FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **09/02/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/50222/2015-CU[DB]** dated **21/01/2015**

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(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/Stay/555/2008	C/188/2008	MULTIWAL DUPLEX PVT. LTD. VILLAGE- GANGAPUR GOSAIN,KUNDESHWARI ROAD,KASHIPUR,UTTARANCHAL,,
			Name and Address of Respondent
2			-C.C.E. MEERUT II OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP),

Copy To

3 Advocate(s) / Consultant(s); RAJESH JAIN,ADV
A-2/142, SAFDARJUNG
ENCLAVE, NEW DELHI

5 Bar Association, CESTAT, Delhi
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 Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing 21.01.2015

For Approval &Signature of :

Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.C/188/2008-CU[DB]

[Arising out of Order-in-Appeal No.19-CUS/MRT-II/2007, dated 10.12.2007 passed by C.C.E.(Appeals), Meerut-II]

M/s. Multiwal Duplex Pvt. Ltd. — Appellants

Vs.

C.C.E., Meerut-II — Respondents

<u>Appearance</u>
None - for the appellants

Shri Amresh Jain, DR - for the respondents

CORAM: Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 50222/15, **dated 21.01.2015**

Per Shri R.K. Singh :

The substantive appeal has been filed against Order-in-Appeal No.19-CUS/MRT-II/2007, dated 10.12.2007, which upheld the primary order dated 11.05.2007. The appellants had imported goods vide Bill of Entry No.587/06, dated 16.06.2006 for clearance of 98.848 M.T. of mixed paper waste. Examination of goods, undertaken in the presence of authorised representative of the Customs House Agent, revealed the net weight to be 96.65 M.T. out of which 19.83 M.T. was used plastic waste and the rest 76.82 M.T. was used paper collected as road sweepings. The plastic content in the paper waste was neither declared by the appellant in the Bill of Entry, nor they submitted any licence issued by the office of DGFT for import of plastic waste. Representative sample of plastic contents was drawn in the presence of the authorised representative of the CHA and sent to the Central Institute of Plastic Engineering & Technology, Lucknow (hereinafter called 'CIPET') for test. The goods were seized vide order dated 12.09.2006 issued under section 110(I) of the Customs Act, 1962, on the reasonable belief that the goods were liable for confiscation as the import of waste of plastic of the kind was regulated in the manner provided in the Public Notice No.392(PN)92-97 dated 01.01.1997 issued by DGFT and the appellant could not produce any evidence documentary or otherwise to show the import of the said goods was in accordance with the said Public Notice. The CIPET, Lucknow vide their Test Certificate dated 20.09.2006 declared the goods as Polyethylene Terephthalate and toxic. The appellant was informed by letter dated 17.10.2006 of the aforesaid test certificate dated 20.09.2006 of CIPET. The appellant vide letter dated Nil (submitted to the Customs, Moradabad on 23.10.2006) requested for re-testing of sample. The CIPET, Lucknow vide their Test Certificate No.821, dated 12.12.2006 declared the goods as 'Polyethylene Terephthalate, Non-food grade'. Accordingly, the used plastic waste was confiscated and used paper collected as road sweepings though confiscated was allowed to redeem on payment of fine of Rs.4 lakhs and penalty of Rs.6 lakhs was also imposed. The confiscation of used plastic waste was under subsections (d), (e), (f), (i), (l) and (m) of Section 111 of the Customs Act, 1962 and confiscation of "used paper collected as road sweepings" under subsection (m) of section 111 read with section 119 *ibid*.

2. No one appeared for the appellant and no request for any adjournment has been received. Accordingly, in terms of the decision of the Hon'ble Supreme Court in the case of ***Balaji Steel Re-rolling Mills Vs. CCE, [2014 (310) ELT 209 (SC)]***, *inter alia* stating that CESTAT ought to decide appeal on merits even if appellant or its counsel is not present, we proceed to decide the appeal on merits.

3. In this case we find that the appellant had waived the Show Cause Notice and thus obviously and voluntarily they agreed to abrogate their right for natural justice to an extent. There is no contention on the part of the appellants that the plastic waste is not restricted for import. Therefore, the same is clearly liable for confiscation as they do not fulfil the condition for the import thereof. Also as a consequence, the used paper collected as road sweepings is liable to confiscate under section 119 *ibid* as the goods used for concealing the smuggled goods, namely, the used plastic waste. Clause 7 of their contract with the suppliers provided for final load port quality inspection [redacted] on seller's account by surveyor mutually agreed upon. It is obvious that they had stipulated pre- shipment inspection that the goods imported were as per declaration in the Bill of Entry. Thus, the appellants cannot fully absolve themselves of the responsibility to ensure that the goods imported were as per their declaration in the Bill of Entry.

4. In the light of the foregoing factual matrix, we do not find any infirmity in the impugned order and therefore the appeal is rejected.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK