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: 02/05/2017

To

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

Final Order No. A/70422-70427/2017-SM[BR] dated 21/03/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| 1 | C/393/2010 | C.C.E, NOIDA C-56/42, Sector-62, Noida-201307 |
| 2 | C/394/2010 | C.C.E, NOIDA C-56/42, Sector-62, Noida-201307 |
| 3 | C/395/2010 | C.C.E, NOIDA C-56/42, Sector-62, Noida-201307 |
| 4 | C/396/2010 | C.C.E, NOIDA C-56/42, Sector-62, Noida-201307 |
| 5 | C/397/2010 | C.C.E, NOIDA C-56/42, Sector-62, Noida-201307 |
| 6 | C/398/2010 | C.C.E, NOIDA C-56/42, Sector-62, Noida-201307 |

| | | Name and Address of Respondent |
|---|---|---|
| 7 | | SHAKUMBHARI STRAW PRODUCTS LTD. VILLAGE-DEVRI MORADABAD. ,, |
| 8 | | SHAKUMBHARI STRAW PRODUCTS LTD. VILLAGE-DEVRI MORADABAD. ,, |
| 9 | | SHAKUMBHARI STRAW PRODUCTS LTD. VILLAGE-DEVRI MORADABAD. ,, |

10 SHAKUMBHARI STRAW
PRODUCTS LTD.
VILLAGE-DEVRI
MORADABAD. ,,

11 SHAKUMBHARI STRAW
PRODUCTS LTD.
VILLAGE-DEVRI
MORADABAD. ,,

12 SHAKUMBHARI STRAW
PRODUCTS LTD.
VILLAGE-DEVRI
MORADABAD. ,,

Other Appellants and Respondents as per Annexure

Copy To

13 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

23 C.D.R. 24 Office Copy 25 Guard File

Asstt. Registrar

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD**

**SINGLE MEMBER BENCH**

**Appeal No. C/393,394,395,396,397,398/2010-CU(SM)**

**Dated of Hearing/decision: 21/3/2017**

[Arising out of Order-in-Appeal No. 91-96/CE/APPL/Noida/2010 dated 22.3.2010 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, NOIDA]

C.C.E - NOIDA Appellant

Vs.

Shakumbhari Straw products Ltd. Respondent

**Appearance:**
Present for the Appellant: Shri Pawan Kumar Singh (Superintendent) AR
Present for the Respondent: None

**Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)**

**Final Order No.** 70422-70427|2017

**Per: Anil Choudhary**

This appeal by Revenue is on the ground that the Commissioner (Appeals) have erred in remanding the matter to Adjudicating Authority, and thus have exceeded jurisdiction.

2. Heard ld. A.R and perused the records.

3. I find that the Commissioner (Appeals) recorded the following findings:-

> "I have carefully gone through the facts and records of the case as well as the submissions made by

Ach

the appellant and the departmental officer during the personal hearing.

In the instant case the appellant imported consignments declaring the contents as 'waste paper – office waste' in the impugned Bills of Entry. On examination by the Customs officers, the containers declared to contain the 'waste-office waste' were found to contain calendars, diaries, planners, desk pads etc. Accordingly, the imported goods were classified under Customs Tariff heading No. 490100090 and 48201030, redemption fine and penalty was imposed for mis-declaration.

I observe that no Order-in-Original has been passed in these cases and the appeals have been filed against the assessment order made on the impugned Bills of Entry. The appellant has contended that they have not been issued a reasoned Order-in-Original. The Assistant Commissioner, Customs has submitted that the appellant vide letter dated 28.10.2009 admitted the fact of mis-declaration and agreeing with the findings of the Customs officer paid appropriate duty, redemption fine and penalty.

On a perusal of the relevant files produced by the department at the time of hearing. I find that there is no dispute as regards to the nature/description of imported goods. This is a fact that diaries, calendars, planners etc. for the year 2009 in original packing were found on examination of the containers whereas as per the declaration on the relevant Bills of Entry the description of the imported goods had been shown as "paper waste". The appellant has not contested the examination reports of the Customs officer but instead pleaded that the diaries, calendars etc for the year 2009 are of no use with only 3-4 months remaining of that year and that the same are to be used as waste in the manufacturing process in their unit. In their letter dated 28.10.2009 the appellant has clearly agreed with the findings of the examination of the imported goods. In the said letter, they have further admitted that they are aware that by mis-declaring the goods an offence under the Customs Act has been committed and waived the requirement of issue of show cause notice or personal hearing. Further vide letter dated 10.9.2009 addressed to the Commissioner, Central Excise, Noida and Dy. Commissioner, Customs, Noida, the appellant requested the goods may be cleared under heading No. 47079000 and if required, they may be allowed to clear the said goods after mutilation to the satisfaction of the authorities.

From the above facts, I observe that in the instant cases the appellant's request for mutilation was not considered, the seized goods were released in the month of November, 2009 and no speaking order was passed uptill December, 2009. Now, the appellant has submitted photocopies of the 'Ënd use Certificates' issued by the Assistant Commissioner, Central Excise Division, Moradabad as an additional evidence in support of their contention regarding –

- End use of the imported goods as waste,
- Assessment of the impugned goods under Tariff heading 47079000 and
- Imposition of redemption fine and penalty

There are scores of judgements on the issues involved in these appeals. The Hon'ble Apex Court in the case of **Collector of Customs vs. Swastik Woolen Industries 1991 (47) ELT 216 (SC)** held the confiscation and imposition of penalty not valid where suo moto offer by importer for mutilation of rags to the satisfaction of the adjudicating authority was declined by the department. Similar pronouncements have been made in the following cases by the Hon'ble High Court and Tribunal –

**Pudumjee Agro Industries Ltd. Vs. CC, Pune 2007 (216) ELT 127 (Tr.)**
**Patiala Castings Pvt. Ltd. Vs. UOI 2003 (156) ELT 458 (P&H)**
**Vardhman Trade Link Vs. C.C. 2009 (236) ELT 72 (Tr.)**

In view of the foregoing discussion and the additional evidence in form of **'End use Certificate'** produced before this authority, in accordance with the provisions contained in Rule 5 of the Central Excise (Appeals) Rules, 2001, the assessing/adjudicating authority is directed to examine/consider the said certificate and reassess the impugned Bills of Entries after according an opportunity of personal hearing to the appellant."

4. I have considered the ground of Revenue and perused the finding and Commissioner (Appeals) recorded as above. Commissioner (Appeals) have rightly remanded to the adjudicating authority for a fresh decision considering the facts and additional evidence produced before him. In this view the matter I uphold the impugned order in appeal directing the adjudicating authority to pass a fresh order as

directed. Accordingly the appeal is dismissed with directions by way of remand to the adjudicating authority.

(Dictated and pronounced in the open Court)

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

(K. Gupta)

08/05/2017

सहायक पंजीयक/Asst. 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