Authority is not based on the Rule of interpretation of tariff and by pre-dominance of the material used in their goods, the decision for classifying all the goods manufactured by them under Tariff Item No.4203 2010 is not as per Law. Further, the notification through which All Industries Rate of Drawback was issued by Government of India, the goods manufactured by them, were shown to have been classifiable under Tariff Item No.950621 and, therefore, extended period is not applicable in this case.

5. Heard the learned Counsel, who has reiterated the arguments made before the Original Authority and grounds of appeal.

6. The A.R. for the Revenue has reiterated the findings of Order-in-Original dated 09.01.2014.

7. We have taken into consideration the rival contentions. We wish to examine the issue on the basis of limitation. We find that the show cause notice was issued by invoking proviso to Sub-Section 1 of Section 11A to Central Excise Act, 1944. The show cause notice was issued on 25.06.2013 and the period covered by the show cause notice, is from June, 2008 to February, 2012. For issue of show cause notice under extended period, separately it is to be established that the noticee has either suppressed information or miss-declared the information or contravened the provisions of Central Excise Law or Rules made thereunder, and

separately, they had intention to evade duty. In the present case, we find that Government of India through their notification for All Industry Rate of Drawback classified the goods manufactured by noticee, under Tariff Item No.9506 21, and admittedly, the noticee have paid the Central Excise duty liable to be paid for the goods classifiable under Tariff Item No.9506 21. Therefore, Revenue could not establish that the appellants had intention to evade duty. We, therefore, hold that the show cause notice is hit by limitation. Accordingly, we allow both the appeals and hold that the appellants are entitled for consequential relief, if any.

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

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
30.8
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