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: 23/02/2018

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

Final Order No. **C/A/70357-70358/2018-CU[DB] dated 21/02/2018**

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/MISC/70336/2017	C/70662/2017	**Pavas Polychem Pvt Ltd** 127/163-w-1,saket Nagar KANPUR UP
2	C/MISC/70337/2017	C/70663/2017	**Pawan Khatri Director** C/o Pavas Polychem Pvt Ltd 127/163 w-1 Saket Nagar KANPUR UP
			Name and Address of Respondent
3			C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
4			C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

AMIT AWASTHI &
VAIBHAV DIXIT,
ADVOCATE
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR,
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6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

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

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

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL No. C/70662-70663/2017-CU[DB] With
MISC Application No. C/MISC/70336-703372017

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-002-17-18 dated 17/07/2017 passed by Commissioner of Customs, Central Excise & Service Tax, Kanpur)

M/s Pavas Polychem Pvt. Ltd. (In Appeal No. C/70662/2017) &
Shri Pawan Khatri, Director (In Appeal No. C/70663/2017)
Appellant

Vs.

Commissioner of Customs, Kanpur **Respondent**

Appearance

Shri Amit Awasthi, Advocate &
Shri Vaibhav Dixit, 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 : 14/12/2017
FINAL ORDER NO. 70357-70358/2018

Per: Anil G. Shakkarwar

The ld. Counsel for the appellant has submitted that their contention in the above stated two appeals was supported by recently issued CBEC Circular No. 43/2017-Cus dated 16/11/2017 and therefore, both the appeals may be taken up for decision. With the consent of Revenue the main appeals were taken up for hearing and decision.

2. The brief facts of the case are that M/s Pavas Polychem Pvt. Ltd. (hereinafter referred as "the appellant") filed two Bills of Entry on 25/09/2014 & 30/09/2014 at ICD, JRY Kanpur by declaring the goods imported by them as "Natural Calcite

Powder" claiming classification of the same under CTH-25309030. It appeared to Revenue that the goods imported were not Natural Calcite Powder but they were Processed Calcium Carbonate Powder and therefore, the goods were detained and samples were drawn and sent to Central Revenue Control Library, New Delhi. The test report was issued by CRCL, New Delhi vide their letter No. 35-Customs/CRCL/2014-15 dated 18/11/2014 indicating that the samples were Processed Calcium Carbonate Powder. The appellant vide his letter dated 10/07/2015 requested for retesting of Natural Calcite Powder. The said request for retesting of the samples were not ~~accessed~~ acceded to by Revenue and Revenue went ahead on the basis of said test report given by CRCL and issued the appellant with Show Cause Notice dated 29/02/2016 proposing change in the classification of imported goods from CTH-25309030 to 28365000 which is for Calcium Carbonate. Accordingly, there was a proposal to reject the value of the goods imported ~~through~~ covered by said two Bills of Entry and enhance the same and as a result there was a proposal to demand differential Customs duty of Rs.6,80,859/-. Further, there was a proposal to confiscate the goods covered by above stated two Bills of Entry and also to confiscate the previous consignment imported by the same appellant. Further, there were proposals to enhance the value of goods imported in the past after they were cleared long back and there was also proposal to demand differential duty of Rs.31,00,070/- in respect of past cleared consignments. There were proposals to impose penalty on the importer and on the director of the importer company. The appellant submitted in reply to the Show Cause Notice that through Final Order No. A/50137/2015 dated 19/01/2015 this Tribunal in the case of M/s Rathi Enterprises, Delhi had set aside the Order-in-Original therein and Revenue was directed to get the samples retested from any laboratory other than CRCL, New Delhi. The appellant also submitted before the Original Authority in the said reply to Show Cause Notice that they requested on 09/07/2015 & 10/07/2015 for furnishing the Test Report in Original and that the DRI Authorities through letter dated 28/08/2015 informed them that as informed earlier, for retesting procedure should be followed. They, further submitted that this Tribunal had recorded in the above stated case of M/s Rathi Enterprises that representative samples were drawn and sent to CRCL Laboratories and that CRCL did not have equipment to test the said samples and therefore, the test report given by CRCL was in doubt and that the appellant had right to ask retest of the samples from any other laboratory other than CRCL. The Original Authority adjudicated the said Show Cause Notice through impugned Order-in-Original and confirmed all the proposals in the said Show Cause Notice, including confirmation of demand confiscation, etc. and imposed penalty of Rs.70,00,000/- on the importer-appellant and penalty of Rs.70,00,000/- on Shri Pawan Khatri (Director). Aggrieved by the said order, both the appellants have preferred present appeal.

