REGISTERED / AD

FAX : 0532-2400149

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

Dated: 09/06/2016

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

Final Order No. A/70239/2016-EX[DB] dated 27/05/2016

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/Stay/40/2007	E/50/2007	AGRA ISPAT UDYOG 8/170, BHAIRON BAZAR, AGRA (U.P.)
			Name and Address of Respondent
2			C.C.E. KANPUR 117/7, SARVODAYA NAGAR, KANPUR.

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

R. Santhanam
C-3/210, JANAK PURI,
NEW DELHI,-110058

4 Bar Association, CESTAT, Delhi

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, I-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 APPEL
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/50/2007(DB)

(Arising out of Order-in-Appeal No. 520/CE/APPL/KNP/20(19/10/2006 passed by Commissioner of Central Excise & (Appeals), Kanpur)

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?
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3.	Whether their Lordships wish to see the fair copy of the order?
4.	Whether order is to be circulated to the Department Authorities?

M/s Agra Ispat Udyog Aj

Vs.

Commissioner of Central Excise, Kanpur Re

Appearance:

Shri S.S. Kumar, (Authorized Representative) fo
Shri M.K. Sarangi, Joint Commissioner (AR), for

CORAM:

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

Date of Hearing : 27/05/2016
Date of Decision : 27/05/2016

Final --ORDER NO...70239/2016....

Per: Anil G. Shakkarwar

Present appeal is filed by appellant M/s Agra Ispat Udyog against Order-in-Appeal No. 520/CE/APPL/KNP/2006 dated 19/10/2006 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. Facts of the case are that appellant were engaged in the manufacture and clearance of C.R. Strips of iron and steel. They were availing benefits of SSI exemption under notification 9/2003-CE dated 01.03.03. The appellant was also manufacturing C.R. Strips on which brand name of locks such as Link, Konark etc was embossed and such branded goods were cleared to respective lock manufacturers on payment of full rate of Central Excise Duty without availing small scale exemption. The revenue contended that the goods on which full duty was paid were not branded goods and therefore their clearance value should be included for computation on total clearance value of the unit during the financial year 2003-04. As a result the unit became ineligible to avail the said SSI exemption and therefore, a demand of Rs.3,72,787/- for deferential duty was raised with other proposals through show cause notice dated 04/07/2005. The said show cause notice was adjudicated through Order-in-Original No.116-AC/DMD/2005 dated 29.11.2005. The original authority has relied upon Circular dated 27.10.1994 issued by CBEC and held that the

goods on which the full rate of duty was paid were sold to particular manufacturers and they were not treaded in the open market and therefore, they will not be ~~treated~~ branded as branded goods within the meaning of brand name defined in the said notification. He, therefore, confirmed the demand and imposed penalties. Aggrieved by the said order appellant filed appeal before Commissioner (Appeals). Learned Commissioner (Appeals) passed Order-in-Appeal dated 19/10/2006 wherein he has upheld the order of original authority confirming the demand of duty and interest and set aside penalties imposed. Aggrieved by the said Order-in-Appeal dated 19/10/2006 appellant is before us.

3. In the appeal appellant has contended that including the goods on which full duty was paid into the value of clearance is not permitted in the said exemption notification and also that the demand is time barred.

4. During the hearing learned representative of the appellant contended that in the year 2003-04 they have cleared the goods on which brand name were affixed to respective lock manufacturers by paying full rate of duty for which regular returns were filed and after the time limit expired for filling appeal against finalization of said returns the present show cause notice is issued treating the goods on which full rate of duty was paid and for which small scale exemption was not availed as unbranded goods through the said show cause

Date of Hearing : 27/05/2016
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Final —ORDER NO. 70239/2016

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notice and that this amounts to reopening of assessments without following the process of review and filing an appeal. Therefore, the revenue has no authority of law as on 04.07.2005 to treat the goods on which full duty was paid as un-branded goods because against the assessments of such goods no appeal was filed before commissioner (Appeals). Once it is established that the assessment of goods on which full rate of duty was paid cannot be subsequently called un-branded goods without going through the process of appeal the show cause notice dated 04.07.2005 became unsustainable.

5. The learned D.R. has submitted case laws in the case of Prakash Industries Vs Commissioner of Central Excise, Bhubaneswar 2000(119) E.L.T. 30(Tri.LB) & Commissioner of Central Excise, Rajkot Vs Vitashiv Ceramics Ltd. 2000 (122) E.L.T. 106 (Tribunal) and argued that the goods manufactured by appellant on which brand names were affixed were not traded in market and therefore as held in the said cases cannot be treated as branded goods for the purpose of computation of value of clearance.

6. We have taken into consideration the rival contentions. We have also perused the stay Order No.162/07-EX dated 09.02.2007 passed in this appeal wherein a prima-facie view was taken that the assessments of goods during the year 2003-04 has become final and it is not open to revenue to contend that goods assessed to full rate of duty as branded goods in 2003-04 have changed their ~~correcter~~ character and

they became un-branded. The revenue has not advanced any arguments against the said prima-facie view of this Tribunal. We, therefore, hold that the said prima-facie view has attained finality as a result the impugned Order-in-Appeal is set aside and appeal is allowed with consequential relief, if any. No Costs.

(Dictated in Court)

-Sd- -Sd-

(Anil Choudhary)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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