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: **24/03/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51152/2014-CU[DB]** dated **14/03/2014**

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/33/2009	**SHOTAM INSTRUMENTS PVT. LTD.** S-105, BLOCK IV, GANGA SHOPPING COMPLEX, SECTOR 29, NOIDA, U.P.
		Name and Address of Respondent
2	C/33/2009	**C.C. NEW DELHI (IMPORT & GENERAL)** New Custom House, Near I.G.I. Airport, New Delhi 110037.

Other Appellants and Respondents as per Annexure

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

P. S. Bedi & Co.
D-10, IIIrd FLOOR, SOUTH
EXTN. PART-II,
NEW DELHI,110049

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4 Bar Association, CESTAT, Delhi
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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, 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 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

BENCH-DB

Custom Appeal No.C/33/2009 -CUS[DB]

[Arising out of Order-in-Appeal No. CC(A)/CUS/I & G/05/2009 dated 07/01/2009 passed by Commissioner of Custom, New Delhi]

M/s. Shotam Instruments Pvt. Ltd. ...Appellant

Vs.

CC, New Delhi ... Respondent

Present for the Appellant : Shri Surabh, Advocate
Present for the Respondent : Shri Rakesh Puri , DR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

Date of Hearing: 14.03.2014

FINAL ORDER NO. 51152/2014 DATED: 14.03.2014

PER: D.N.PANDA

Ld. Counsel vehemently opposes the first appellate order on the ground that the goods brought to India were not restricted goods and that is not covered by the EXIM Policy of 2004-09. The goods were only GPS and Modem but not the GPS and trans-receiver. Such goods are not covered by the EXIM Policy. Therefore, the classification adopted by the Revenue is not correct and neither redemption fine nor penalty imposable.

2. Revenue supports the adjudication.

3. Heard both sides and perused record.

4. Revenue is not in appeal against the appellate order which upheld the classification but granted reduction in redemption fine as well as penalty. In adjudication, the imposition of redemption fine was Rs.3,15,000/- and penalty was Rs.75,000/-. But appellate authority reduced the same to Rs.2 Lakhs and 50,000/- respectively. Ld. Commissioner (Appeals) while upholding the classification in para 13 of the order recorded as under:-

> *"13. Description of the impugned goods as per the catalogue and recorded in Para 3.3.3 of the OIO clearly indicates that the said goods satisfy the definition of GPS Transreceiver. It has also been seen, as discussed in foregoing Paras, that GPS Transreceiver is separate and distinct item and different from GPS Receiver and Differential GPS. In view of these facts, I hold that the impugned goods are nothing but GPS Transreceivr, classifiable under CTH 85269190. This holds good not only for the classification under Customs Tariff Act but also for other purposes because of the nature and use of the goods. Therefore, the contention of the Appellants that rules for deciding the classification under Customs Tariff Act can not be applied in the case of EXIM Policy is rejected because the said goods are GPS Transreceiver not only because of Rule 2(a) of the Rules for Interpenetration of the Customs Tariff Act but because of their use nature and functions. Moreover, even as per ITC HSN, the said goods also fall under 85269190."*

Sd/-

5. Although appellant advances a novel argument today that there was no examination of technicality of the goods by any technical institution, such proposition of appellant was not before either of the authority below. Therefore, such averment on technicality is not ' entertainable at this stage being a fresh ground.

6. The appellate authority appears to have applied his mind to understand whether the goods imported was covered by EXIM policy of 2004-09. He has noted what that GPS trans-receiver means. He was of the view that GPS receiver is different from GPS trans-receiver. Accordingly,he held that there was licensing requirement under EXIM policy. When no licence was obtained, the goods were liable to confiscation. Law is clear that when the goods enter into India in contravention of law that becomes smuggled goods under section 2 (39) of Customs Act 1962. Considering the imposition of quantum of redemption fine and penalty to be appropriate as ordered by ld. Commissioner (Appeals), assessee's appeal is dismissed.

[Dictated & Pronounced in the open Court].

20.3.2014	20/3/2014.
(MANMOHAN SINGH)	**(D.N.PANDA)**
TECHNICAL MEMBER	**JUDICIAL MEMBER**

Anita