3. Heard the ld. Counsel for the appellants. He has submitted that the whole proceedings have violated principles of natural justice because as held by this Tribunal in the said case of M/s Rathi Enterprises the appellant had right to ask retest of the samples from any other laboratory other than CRCL. Further, he has submitted that they informed the Original Authority that CRCL did not have equipment for testing Natural Calcite Powder because for testing whether the Calcite Powder was natural or processed x-ray diffraction method is to be used and CRCL did not have such equipment and that said contention has been confirmed through Circular No. 43/2017-Cus dated 16/11/2017 issued by Central Board of Excise & Customs, wherein in Para 2 of the said Circular it has been stated that the Laboratories were short listed for testing of samples which cannot be tested in CRCL and Laboratory and for Natural Calcite Powder at Sr. No. 16 of Annexure to the said Circular the laboratory selected is National Metallurgical Laboratory (NML), Jamshedpur & Chennai which functions under the Ministry of Science & Technology. He has submitted that on the basis of test report of samples drawn from the consignments for which Bills of Entry were filed on 25/09/2015 & 30/09/2015 the classification and valuation of earlier consignment

imported by the same importer were also adjudicated through impugned Order-in-Original and applying test report to such consignments which were not the consignments for which the representative samples were ~~not~~ drawn the test report cannot be applied in that manner and therefore, the entire adjudication order in respect of past consignments including classification, valuation of demand and imposition of fine and penalty is not sustainable. He relied upon the decision of this Tribunal in the case of Penshibao Wang P. Ltd. *Versus* Commissioner of Customs (Seaport-Import), Chennai reported at 2016 (338) ELT 597 (Tri. – Chennai) and submitted that in the said case on the basis of test report of live consignment it was held that re-classification of the goods in respect of past consignments was not sustainable.

4. Heard the ld. A. R. for Revenue, who has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of the facts on record, we find that in so far as confirmation of demand, re-classification, enhancement of value, confiscation, imposition of penalty and redemption fine on past clearances in the impugned Order-in-Original is concerned the same set aside by relying on the precedent decision of this Tribunal in the case of Penshibao Wang P. Ltd. (supra). In so far as, the Order-in-Order in respect of the said two Bills of Entry dated 25/09/2014 & 30/09/2014 is concerned, we find that the said Circular dated 16/11/2017

clearly indicates that National Metallurgical Laboratory (NML), Jamshedpur & Chennai were identified as designated laboratory for testing of Natural Calcite Powder. We also find that in the case of M/s Rathi Enterprises, this Tribunal had held that CRCL did not have facility to test the samples and therefore, the test report given by CRCL is in doubt and that the appellant had right to ask retest of the samples from any other laboratory other than CRCL. We find that in the case of M/s Rathi Enterprises the right of the importer to get the samples re-tested was upheld and therefore, the confirmation demand to the extent of Rs.6,80,859/- is not sustainable since re-testing of samples in the laboratory other than CRCL was not allowed. Therefore, the related confiscation and imposition of penalty and re-determination of value of consignments related to Bills of Entry filed on 25/09/2014 & 30/09/2014 is not sustainable. In the result, the entire Original-in-Original is set aside and both the appeals are allowed. Since the main appeals are allowed both the Miscellaneous Applications are disposed as infructuous. The appellants shall be entitled for consequential relief, as per law.

(Dictated in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
31/03/18

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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