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: 02/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70017/2018-SM[BR] dated 01/01/2018

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/50593/2017	**Ms KLA India Public Ltd** 2nd Milestone, Kicha Road, Rudrapur Uttrakhand 263153
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

Tarun Gulati & Kishore Kunal,
(Advocates) 5TH FLOOR, PLOT
NO.2B, TOWER2, SECTOR-126,
GAUTAM BUDH NAGAR,
NOIDA,
UTTAR PRADESH
201304

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 2

APPEAL No. C/50593/2017-CU[SM]

(Arising out of Order-in-Appeal No. HPR/EXCUS/000/APPL-I/269/2016-17 dated 22/12/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut)

M/s KLA India Public Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Meerut-II (Now Hapur) **Respondent**

Appearance:

Shri Tarun Gulati, Advocate &
Shri Kishore Kunal, Advocate, for Appellant
Shri Pradeep Kumar Dubey, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 08/12/2017

FINAL ORDER NO. 70017/2018

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. HPR/EXCUS/000/APPL-I/269/2016-17 dated 22/12/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut.

2. The brief facts of the case are that the appellants were engaged in the export of Basmati Rice to various countries. They filed Shipping Bill No. 9835 dated 27/08/2009 at ICD, Moradabad for export of 47.040 MT of Rice declaring the same as Indian Basmati Rice and the said goods were valued at Rs.24,77,860/-. The containers were opened for examination and samples were drawn. The samples so drawn

were sent for test to M/s SGS India Pvt. Ltd., Gurgaon, Haryana. The matter was adjudicated on the basis of test report submitted by M/s SGS India Pvt. Ltd. It was reported in the said Test Report dated 08/09/2009 that the percentage of Basmati Rice in the sample was nil. Therefore, through OIO dated 21/10/2009, the said goods were confiscated and Redemption Fine of Rs.4,50,000/-was imposed. Further the penalty of Rs.1,00,000/- was imposed on the appellants. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) vide his Order-in-Appeal dated 31/03/2010 held that M/s SGS India Pvt. Ltd., was not a Laboratory competent to test as per the Policy Circular No. 33(RE-08)/2004-09 dated 30/09/2009 and therefore he directed to conduct the retest of random samples through laboratory, which is an Agmark Laboratory as per said Circular issued by the DGFT. Revenue preferred appeal before this Tribunal against the said Order-in-Appeal dated 31/03/2010. This Tribunal through its Final Order dated 22/10/2014 held that this Tribunal has powers to remand the mater and therefore remanded the matter directing that samples may be got tested as directed by ld. Commissioner (Appeals) through his said Order-in-Appeal dated 31/03/2010. In compliance to the directions of this Tribunal samples were sent to Regional Agmark Laboratory, New Delhi on 17/07/2015. The samples were drawn on 27/08/2009. A report dated 30/06/2015 was issued stating that the samples were semi powder due to infestation by insects and therefore, not any for analysis. The Original Authority adjudicated the matter and passed the order dated 23/03/2016. The Original Authority has held in Para 27 of his OIO dated 22/02/2016 as follows:-

> "27. In the light of above discussions I am of the view that as the Agmark standards have been followed while testing the rice so the testing report given by M/s SGS India, an APEDA registered and notified laboratory, is accepted under the provisions of DGFT Policy Circular No. 33(RE-08)/2004-09 dated 30/09/2009."

With the said finding, he imposed penalty of Rs.1,00,000/- on the appellant and imposed Redemption Fine of Rs.4,50,000/-. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 22/12/2016, wherein the ld. Commissioner (Appeals) has held that there was no evidence on record to contradict the said report of M/s SGS India Pvt. Ltd. and therefore, upheld the said OIO dated 22/02/2016. Aggrieved by the said order appellant preferred present appeal before this Tribunal.

3. Heard the parties and perused the record.

4. After this Tribunal had directed to get the samples tested through Agmark approved laboratories in view of the fact that M/s SGS India Pvt. Ltd. was not a qualified laboratory as per the Circular issued by the DGFT Revenue

should not have once again relied on the test report given by M/s SGS India Pvt. Ltd. for adjudication in the present matter. On going through Para 27 of the OIO it appears that the Original Authority did not understand the process of adjudication nor he has any knowledge of judicial discipline. It was held by this Tribunal by affirming the order dated 31/03/2010 passed by ld. Commissioner (Appeals) that report given by M/s SGS India Pvt. Ltd. was not qualified to adjudicate the matter. The Original Adjudicating Authority passed the judgment on the finding of this Tribunal through Para 27 of OIO dated 22/02/2016. It is more pitiable that the Senior Officer of the Rank of Commissioner working as Commissioner (Appeals) did not object to such an action by the Original Authority. In view of above stated observations, I set aside the impugned Order-in-Appeal. As a result, the said OIO dated 23/02/2016 does not survive in law. In above terms, appeal is allowed with consequential relief to the appellant. Revenue shall ensure consequential relief to the appellant within a period of three months from the date of receipt/production of copy of this order.

(Dictated & Pronounced in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Ansari

प्रमाणित प्रति/Certified True Copy
01/02/18
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