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: 11/07/2017

To

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

Final Order No. A/70603/2017-EX[DB] dated 12/06/2017

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/3749/2006	KUNDAN CHAINS 21/13, Chiman Lal road, Freeganj, Agra.
		Name and Address of Respondent
2		-C.C.E.KANPUR 117/7, Sarvodaya Nagar, Kanpur.

Copy To

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

13 C.D.R.   14 Office Copy   15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/3749/2006-EX[DB]

(Arising out of Order-in-Original No. 15/Commr./MP/2006 dated 25/07/2006 passed by Commissioner of Central Excise, Kanpur)

M/s Kundan Chains — **Appellant**

Vs.

Commissioner of Central Excise, Kanpur — **Respondent**

Appearance:

None — for Appellant
Shri Pawan Kumar Singh, 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 : 12/06/2017

FINAL ORDER NO. 70603/2017

Per: Anil G. Shakkarwar

The present is filed by the appellant - M/s Kundan Chains against Order-in-Original No. 15/Commr./MP/2006 dated 25.07.2006 passed by Commissioner of Central Excise, Kanpur.

2. The brief facts of the case are that the appellants were issued a Show Cause Notice dated 23.03.2006 wherein it was stated that the appellants were engaged in the manufacture and clearance of Imitation Jewellery falling under Tariff Item No. 71179090 of the first Schedule to the Central Excise Tariff Act, 1985. It was further stated in the said Show Cause

Notice that the appellants were availing benefit of Notification No. 8/2003-CE dated 01.03.2003. It was also stated in the said Show Cause Notice that Imitation Jewellery was attracting effective rate of Central Excise duty and for the same was as follows:-

Period	**Rate of Duty**	**Effective Rate of Central Excise Duty**	**Relevant Notification No. & Date for Effective Rate**
01.03.2001 to 28.02.2002	16%	4%	Sr. No. 262(d) of Notification No. 3/2001-CE dated 01.03.2001
01.03.2002 to 28.02.2003	16%	8%	Sr. No. 3 of Notification No. 10/2002-CE dated 01.03.2002
01.03.2003 to 08.07.2004	16%	8%	Sr. No. 3 of Notification No. 10/2003-CE dated 01.03.2003
09.07.2004 to 28.02.2005	16%	16%	Sr. No. 3 of Notification No. 10/2001-CE dated 01.03.2001as amended by Notification No. 25/2004-CE dated 09.07.2004
01.03.2005 to 10.10.2005	16%	8%	Sr. No. 16 of Notification No. 4/2005-CE dated 01.03.2005

It was alleged that appellant failed to get registered with Central Excise Department and follow Central Excise procedures in spite of having been engaged in the manufacture of dutiable goods viz. Imitation Jewellery. It was stated in the said Show Cause Notice that Imitation Jewellery was manufactured in the factory of appellant with the aid of Wires & Sheets of Iron, Copper, Aluminium, etc. and that some of said Imitation Jewellery was also being coated with the Plating of Nickel, Gold, Chrome, Silver, Laker, etc. During the course of investigation as reflected in the said Show Cause Notice statement of Shri Dharmendra Kumar Agarwal, Partner of the appellant was recorded on 10.10.2005 wherein he stated that they were recording the production of Imitation Jewellery on which no plating was being done in the stock register titled as un-plated Imitation Jewellery and production of Imitation Jewellery on which Plating of Nickel, Gold, Chrome, Silver, Laker, etc. was done in the stock register titled as plated Imitation Jewellery. It was stated in the said Show Cause Notice that the appellant deposited Central Excise duty & Education Cess of Rs.26,59,470/- through TR-6 Challans dated 14.10.2005, 07.11.2005, 05.12.2005, 02.01.2006, 23.02.2006 & 02.03.2006. For the purpose of Heading 7113 the explanation "Articles of Jewellery" means "any small object of personal adornment." It was alleged in the said Show Cause Notice that un-plated Imitation Jewellery was also attracting Central Excise duty and appellant were clearing said goods attracting Central Excise duty without payment of duty treating the same as not attracting Central Excise duty and as a result evaded Central Excise duty to the tune of Rs.26,59,469/- for the period from 01.03.2001 to 10.10.2005. Therefore, through the said Show Cause Notice Central Excise duty of Rs.26,59,469/- was demanded invoking extended period. Further, there were proposals for penalty and interest. The said Show Cause Notice was adjudicated through impugned Order-in-Original

