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: 19/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70375/2017-SM[BR] dated 07/04/2017

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/51750/2015	**Aban Exim Pvt Ltd** D-60/2, Basement, East Of Kailash NEW DELHI 110065
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To

3Advocate(s) / Consultant(s):

Priyadarshi Manish,Adv
437,MATHURA ROAD, (BEHIND BHOGAL BUS STOP)
JANGPURA , NEW DELHI-110014
I.P. EXTENSION, PATPARGANJ, DELHI

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/51750/2015-CU[SM]

(Arising out of Order-in-Appeal No. NOI/CUSTOM/000/APP/397/2014-15 dated 27/02/2005 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Aban Exim Pvt. Ltd. — **Appellant**

Vs.

Commissioner of Customs, Meerut-II (Now Hapur) — **Respondent**

Appearance:

Shri Rahul Ranjan, Advocate, for Appellant
Shri Rajeev Ranjan, Joint Commissioner, (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Date of Hearing & Date of Decision: 07/04/2017
FINAL ORDER NO...70375/2017......

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s Aban Exim Pvt. Ltd., against Order-in-Appeal No. NOI/CUSTOM/000/APP/397/2014-15 dated 27/02/2005 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The brief facts are that the appellant M/s Aban Exim Pvt. Ltd. – importer filed Bill of Entry No. 2334224 dated 15/06/2013 at ICD Dadri for clearance of goods declared as 'New Passenger Car Radial Tyres' of mixed sixes, stuffed in three containers. The goods were subject to 100% examination on first check basis with the instruction to verify make, model, type, sizes and BIS certification/requirement. The entire consignment was opened and examined on 24th

Avr

June, 2013 by the Customs Officers in presence of the CHA's representative. On examination, it was found that in the aforesaid three containers goods are as per declaration, there were total 2529 nos. of tubeless tyres as per Invoice & Packing List of mixed brands like Nexen, Hankook Dunlop, Good Year, etc. of different sizes and different country of origin like Korea, China, Japan, etc. The Assistant Commissioner (Shed) reported that the importer only submitted the Xerox copy of BIS Certificate for Nexen Brand (given to M/s Nexen Tyre Corporation, South Korea), which was valid upto 13/12/2012. Further noted that the import documents did not contain all the attachments to Licence No. 4019041, as endorsed by BIS, New Delhi from time to time. In respect of other brands, the appellant importer could not produce any BIS Certificate as required. The stock lot of the goods were declared valued at US$ 72,375 approximately (Rs.40,87,838/-).

3. This is the second round of litigation. Earlier, the matter went up to the Hon'ble Allahabad High Court and by order dated 04/08/2014 reported at 2014 (308) E.L.T. 641 (Allahabad), the Hon'ble High Court consider the appeal by the Revenue and the writ petition by the appellant/importer considered the following questions:-

"Whether the tribunal has committed an error of law in accepting and upholding the clearance for home consumption allowed by the Commissioner (Appeals) of goods, otherwise prohibited for clearance for home consumption. In absence of valid BIS Certificate with reference to the Pneumatic Tires & Tubes for Automotive Vehicles (Quality Control) Order, 2009, read with 2.2 of the Foreign Trade Policy and General Note 2A of import policy regarding mandatory compliance with regard to BIS certification as per Schedule III to the import policy."

4. High Court took notice of Para- 2.3 of the 2009, order, which provides as follows: –

"No person shall by himself or through any person on his behalf, manufacture, import, store for sale, sell or distribute Pneumatic Tires which do not confirm to the specified standards and which do not bear the BIS Standard Mark of the bureau on obtaining certification marks licence.

5. The Additional Commissioner by the Order-in-Original had held that no proper certificate of BIS is available for Nexen Brand and further as regards the other brands of tyres imported, observed that the appellant was found to be a Trader and not the original equipment manufacturer or an entity authorized for the fitment of tyres on vehicles and accordingly, the Additional Commissioner ordered confiscation of the goods under Section 111(d) of the Customs Act, 1962. However, he gave an option under Section 125 (1) of the Customs Act, 1962 for the payment of redemption fine of Rs. 8 lakhs in lieu of confiscation. Subject to which re-export was allowed and further penalty of Rs. 5 lakhs was imposed on the importer under Section 112(a) of the Customs

Act, 1962. On appeal, the ld. Commissioner (Appeals) by the order dated 19/08/2013 was pleased to modify the order of the Additional Commissioner on observing that it was harsh on the part of the Additional Commissioner to impose a redemption fine of Rs. 8 lakhs with the condition of re-export. Further finding that the appellant/importer was entitled to redemption on payment of appropriate fine, the condition of re-export was deleted.

