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: 21/09/2017

To

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

Final Order No. A/71135/2017-SM[BR] dated 18/09/2017

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/74/2011	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		BANARAS GLASS PVT. LTD. 126/31, SHALIMAR SQUIRE, B.N.ROAD, LUCKNOW. (U.P.),,

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

AMIT AWASTHI ADVOCATE
7/116A, H-I, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR, KANPUR-
208002

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/74/2011-CU[SM]

(Arising out of Order-in-Appeal No. 606-Cus/APPL/KNP/2010 dated 29/12/2010 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur)

Commissioner of Central Excise, Kanpur	**Appellant**
Vs.	
M/s Banaras Glass Pvt. Ltd.	**Respondent**

Appearance:

Shri Pradeep Kumar Dubey (Supdt.) AR	for Appellant
Shri Vaibhav Dixit (Adv.)	for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing	:	18/09/2017
Date of Decision	:	18/09/2017

FINAL ORDER NO:-71135/2017........

Per: Anil Choudhary

The issue in this appeal by the Revenue is whether the Commissioner (Appeals) have rightly held that the importer has imported sheet of Mirror of 1.8mm and sold the goods with description of 2.0mm, did not create any confusion that the goods which were imported are not the same, which were sold by the respondent, vide invoices and consequently further held that the respondent is entitled to refund under Notification No. 102/2007-CUS.

2. The brief facts are that the respondent is an importer.

They imported 1.8mm Aluminium Coated Sheet Glass Mirror vide Bills of Entry dated 08/06/2009, 15/06/2009, and 07/07/2009 and had also paid SAD along with the customs duty. Subsequently, the respondents sold the goods imported with tax invoices and applied for refund of SAD as permissible under Notification No. 102/2007–CUS. On scrutiny of invoices submitted the refund application, it appeared to Revenue that the same are for sale of 2.0mm mirror glass and not for glass of 1.8mm imported vide the Bill of Entry in question in respect of which refund claims have been filed. As such it appeared that the invoices submitted with the claims are not for sale of goods as imported by the respondent importer. In reply to the objection of Revenue the appellant appeared and stated by their letter dated 03/08/2010 that as per Bureau of Indian Standards specifications (+-0.2mm) thickness in cut size glass is that 'tolerance limit' as such thickness of 1.8mm is to be considered as 2.0mm. However he was pleased to reject the contention and rejected the refund claim. Being aggrieved the respondent assessee have preferred appeal before Learned Commissioner (Appeals) on the ground that the Deputy Commissioner appreciated the fact that the appellant is an importer as well as a Trader of Aluminium Coated Sheet Glass Mirror. Further, it appear to the adjudicating authority that in common parlance in trade, Aluminium Coated Sheet Glass Mirror ranging thickness between 1.8mm to 2.2mm with a dimensional tolerance of

1.5mm, the nominal thickness is accepted in the course of trade was 2.0mm and thus that thickness confirms to the norms of BIS. That the Deputy Commissioner rejected the contentions without making any enquiry and verification of the records of the respondent arbitrarily.

3. The Learned Commissioner (Appeals) have been pleased to allow the appeal of the respondent assessee observing that it is certified by the BIS as regards specific goods - Float and Sheet Glass that the actual size or thickness is from 1.8mm to 2.2mm, considering tolerance. It is further observed that the standard of tolerance is known to all in trade as well as the customers of the respondent who were purchasing the goods. Further observed that the difference of thickness indicated in the invoices and that shown in the Bill of Entry for the imported goods are within the tolerance limit as prescribed by Bureau of Indian Standard. It was concluded that the goods imported by the respondent vide Bills of Entry in question tallies with the description in the tax invoices for resale. Accordingly, the Learned Commissioner (Appeals) held that the appellant is eligible for benefit of refund under the said Notification.

4. The Revenue is in the appeal on the ground that the contention of the respondent is not acceptable, that sheet of the glass having thickness ranging between 1.8mm to 2.2mm, meaning thereby that all the glass between specified range of thickness mandatorily have nomenclature of 2.0mm in the

trade parlance is misleading. If it is in the knowledge of trade that glass sheet thickness of 1.8mm to 2.2mm are same in the trade parlance, then what was the necessity of mis-coating the thickness of glass sheets in the sale invoices by the respondent.

5. The Learned Counsel for the respondent – importer have supported the impugned Order-in-Appeal. He further states that there is no ostensible ground raised by Revenue. He further said that the Bureau of Indian Standards is the competent authority under the law of the land to prescribe the tolerance limits and they have accordingly, prescribed the same, which have not been disputed by the Revenue. Accordingly prays for dismissing of the appeal by Revenue.

6. Having considered the rival contentions, and after going through the facts on record I find that in the tax invoice for resale by the respondent importer they have mentioned "2.0mm Mirror IMP 60 x 90." From the description it is evident than they have sold 2.0mm mirror and the size mentioned therein 60 x 90 mentioned matches the size in the Bill of Entry. Further, the description IMP in the invoices stand for imported. Further, in the tax invoice it is mentioned that no credit of the additional duty of customs levied under Sub-section 5 of Section 3 of the Customs Tariff Act, 1975 shall be admissible in respect of the above goods. That in view of the facts evident on the facts of the record, I agree with the finding of Learned Commissioner (Appeals) and also hold that

there is no material difference in mentioning the glass imported as '1.8mm Aluminium Coated Glass Sheet Mirror' as '2.0mm mirror imported' at the time of resale in the tax invoice. Accordingly, I find no merit in the appeal by the Department and the same is dismissed. I further direct the adjudicating authority to disburse the refund within a period of 45 days from receipt of a copy of this order along with interest as per rules.

(Dictated & Pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
11/10/17
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