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: 13/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70628-70629/2017-EX[DB] dated 05/07/2017

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/CROSS/35/2012, | E/2736/2011 | **Commissioner of CUSTOMS-Kanpur**<br>117/7...SARVODYA NAGAR,<br>KANPUR,<br>UTTAR PRADESH<br>208005 |
| 2 | | E/2738/2011 | **Commissioner of CUSTOMS-Kanpur**<br>117/7...SARVODYA NAGAR,<br>KANPUR,<br>UTTAR PRADESH<br>208005 |
| | | | Name and Address of Respondent |
| 3 | | | Kanchan Udyog<br>268, Ga Industrial Area, Rania,<br>Kanpur Dehat-(U.P) |
| 4 | | | Brij Kattha<br>Dedupur, Chaubeypur, Kanpur.-(U.P) |

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

**Anurag Mishra**
**117/10 SK APARTMENT**
**SARVODAYA NAGAR,**
**KANPUR,**
**UTTAR PRADESH**

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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 & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/2736 & 2738/2011-EX[DB] With
CROSS Application No. E/CROSS/35/2012

(Arising out of Order-in-Appeal No. 212, 213, 214-CE/APPL/KNP/2011 dated26/09/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

| | |
|---|---|
| **Commissioner of Central Excise Service Tax, Kanpur** | **Appellant** |
| Vs. | |
| **M/s Brij Kattha (In Appeal No. E/2736/2011) & Kanchan Udyog (In Appeal No. E/2738/2011)** | **Respondent** |

Appearance:

| | |
|---|---|
| Shri Rajeev Ranjan, Joint Commissioner (AR), | for Appellant |
| Shri Anurag Mishra, Advocate, | for Respondent |

**CORAM:**

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

Date of Hearing & Date of Decision : 05/07/2017

FINAL ORDER NO...70628-70629/2017

**Per: Anil G. Shakkarwar**

Above stated these two appeals have been filed by Revenue arising out of common Order-in-Appeal No. 212, 213, 214-CE/APPL/KNP/2011 dated 26/09/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur and therefore, these are taken together for decision.

2. The brief facts of the case are that in the said two appeals there are two respondents namely; M/s Brij Kattha, Kanpur (In Appeal No. E/2736/2011) & M/s Kanchan Udyog, Kanpur (In Appeal No. E/2738/2011). Both the respondents

were issued with Show Cause Notices. Both the respondents were engaged in the manufacture of Indian Kattha which is also called as 'Catechu'. It appeared to Revenue that the respondents were using extract from Gambier in addition to the extract of Khairwood and were manufacturing Indian Kattha and therefore the classification of the goods manufactured would not fall under Tariff Item No. 14049050 but the same would be classifiable under Tariff Item No. 13021990 which is a residual entry with a description as others. Therefore, both the respondents were issued with series of Show Cause Notices demanding duty by resorting to the classification of the goods manufactured by them under Tariff Item No. 13021990. Both the respondents contested the issue. In the case of M/s Brij Kattha, the Original Authority passed Order-in-Original No. 13/ADC/CE/2011 dated 23/05/2011wherin the Original Authority decided that the goods manufactured by the respondents were falling under Tariff Item No. 14049050 and dropped the demand of Central Excise duty raised against M/s Brij Kattha. In the case of M/s Kanchan Udyog, the Original Authority passed Order-in-Original No. 15/ADC/CE/2011 dated 01/06/2011 wherein the Original Authority decided that the classification of the goods manufactured by the respondents were falling under Tariff Item No. 14049050 and dropped the demand of Central Excise duty raised against M/s Kanchan Udyog through various Show Cause Notices. Aggrieved by the orders of the

Original Authority Revenue preferred appeals before Commissioner (Appeals). Ld. Commissioner (Appeals) passed common Order-in-Appeal dated 26/09/2011 in respect of both above stated Orders-in-Original dated 23/05/2011 & 01/06/2011 wherein the ld. Commissioner (Appeals) rejected the grounds of appeal, raised by Revenue before the First Appellate Authority and upheld the Orders-in-Original dated 23/05/2011 & 01/06/2011. Aggrieved by the said order Revenue preferred above stated two appeals.

