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: 07/04/2017

To

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

Final Order No. C/A/70336/2017-CU[DB] dated 06/03/2017

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/53571/2014	**Klaxon Trading Pvt Ltd** Khasra No.-99/17,plot No.-c-25,swarn Park,mundka NEW DELHI 110041
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To
3Advocate(s) / Consultant(s):

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Jangpura(Bhogal),
New Delhi
Delhi110014

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/53571/2014-CU[DB]

(Arising out of Order-in-Original No. 01/Commissioner/Cus/2014-15 dated 23/04/2014 passed by Commissioner of Central Excise & Customs, Ghaziabad)

M/s Klaxon Trading Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax,

Ghaziabad **Respondent**

Appearance:

Shri Ashish Bansal, Advocate, for Appellant
Shri Rajeev Ranjan, Joint Commissioner (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: 06/03/2017

FINAL ORDER NO....70336/2017

Per: Anil Choudhary

The appellant/importer is in appeal against Order-in-Original dated 23/04/2014, wherein the goods imported and declared as 'Copper Flakes' and classification claimed under CTH 74062000 of the Tariff, whereas Revenue have disputed the same and reclassified under CTH 74040012 of the Tariff. Thereby rejecting the claim of concessional rate of duty under Notification No. 53/2011-Cus dated 01/07/2011, as amended, in respect of Bill of Entry No. 4263814 dated 04/01/2014 and also for one previous Bill of Entry No. 3291963 dated 17/09/2013 wherein also the item imported was declared as 'Copper Flakes' imported from the same supplier situated at Malaysia.

2. The ld. Counsel for the appellant urges that there have been breach of the principles of natural Justice, the impugned order is vitiated. Although, the appellant had waived the requirement of Show Cause Notice, but from the impugned order, it is evident that ld. Commissioner have relied upon at Test Report dated 22/01/2014 from Senior Quality Assurance Officer of Ministry of Defence, Government of India (Ordnance Factory) Muradnagar, Ghaziabad, have certified that the goods were found to be of description of cut pieces of copper wire – scrap having purity 99.38% of Copper. According to appellant, they were never confronted with this report, which is obtained at their back nor they were made aware of it during the course of adjudication, resulting into miscarriage of Justice. It is further stated that the appellant had also obtained one test report from the sample in their possession, being report dated 17-21/01/2014 issued by one Spectro Analytical Labs Ltd. also an accredited lab by NABL etc. who has certified that the purity is 99.9% which is not for scrap. Accordingly, the ld. Counsel prays that the impugned order be set aside and remanded to the ld. Commissioner for re-adjudication after providing them with a copy of all the documents, relied upon by the Commissioner including the test reports.

3. The ld. A. R. for revenue relies on the impugned order.

4. Having considered the rival contentions and on perusal of record, we find that the appellant was not made aware of the test report obtained by revenue from the Defence Lab (Ordnance Factory) Muradnagar, Ghaziabad, and accordingly there have been miscarriage of Justice. In this view of the matter, we set aside the impugned order and remand the issue back to the ld. Commissioner for re-adjudication in accordance with law after allowing inspection of the material on record, providing all the copies of the material, the Revenue intends to use against the appellant, thereafter the appellant be given opportunity to file an appropriate reply/representation and after perusing the same and hearing the appellant, pass a reasoned order. All the issues are kept open. In view of the above observations and directions, appeal is allowed by way of remand.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति / Certified True Copy
24/04/2017
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