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: 11/08/2017

To

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

Final Order No. A/70778/2017-EX[DB] dated 02/08/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2737/2011	CCE, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		N.K.LAMINATORS P.LTD Dedupur, Chaubeypur, Kanpur.,,

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

Anurag Mishra
117/10 SK APARTMENT
SARVODAYA NAGAR,
KANPUR,
UTTAR PRADESH

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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

Appeal No. E/2737/2011-EX(DB),

Dated of Hearing/decision: 02/8/2017

[Arising out of Order-in-Appeal Nos. 212, 213 & 214-CE/APPL/KNP/2011 dated 02.08.2011 passed by The Commissioner (Appeals), Customs & Central Excise, Kanpur]

C.C.E.-Kanpur Appellant

Vs.

N.K. Laminators P. Ltd. Respondent

Appearance:
Present for the Appellant: Shri Rajeev Ranjan (Joint Commissioner) A.R.
Present for the Respondent: Shri Anurag Mishra (Advocate)

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 70778/2017

Per: Anil Choudhary

Above stated appeal has been filed by Revenue arising out of common Order-in-Appeal No. 212, 213, 214-CE/APPL/KNP/2011 dated 02/08/2011 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The brief facts of the case are that in the said appeal is respondent namely; N.K. Laminators P. Ltd. was issued with Show Cause Notices. The respondent was engaged in the manufacture of Indian Kattha which is also called as 'Catechu'. It appeared to Revenue

that the respondent were using extract from Gambier in addition to the extract of Khairwood and were manufacturing Indian Kattha and therefore the classification of the goods manufactured would not fall under Tariff Item No. 14049050 but the same would be classifiable under Tariff Item No. 13021990 which is a residual entry with a description as 'others'. Therefore, the respondent was issued with series of Show Cause Notices demanding duty by resorting to the classification of the goods manufactured by them under Tariff Item No. 13021990. The respondent contested the show cause notice. The Original Authority passed Order in Original No. 14/ADG/CE/2011 dated 23/05/2011 wherein the Original Authority held that the goods manufactured by the respondent were falling under Tariff Item No. 14049050 and dropped the demand of Central Excise duty raised against M/s N.K Laminators P. Ltd. Aggrieved by the order of the Original Authority, Revenue preferred appeals before Commissioner (Appeals). Ld. Commissioner (Appeals) passed common Order-in-Appeal dated 26/09/2011 in respect of Orders-in-Original dated 23/05/2011 & 01/06/2011 wherein the ld. Commissioner (Appeals) rejected the grounds of appeal, raised by Revenue and upheld the Orders-in-Original dated 23/05/2011. Aggrieved by the said order Revenue have preferred this appeal.

3. The grounds of appeal filed by Revenue is that on exactly identical issue of classification, in the case of M/s Indian Wood Products Co. Ltd., Commissioner Central Excise Meerut-II vide C. No. V(15)Adj./M-II/JWP/56/08 & 140/08 dated 18/05/2009 and other order vide C. No. V(15)Adj./Meerut-II/IWP/70/09 dated 11/01/2010,

have confirmed the demand of duty and decided the classification of Indian Kattha under 1404 and Catechu obtained from Gambier extract of Catechu like substance under Chapter Sub-heading 13019 of Central Excise Tariff Act, 1985 and that M/s Indian Wood Products Co. Ltd., has filed appeal against the said both Orders-in-Original dated 18/05/2009 & 11/01/2010 before this Tribunal and no stay has been granted and matter is still pending before Tribunal for final order and that since the issue is pending before the higher forum lower authority should have followed judicial discipline and decided the case in line with stand taken by the Department.

4. Heard the ld. A. R. for Revenue, who has presented the grounds of appeal.

5. Heard the ld. Counsel for the respondents, who has submitted that Revenue have collected the samples of the goods manufactured by the respondents and said samples were tested by Central Revenue Control Laboratory, New Delhi and test report dated 19/12/2003 has not been made document relied upon. He has further stated that the test report was not relied upon for issue of Show Cause Notice. He has further submitted that the First Appellate Authority has dealt with all the grounds of appeal putforth before him by Revenue such as:-

(A) Classification of the goods on the basis of entries in the Tariff, (B) Commercial parlance test & (C) Other evidences. The First Appellate Authority on the basis of entries in the Tariff have ruled the classification of goods manufactured by the respondents under Tariff Item No. 14049050 and ruled out the classification under Tariff Item No. 13021990 as Vegetable Sap. He has further held that in the commercial parlance also the goods manufactured by the respondents were called as 'Indian Kattha'. He has further taken other relevant evidences on record and finally the ld. Commissioner (Appeals) has upheld the said Orders-in-Original dated 23/05/2011 & 01/06/2011 through which it was held that the goods manufactured by the respondents were classifiable under Tariff Item No. 14049050. The ld. Counsel for respondents has also submitted that this Tribunal through Final Order No. 70009/2017-EX[DB] dated 04/01/2017 in Appeal No. E/58482/2013-EX[DB] in the case of M/s Indian Wood Products Co. Ltd. has held that the goods manufactured by M/s Indian Wood Products Co. Ltd. during the relevant period were classifiable under Tariff Item No. 14049050 and further argued that Revenue has in its grounds of appeal has already qualified that the issue of classification in the present appeals and that in the case of M/s Indian Wood Products Co. Ltd. was identical. Therefore, the appeal filed by Revenue may be rejected.

6. Having considered the rival contentions and on perusal of the facts on record, we find that though the outcome of appeal filed in respect of M/s M/s Indian Wood Products Co. Ltd. in Appeal No. E/2604/2007-09-EX[DB] is not available before this Bench, however, the decision of this Bench in respect of M/s M/s Indian Wood Products Co. Ltd. in Appeal No. E/58482/2013-EX[DB] is available and in the said Final Order No. 70009/2017-EX[DB] dated 04/01/2017 heard and pronounced on 15/12/2016, is available wherein this Tribunal had already decided the classification of identical goods under Tariff Item No. 14049050. In view of above findings, we find that we have already

upheld the Order-in-Appeal No. 212, 213 & 214-CE-APPL-KNP-2011. Since the appellant is also party to the said Order, therefore, following the Final Order No. A/70628-70629/2017 dated 05.07.2017, in Appeal Nos. E/2736 & 2737/2011-EX(DB). Therefore, we dismiss the appeal filed by Revenue. The respondents will be entitled for consequential relief, as per law.

(Dictated and pronounced in the Open Court)

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

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

(K. Gupta)

14/08/17

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