No. 15/Commr./MP/2006 dated 25.07.2006. The appellant stated before the Original Authority that the Departmental Officers themselves had visited their manufacturing unit in the year 2001. The Departmental Officers had satisfied themselves that such goods were not liable to pay Central Excise duty and therefore the Department had no right to issue Show Cause Notice under extended period. The appellant submitted before the Original Authority that they had given declaration that the goods manufactured by them which were not subjected to plating were non-excisable goods and Departmental Officers had satisfied themselves that such goods were not liable to pay Central Excise duty. The appellant had also contested before the Original Authority that un-plated/uncoated Imitation Jewellery was not dutiable prior to the amendment of Chapter 7101.50 on 13.05.2005 undergoing change by way of addition of words "of base metal, whether or not plated with precious metal." The Original Authority has held that for the purpose of Heading 7117 the explanation Imitation Jewellery means "articles of jewellery within the meaning of Paragraph (a) of Note '9'. He, further, elaborated that it was very clear from the definition of Imitation Jewellery that both plated/coated, un-plated/uncoated Imitation Jewellery was covered under the above Chapter Heading 7117 and the same have been elaborated by insertion of the words "whether or not plated with precious metal." He, further, confirmed the demand and imposed equal penalty. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant, who has submitted that before the amendment effected through Finance Act, 2005 with effect from 13.05.2005 Imitation Jewellery was covered by Chapter Sub-heading 7101.50 and it attracted nil rate of duty. Further articles of Jewellery were defined through Chapter Note '7' of Chapter 71 as "any small object of personal adornment." Further, Chapter Note '8' of Chapter 71 provided that expression Imitation Jewellery means articles of jewellery within the meaning of Chapter Note '7(a)' above i. e. "any small object of personal adornment" and that said legal position under went change with effect from 13.05.2005 Imitation Jewellery was brought under Tariff Item No. 71179090 with effect from 01.03.2005 & with effect from 13.05.2005 there was addition of words "of base metal, whether or not plated with precious metal". He, further, argued that chains of base metals manufactured by them which were not plated with precious metal were treated as goods manufactured by Revenue and Central Excise duty of Rs.26,59,469/- was demanded through the said Show Cause Notice dated 23.03.2006. He, further, argued that the said Show Cause Notice covered the clearances for the period from 01.03.2001 to 10.10.2005 whereas the Imitation Jewellery "of base metal, whether or not plated with precious metal" did not attract Central Excise duty for the period from

01.03.2001 to 13.05.2005 covered in the said Show Cause Notice. He further argued that even for the period from 13.05.2005 to 10.10.2005 the said Show Cause Notice should have established that basically the chains of base metal without plating were articles of jewellery as defined under the chapter note which provided that articles of jewellery means "any small object of personal adornment." The said Show Cause Notice was silent on establishing that the chains of base metals on which there was not plating of precious metal were objects of personal adornment. Therefore, the said Show Cause Notice is not sustainable.

4. Heard the ld. A. R. who has supported the impugned Order-in-Original No. 15/Commr./MP/2006 dated 25.07.2006.

5. Having considered the rival contentions and on perusal of the facts on record, we fully agree with the contentions of the ld. Counsel for the appellant that the amendment that was brought in as on 13.05.2005 by insertion of words "of base metal, whether or not plated with precious metal" was not applicable for the clearance of chains of base metal on which there was no plating with precious metal for the period prior to 13.05.2005 therefore the demand for the period prior to 13.05.2005 is not sustainable. Further, we also accept the contention of the ld. Counsel for the appellant that for the period from 13.05.2005 to 10.10.2005 neither the said Show Cause Notice nor the findings by Original Authority could

establish that the chains of base metal on which there was no plating with precious metal and for which duty was demanded and confirmed were capable of being "any small object of personal adornment." Therefore, the said Show Cause Notice even for the period 13.05.2005 to 10.10.2005 is not sustainable.

6. To sum up, the entire Show Cause Notice is not sustainable. Therefore, the impugned Order-in-Original dated 25.07.2006 is set aside and appeal is allowed.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
14/07/2017
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