3. The grounds of appeal filed by Revenue is that on exactly identical issue of classification in the case of M/s Indian Wood Products Co. Ltd., Commissioner Central Excise Meerut-II vide C. No. V(15)Adj./M-II/JWP/56/08 & 140/08 dated 18/05/2009 and other order vide C. No. V(15)Adj./Meerut-II/IWP/70/09 dated 11/01/2010 wherein confirmed the demand of duty and decided the classification of Indian Kattha under 1404 and Catechu obtained from Gambier extract of Catechu like substance under Chapter Sub-heading 13019 of Central Excise Tariff Act, 1985 and that M/s Indian Wood Products Co. Ltd., has filed appeal against the said both Orders-in-Original dated 18/05/2009 & 11/01/2010 before this Tribunal and no stay has been granted and matter is still pending before Tribunal for final order and that since the issue is pending before the higher forum lower authority should have followed judicial discipline

and decided the case in line with stand taken by the Department.

4. Heard the ld. A. R. for Revenue, who has presented the grounds of appeal.

5. Heard the ld. Counsel for the respondents, who has submitted that Revenue have collected the samples of the goods manufactured by the respondents and said samples were tested by Central Revenue Control Laboratory, New Delhi and test report dated 19/12/2003 has not been made document relied upon. He has further stated that the test report was not relied upon for issue of Show Cause Notice. He has further submitted that the First Appellate Authority has dealt with all the grounds of appeal putforth before him by Revenue such as:-

(A) Classification of the goods on the basis of entries in the Tariff, (B) Commercial parlance test & (C) Other evidences. The First Appellate Authority on the basis of entries in the Tariff have ruled the classification of goods manufactured by the respondents under Tariff Item No. 14049050 and ruled out the classification under Tariff Item No. 13021990 as Vegetable Sap. He has further held that in the commercial parlance also the goods manufactured by the respondents were called as 'Indian Kattha'. He has further taken other relevant evidences on record and finally the ld. Commissioner (Appeals) has upheld the said Orders-in-Original dated 23/05/2011 & 01/06/2011 through which it was held that the goods manufactured by the respondents were classifiable under Tariff Item No. 14049050. The ld. Counsel for respondents has also submitted that this Tribunal through Final Order No. 70009/2017-EX[DB] dated 04/01/2017 in Appeal No. E/58482/2013-EX[DB] in the case of M/s Indian Wood Products Co. Ltd. has held that the goods manufactured by M/s Indian Wood Products Co. Ltd. during the relevant period were classifiable under Tariff Item No. 14049050 and further argued that Revenue has in its grounds of appeal has already qualified that the issue of classification in the present appeals and that in the case of M/s Indian Wood Products Co. Ltd. was identical. Therefore, the appeal filed by Revenue may be rejected.

6. Having considered the rival contentions and on perusal of the facts on record, we find that though the outcome of appeal filed in respect of M/s M/s Indian Wood Products Co. Ltd. in Appeal No. E/2604/2007-09-EX[DB] is not available before this Bench however, the decision of this Bench in respect of M/s M/s Indian Wood Products Co. Ltd. in Appeal No. E/58482/2013-EX[DB] is available and in the said Final Order No. 70009/2017-EX[DB] dated 04/01/2017 heard and pronounced on 15/12/2016 is available wherein this Tribunal had already decided the classification of identical goods under Tariff Item No. 14049050. In view of above findings, we do not find any merit in both appeal filed by Revenue. Therefore, we dismiss both the appeals filed by

Revenue. The respondents will be entitled for consequential relief, as per law. Cross Objection also stands disposed of.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

*Ansari*