6. This order was challenged by Revenue in appeal before this Tribunal, which was rejected confirming the order of Commissioner (Appeals) by its order dated 16th May, 2014.

7. Before the Hon'ble High Court, Revenue pleaded that the goods in question were prohibited goods within the meaning of Section 2(33) of the Customs Act, 1962. On the other hand, the importer had raised the ground that the option of releasing the goods on imposing the redemption fine under Section 125(1) of the Customs Act, 1962, extends also to prohibited goods within the meaning of Section 2(33) of the Customs Act, 1962, and relied on the judgment of the Delhi High Court in the case of Commissioner of Central Excise *Versus* Achiever International reported at 2012 (286) E.L.T. 180 (Delhi). The Hon'ble High Court further observed that the Commissioner (Appeals) had missed the central aspect of Section 125 of the Customs Act, 1962, which is the discretionary element in the exercise of jurisdiction. The Hon'ble High Court further observed that in fact BIS

certification was available only in respect of part of the consignment. The Commissioner (Appeals) held that some of the brands are renowned internationally. There has been no effort on the part of the Commissioner (Appeals) to segregate these brands from the rest. In such a matter and as in the present case, the imported goods which are to be utilized in motor vehicles has an important bearing on the safety of the public at large. The condition which has been imposed in the 2009 order and in the Circular of the Board has intended to fulfill a specific purpose of protecting the public interest. Accordingly, the High Court remanded the matter to the file of Commissioner (Appeals) to decide the matter afresh after hearing the importer and the Revenue. Further, additional ground was taken before the High Court by importer that with respect to Nexen Tyres, they have received the up-to-date BIS certification and accordingly the same was directed to be considered by the Commissioner (Appeals).

8. Pursuant to remand, by the impugned OIA dated 27/02/2013, the ld. Commissioner (Appeals) with respect to BIS Certificate for Nexen Brand Tyres found that Nexen Tryes was having BIS certification CMD, 1/FM/L4019041 dated 22-23/02/2011 which was valid upto 31st December, 2012. Therefore, on the date of import, the same was not valid and had expired. And accordingly held that the benefit of exemption in view of the expiry of the licence could not be extended to the appellant/importer.

9. Ld. counsel for the appellant have lead evidence before me that the said licence CML No. 4019041 have been extended till 31/01/2019, as is evident from the publication of Bureau of Indian Standards dated 30/04/2017, and also reflected by the earlier list of licenses dated 13th February, 2015, wherein it was extended till 31/01/2017. Accordingly so far Nexen Brand Tyres are concerned, I hold that the appellant is permitted to clear the same for home consumption.

10. So far the tyres of other brands are concerned, it is urged by the ld. counsel for the importer/appellant that they are all good branded tyres like Hankook, Koyote, Dunlop, Good Year, etc. imported from countries of origin like China, Japan, Germany, Taiwan, Thailand, Korea, etc. The ld. Counsel for the appellant further urges that it nowhere have come in the report of the Customs Officers that such tyres are not of good quality on first check or visual examination. For these tyres, I direct that the Adjudicating Authority shall obtain a test report from a scientist of Central Institute of Road transport (CIRT) or some other lab, as acceptable to both the Revenue and the appellant, and if those tyres are found to be of acceptable quality as per the test reports so, obtained, then the Adjudicating Authority shall allow the same to be cleared for home consumption. Otherwise, the appellant will be required to re-export the same on payment of fine.

11. So far redemption fine is concerned, I hold that the same shall be re-determined @ of 20% ADV of the tyres found not of acceptable quality as directed above, which shall be available for re-export on payment of redemption fine so determined.

12. To sum up – Appeal is allowed in part and remanded in part as follows to the Adjudicating Authority:-

i) The Nexen Brand Tyres are to be released forthwith for home consumption, on payment of duty, if not paid, within a period of t~~h~~en days from receipt or service of a copy of this order. An

ii). For other tyres, the Adjudicating Authority will obtain test-report as indicated above. On receipt of report, allow release for home consumption if of acceptable quality or direct re-export, on payment of Redemption fine @ of 20% ADV.

iii). So far penalty is concerned, under the facts and circumstances that the goods ~~are~~ have been lying in the ICD Dadri for about four years and the appellant have suffered heavy damages, I reduce the penalty imposed from Rs. 5 lakhs to Rs. 2 lakhs. In the result, the appeal is allowed in part. An

Order be issued Dasti.

(Dictated and pronounced in Court)

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

प्रमाणित प्रति / Certified True Copy
24/04/2017
सहायक [illegible] / Asstt. Registrar
सीमाशुल्क, [illegible] एवं सेवा कर
अपील [illegible] / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari