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

Dated: 06/08/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52373/2015-CU[DB]** dated **15/07/2015**

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/603/2010	**MARUCHI TOOLS INDIA PVT. LTD.,** 187A, SAI SADAN, SANT NAGAR, EAST OF KAILASH, NEW DELHI.
		Name and Address of Respondent
2		-C.C. NEW DELHI (IMPORT & GENERAL) New Custom House, Near I.G.I. Airport, New Delhi 110037.

Copy To

3 Advocate(s) / Consultant(s):

4 Additional Party's Name & Address :
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/Order : 15.7.2015

Appeal No. C/603/2010-CU(DB)

(Arising out of Order-in-Appeal No.CC(A)/I&G/93/2010 dated 19.7.2010 passed by the Commissioner of Customs (Appeals), New Delhi)

For Approval & Signature :

Hon'ble Mr. 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Maruchi Tools India Pvt. Ltd. — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:

None - for the Appellant

Shri B.B. Sharma, D.R. - for the Respondent

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

F. Order No. 52373/2015

Per **R.K. Singh :**

Appeal is filed against order-in-appeal dated 27.2.2010.

2. The appellant filed a Bill of Entry No. 436490 dated 29.4.2009 for the goods viz "Strong Nipper, Spiral Hose, Pinch of Pliers, Fixing Jig for Header connecting pipe, Erichsen Testing Machine" and

declared value of Rs.37,69.710/-. On examination of the said goods, it was noticed that the goods included 10 cylinders also the import of which required a "No Objection Certificate" from the Chief Controller of Explosives which the appellant could not produce and therefore the primary adjudicating authority adjudicated the matter and allowed re-export of the same on a fine of Rs.55,000/- and imposed penalty of Rs.11,000/-. The appellant filed appeal before Commissioner (Appeals) on the ground that the fine and penalty were on the higher side and that the accumulated demurrage charges of Rs.2,50,000/- had not been taken into account while imposing the fine. The Commissioner (Appeals) observed that the appellant had admitted that the impugned goods (10 cylinders) required a NOC from the competent authority which was not produced. The Commissioner (Appeals) also noted that the primary adjudicating authority had not calculated the margin of profit while imposing fine under Section 125 of Customs Act, 1962. Taking into account the facts and circumstances, the Commissioner (Appeals) vide impugned order-in-appeal reduced the redemption fine to Rs. 25,000/- and penalty to Rs.5,000/-.

3. In its appeal before CESTAT, the appellant has pleaded that for the import of the said 10 cylinders valued at Rs.2,74,045/-, it applied for NOC to the competent authority viz. Chief Controller of Explosives, Nagpur who declined to grant NOC without assigning any

reason and consequently it requested the Additional Commissioner of Customs that as it was not able to produce the NOC, the said goods may be allowed to be exported. In these circumstances, the appellant contended that the redemption fine and penalty were too high and should be reduced and that on redemption fine, the goods should be allowed for domestic clearance also and that the consignment has also incurred considerable demurrage.

4. When the case was taken up, nobody appeared on behalf of the appellant.

5. The ld. DR, on the other hand stated that the said goods cannot be allowed for domestic clearance on redemption fine as certificate from the Chief Controller of Explosives was not produced. He also stated that the redemption fine and personal penalty have already been reduced by the Commissioner (Appeals) to reasonable levels.

6. We have considered the contentions of the appellant in its appeal and also of Revenue. It is admitted that the impugned goods (10 cylinders) required "No Objection Certificate" from the Chief Controller of Explosives for their import in the absence of which the goods were rightly confiscated and allowed to be re-exported on redemption fine and penalty. Indeed the appellant itself requested

for permission to re-export the goods which was allowed by the primary adjudicating authority on fine and penalty. The Commissioner (Appeals) after considering the facts and circumstances reduced the redemption fine and penalty from Rs.55,000/- and 11,000/- imposed by the primary adjudicating authority to Rs.25,000/- and 5,000/- respectively for the goods (10 cylinders) valued at Rs.2,74,045/-. Having regard to the nature of goods which required No Objection Certification for their import from Chief Controller of Explosives, we are of the view that the said goods cannot be allowed into the domestic tariff area in the absence of the said "No Objection Certificate" and also that the reduced redemption fine and penalty imposed by the Commissioner (Appeals) can by no stretch be called unreasonable or arbitrary. Therefore we do not find any infirmity in the impugned order-in-appeal. The appeal is dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM