REGISTERED / AD

FAX : 0532-2400149

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

Dated: 21/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70209/2017-SM[BR] dated 03/02/2017

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/MISC/70530/2016, C/MISC/70531/2016	C/661/2004	**Mohd Ujair Son Of Mohd Jubair** Proprietor Of Khan Scrap Traders, Anand Parbat Behraich UP

Name and Address of Respondent

2 C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

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Copy To

3 Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

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

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

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

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

Misc. Application Nos. C/MISC./70530 & 70531/2016
Appeal No. : C/661/2004-CU[SM]

Arising out of OIA No. 24-29/CUS/LKO/2004 dated 11.05.2004 passed by Commissioner (Appeals), Customs & Central Excise, Allahabad.

Mohd. Ujair Son of Mohd. Jubair ...APPELLANT

VERSUS

Commissioner of Customs, Lucknow ...RESPONDENT

APPEARANCE

Shri A.P. Mathur, Advocate. for the appellant.
Shri D.K. Deb, (Asst. Commr.) A.R. for the Department.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 03. 02. 2017
FINAL ORDER NO.- 70209/2017

Per Mr. Anil G. Shakkarwar :

The Misc. Application No. 70530/2016 was for listing of Appeal No. 661/2004-NB/SM in respect of appellant Mohd. Ujair Vs. Commissioner of Customs, Lucknow. The Misc. Application No. 70531 of 2016 was with a prayer to provisionally release the seized goods during the pendency of Appeal No. C/661/2004.

2. The Hon'ble High Court of Allahabad Lucknow Bench in First Appeal From Order No. 106/2006 dated 04.09.2014 has set aside the Final Order No. A/1447-1452/05-IV-SM dated 12.07.2005 passed by this Tribunal and directed this Tribunal by remitting the matter back to

this Tribunal with the direction to decide the appeal afresh in the light of the evidence on record and the observations made in the said judgment dated 04.09.2014. The observations made by the Hon'ble High Court are as follows: -

" We find that the learned Appellate Tribunal has failed to take into consideration the statement of Mohd. Ujair recorded under Section 108 of the Customs Act and the statement of Mohd. Fareed the owner of the truck from which it was established that the bills were subsequently prepared in order to cover up the illegal transportation of the copper scrap and the opinion expressed by M/s Gohania Engineering Works, Kehri was merely an opinion was not definite and is on presumption"

3. I find from the record of show cause notice C. No. VIII(10) 494/460/Seiz/Cus/Div/Lko/2001 dated 23.01.2002 that the statement of Mohd. Ujjair of M/s. Khan Scrap Traders, Nanpara was recorded under Section 108 of Customs Act, 1962 on 16.08.2001 wherein he had stated that one can make two rounds in a day upto Kanpur and that he had issued two bills at a time for the same truck and that he had sold 114 bags of copper scrap to M/s. Om Traders, Kanpur and out of 114 bags one bag contained 30-40 kg. scrap while the rest 113 bags contained 60 kg. each; that his intention was not to conceal the copper scrap bags but the old iron scrap got loaded over it to cover the higher charges of truck and that the scrap was got loaded from his Godown at Nanpapra. Further, on inquiry that- the driver and cleaner and Sri Baijnath who was with the truck stated that scrap was got loaded from Mihipurwa Jungle, he stated that he did not know how

they stated so and that the scrap of both bills was sold on credit basis, that the said scrap was purchased by him on credit from M/s. K.K. Exports (India), Aligarh vide bill No. 427 dated 18.07.2001 and bill No. 429 dated 20.07.2001, that he had no stock of copper scrap at present, that prior to that he had not sold any type of scrap to M/s. Om Traders, Kanpur, that he did not know who had handed over the bilities and the bills to the truck driver and that previously he never purchased any scrap from the said K.K. Exports (India), Aligarh. Further, from the said show cause notice dated 23.01.2002 I find that the statement of Mohd. Farid was recorded on 16.08.2001 wherein he had stated that he was the owner of the seized truck No. UP-40/B-8014 that on 25.07.2001 in the morning he sent his truck from Bahraich to Nanpara loaded with vegetables that from Nanpara, the driver informed him that a loading to Kanpur was available on a freight charges of Rs. 2,200/- and he allowed to go there with proper papers of the goods and that he did not know anything about loading of smuggled goods on his truck. The said show cause notice on page 10 further records that Shri Kishore Kumar Son of Karishna Kumar was proprietor of M/s. K.K. Exports (India), Aligarh. The statement of Shri Kishore Kumar was recorded on 26.09.2001 wherein he stated that copper scrap was never been imported by his firm and he sold copper scrap which was Indian "Kabar" (scrap) that the payment was made by M/s. Khan Scrap Traders, Nanpara vide pay order No. 587540 dated 09.08.2001 for Rs. 6,95,222/- issued by Central Bank of India, Aligarh.

4. Heard the learned counsel for the appellant, who has contended that in the entire proceedings it is nowhere established that the goods in respect of which the said show cause notice was issued were of foreign origin or were smuggled.

5. Heard the learned D.R. who has supported the impugned Order-in-Original.

6. I find after careful consideration of available records and the submissions made by both sides that on page-9 of the said show cause notice dated 23.01.2002 it is stated that the statement tendered by Mohd. Ujair is not tenable and said show cause notice records the reasons as to why it is not tenable. I find that Mohd. Ujair stated that the said scrap was purchased by him on credit from M/s. K.K. Exports (India), Aligarh and also find that Shri Kishore Kumar, proprietor of M/s. K.K. Exports (India), Aligarh stated that the said scrap was of Indian origin. I also find that the investigation could not lay its hand on any document which could establish that the said scrap was of foreign origin or the said scrap had entered into India without payment of Customs duty. From the show cause notice, I find that there are two sets of statements. One set of statement established that the goods dealt with in the said show cause notice were of Indian origin and they were sold by M/s. Khan Scrap Traders, Naanpara which were purchased by M/s. Khan Scrap Traders from M/s. K.K. Exports, India, Aligarh. There is another set of statements where it is recorded that scrap was loaded in Mihipurwa Jungle and there were two bilities

issued etc. Now, when the departmental officers had two sets of statements one raising doubt of smuggled nature of goods and other establish that the goods under question were of Indian origin, then it became responsibility of Revenue to establish that the goods were smuggled in nature. I also find that the said goods were not covered by Section 123 of the Customs Act, 1962 where the burden of proof that the goods under question are not smuggled is on the person dealing with such goods. As per the direction of Hon'ble High Court, after taking into consideration the statements of Mohd. Ujjair and Mohd. Farid recorded on 16.01.2008 under Section 108 of Customs Act, 1962, I find that the goods dealt with in the show cause notice were of Indian origin. Therefore, I hold that the show cause notice dated 23.01.2002 was not sustainable. Therefore, the impugned Order-in-Appeal No. 24-29/CUS/LKO/2004 dated 11.05.2004, so far as it relates to Mohd. Ujair is set aside and the appeal is allowed. Both the misc. applications stand disposed of. I further ordered that Mohd. Ujair shall be entitled for consequential relief as per law.

(Pronounced and dictated in the open Court)

-Sd/-

(ANIL G. SHAKKARWAR)

Member(TECHNICAL)

Patel/-