

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

Dated: 04/09/2017

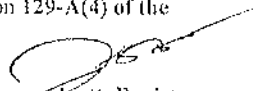
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70816/2017-SM[BR] dated 01/09/2017

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/MISC/70176/2017 C/70043/2015	Commissioner of Customs- Ghaziabad 202... WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH 201002

Name and Address of Respondent

2	Manpreet Body & Auto Engineers S.c.o. 199 Moter Market Sector- 48c,, CHANDIGARH ,PUNJAB
---	---

Copy To

3 Advocate(s) / Consultant(s):

Mohd. Farag Anees, Adv
B-25, Lajpat Nagar - III,
New Delhi
Delhi

4 Pratik Dawar, (Amicus-Curiae)

29 H/1 Nyaya Marg, Opposite Circuit House,
Allahabad-211001

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise, I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohak Road, New Delhi-110005

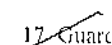
10 LAWCRUX Advisors Pvt. Ltd., LAW House, I-8, Sector-10, Faridabad 121003 (Haryana)

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

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

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

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

15 C.D.R. 16 Office Copy 17  Guard File


 Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.C/70043/2015-CU[SM] with
C/MISC/70176/2017

(Arising out of Order-in-Appeal No. NOI/CUS/000/APP/14/2015-16 dated
19/06/2015 passed by Commissioner of Central Excise & Customs
(Appeals-II), Noida)

Commissioner of Customs, Ghaziabad

Appellant

Vs.

M/s Manpreet Body & Auto Engineers

Respondent

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR)

for Appellant

Shri Pratik Dawar, (Amicus-curiae) &

Shri Mohd. Farag Anees, Advocates,

for Respondent

CORAM:

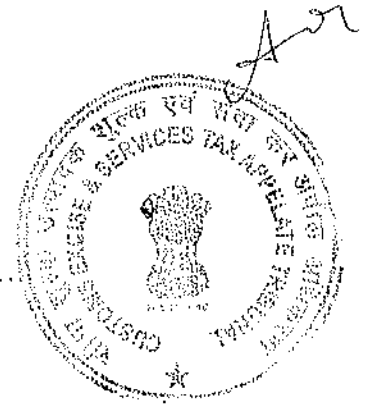
Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 01/09/2017

Date of Decision : 01/09/2017

FINAL ORDER NO. 70816/2017

Per: Anil Choudhary



The issue in this appeal filed by the revenue is whether the Commissioner (Appeals) is justified in the case of import of old/reusable Tyres, allowing the same to be released for home consumption, subject to payment of redemption fine and penalty.

2. The brief facts of the case are that the respondent had imported Old and Used Tyres of different sizes from M/s Ashqueen International FZC, Sharjah (UAE), Sought clearance of impugned goods claiming classification

under CTH 40122020 attracting BCD 10%, CVD-Nil and Ed. Cess @ 2% and additional duty of Customs @ 4% by filing Bills of Entry No.4424964 dated 22.01.2014 through CHA M/s Om Shri Logistics.

3. The grounds of appeal taken by the revenue is that the Commissioner (Appeals) have relied upon Final Order No.C/A/51473/2015-CU[DB] dated 08.04.2015 in the case of M/s Jibran Overseas, New Delhi, wherein a Division Bench of this Tribunal allowed clearance of imported used - old tyres on payment of redemption fine and penalty, as the said order was not accepted by revenue. Aggrieved by the said order, Revenue preferred appeal before Hon'ble Allahabad High Court being Customs Appeal No.278 of 2015 and the matter is sub-judice.

4. The learned Counsel, appearing for the respondent-importer brings to my knowledge that the Hon'ble High Court have already decided the aforementioned appeal vide Final Order dated 20.12.2016 and have held as follows:-

"(i) Whether in view of the facts and circumstances of the case, the Hon'ble Tribunal was justified in arriving at the decision that the impugned goods are not Hazardous wastes (Management, Handling and Transboundary Movement) Rules, 2008, their import did not require permission of the MOEF & absolute confiscation thereof is not warranted and reducing the



redemption fine & penalty to 15% & 10% of the re-determined value respectively?

(ii) Whether an earlier erroneous order passed by the Hon'ble Tribunal could be the basis for passing the impugned order ?

(iii) Whether the Hon'ble Tribunal has committed an error of Law in accepting the prayer of the respondent, on the basis of information provided by the party which misled the Hon'ble CESTAT to pass the impugned order?"

In the show cause notice, which was issued to the assessee it was clearly indicated that the assessee was seeking clearance of goods declared as old and used tyres of different sizes. In the same show cause notice in paragraph no.4 (iv) the authority noted that the tyres can be re-used and have a minimum residual life of about 45-55% of the new tyres.

The case of the department is that the tyres, which were being imported by the assessee would have to have permission for import into the country under Entry B3140. The Entry B3140 is quoted hereunder:-

"Waste pneumatic tyres, excluding those which do not lead to resource recovery, recycling, reclamation or direct reuse"

The Tribunal has recorded a clear finding with regard to the item, which is sought to be imported by the assessee that it is not a waste tyre rather it is a re-usable tyre, which falls within the exclusion clause of the entry. The Tribunal, therefore, has rightly come to the conclusion that the imported goods were not hit by the mischief of hazardous waste and could not be defined as hazardous waste and, therefore, their import did not require the permission of the MOEF.

Having heard learned Counsel on both sides, we are of the opinion that the view taken by the Tribunal that re-usable tyres falls within the exclusion clause of the



entry is correct. The questions of law are, therefore, answered in favour of the assessee and against the department."

4.1 The learned Counsel also brings to my knowledge that under similar facts and circumstances Hon'ble Gujarat High Court in its judgement reported at 2015 SCC OnLine Guj 6018, in Civil Application No.9587 of 2015 vide order dated 06/11/2015 have also considered similar issue and have held as follows:-

"9. As noted hereinabove, the Ministry of Environment and Forests contends that the import in question is of waste pneumatic tyres falling under B-3140 of Schedule III to the rules. The record of the case shows that undisputedly, the goods imported by the applicant - petitioner are used pneumatic tyres fit for reuse. In the above backdrop reference may be made to entry B-3140 which read thus:

"Waste pneumatic tyres, excluding those which do not lead to resource recovery, recycling, reclamation or direct reuse."

10. Thus, a plain reading of the entry shows that the goods that are covered thereunder are waste pneumatic tyres and not used pneumatic tyres. The operations mentioned in the entry are to be done to the tyres which are waste and not second hand tyres which are to be reused. At this juncture reference may be made to the Chapter 40 of the CTI (HS) Classification of Export and Import Items, which clearly shows that there exists a category of Used Pneumatic tyres which fall under Exim Code 4012 20. Insofar as waste pneumatic tyres are concerned, they, prima facie, would be covered under heading 4004 which reads thus: "Waste, parings and scrap rubber (other than hard rubber) and powders and granules obtained therefrom."

16. In the absence of any power conferred upon the Ministry of Environment and Forests, to specify any additional category of hazardous wastes being traceable to any provisions of the Page 9 of 11 HC-NIC
Page 9 of 11 Created On Fri Sep 01 14:34:49 IST 2017



C/CA/9587/2015 ORDER Act or the rules, the impugned memorandum, as rightly submitted by the learned counsel for the applicant, is merely in the nature of administrative instructions and has no enforceability in law. Under the circumstances, the prohibition contained in the impugned office memorandum not being backed by any statutory provisions, prima facie, cannot be relied upon for the purpose of refusing to process the bills of entry submitted by the applicant.

17. In the aforesaid premises, the court is of the view that the applicant has made out a prima facie case for grant of interim relief. The balance of convenience also lies in favour of the applicant, inasmuch as, the import in question, prima facie, does not appear to be governed by the rules. Irreparable injury is writ large on the face of the record, inasmuch as, the applicant is suffering from severe losses on account of the demurrage etc.

18. For the foregoing reasons, the application succeeds and is, accordingly, allowed. The respondents are directed to forthwith permit assessment and clearance of the goods imported by the applicant - petitioner under Bills of Entry No.17 and 18 dated 16.03.2015 in accordance with the provisions of the Customs Act, 1962, subject to the following conditions:

(i) The Customs authorities shall depute a Surveyor to check whether the tyres are reusable with or without retreading.

(ii) The petitioner shall not clear any goods which are not reusable. Page 10 of 11 HC-NIC Page 10 of 11
Created On Fri Sep 01 14:34:49 IST 2017
C/CA/9587/2015 ORDER

(iii) The responsible person concerned will file an undertaking to the effect that they will sell the imported goods in a manner that they will be reused

19. Rule is made absolute accordingly, with no order as to costs."

4.2 Accordingly, learned Counsel for the respondent prays for dismissal of the appeal of the Revenue.

5. Having considered the rival contentions, I find that



the issue, herein have been decided in favour of the respondent-importer by decision of Hon'ble Allahabad High Court in the case of M/s Jibran Overseas (supra). Accordingly, I find there is no impropriety or illegality in the impugned Order-in-Appeal and the same is upheld. I also direct the concerned Customs officer to forthwith release the imported consignment of old/used Tyres on payment of redemption fine and penalty, within a period of 15 days from the date of receipt or service of a copy this order.

6. Accordingly, Appeal filed by the Revenue is dismissed. Respondent shall be entitled for consequential benefits, in accordance with law. Miscellaneous Application also stands disposed of. Let Order to be issued **Dasti** to the party.

7. This Tribunal also appreciates the assistance provided by Shri Pratik Dawar, Advocate, appointed as amicus-curiae.

(Dictated in Court)

प्रमाणित प्रति/Certified True Copy

सहायक पंजीकार/Aasst. 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

07/09/17 (ANIL CHOUDHARY)
MEMBER (JUDICIAL)

akp

