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: **08/10/2015**

To

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

Final Order No. **C/A/53092-53096/2015-CU[DB]** dated **02/09/2015**

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/567/2009 | **GAZAL OVERSEAS,** C-42, IST FLOOR, RAMDUTT ENCLAVE, EAST UTTAM NAGAR, NEW DELHI-110059 |
| 2 | C/568/2009 | **MAYANK ENTERPRISES,** E-41 A, 2nd FLOOR, KIRTI NAGAR, NEW DELHI-110015 |
| 3 | C/570/2009 | **ANAND ASSOCIATES** E-5/6, Ist Floor, Sector-7, Rohini , N Delhi. |
| 4 | C/657/2009 | **ANAND ASSOCIATES,** E-5/6, 1ST FLOOR, SECTOR-7, ROHINI, NEW DELHI-110085. |
| 5 | C/658/2009 | **GAZAL OVERSEAS,** C-42, 1ST FLOOR, RAMDUTT ENCLAVE, EAST UTTAM NAGAR, NEW DELHI-110059. |
| | | **Name and Address of Respondent** |
| 6 | | -C.C. (ICD) NEW DELHI ICD, Tughlakabad, New Delhi 110020. |
| 7 | | -C.C. (ICD) NEW DELHI ICD, Tughlakabad, New Delhi 110020. |
| 8 | | -C.C. NEW DELHI (IMPORT & GENERAL) New Custom House, Near I.G.I. Airport, New Delhi 110037. |

9 -C.C. (ICD) NEW DELHI
ICD, Tughlakabad, New Delhi
110020.

10 -C.C. (ICD) NEW DELHI
ICD, Tughlakabad, New Delhi
110020.

Other Appellants and Respondents as per Annexure

**Copy To**

11 Advocate(s) / Consultant(s):

**R. Santhanam**
**C-3/210,**
**JANAK PURI,**
**NEW DELHI-110058**

**12** Additional Party's Name & Address :

**13** Bar Association, CESTAT, Delhi

**14** Director Publications, Customs, Excise. I.P. Estate, Delhi

**15** M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

**18** Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

**21** Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

**23** C.D.R. **24** Office Copy **25** Guard File

**Asstt. Registrar(CUSTOMS Appeal Branch)**

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. I

Date of hearing / decision : 02.09.2015

For Approval and 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 26 of the CESTAT (Procedure) Rules, 1982? | |
| 2 | Whether it should be released under Rule 26 of 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 Departmental authorities? | |

Customs Appeal Nos. 567 – 568, 570, 657 - 658 of 2009
(Arising out of order-in-appeal No. CC(A) Cus./ICD/149-153/2009 dated 28.05.2009 passed by the Commissioner of Customs (Appeals) New Custom House, New Delhi).

M/s Gazal Overseas — Appellant
M/s Mayank Enterprises
M/s Anand Associates
M/s Anand Associates
M/s Gazal Overseas

Vs.

CC, New Delhi — Respondent

Appearance:

None for the appellants
Sh. Amresh Jain, AR for the Revenue

Coram:

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

Final Order Nos. 53092- 53096 / 2015

**Per: R. K. Singh:**

Appeals have been filed against order-in-appeal dated 28.05.2009 in terms of which the appellants were denied the refund of 4% of additional duty of customs (SAD) on the ground that the appellants did not pay any sales tax/ VAT on the goods, namely, footwear. The appellants have contended that they imported footwear and paid sales tax/ VAT at the appropriate rate which was Nil in the case of the said goods and therefore they were entitled for refund of SAD.

2. Although nobody appeared for the appellants, in the absence of any request for adjournment, we proceed to decide the appeals on merit.

3. Ld. DR pleaded that as no sales tax/ VAT was paid on the goods, they were not entitled to the impugned refund.

4. We have considered the contention of ld. DR and also perused the refund papers. Notification No. 102/2007 dated 14.09.2007 as amended allowed refund of SAD subject to the condition that "the importer shall pay appropriate sales tax or VAT, as the case may be." In the present case, the appropriate sales tax or VAT being NIL the appellants cannot be said to have violated the said conditions of the said notification inasmuch as it cannot be said that they have not paid appropriate sales tax/VAT. In this regard, it is seen that vide Circular No. 06/2008 dated 28.04.2008 CBEC in para 5.3 thereof clarified as under:

> "5.3. *The exemption contained in the said notification envisages that the importer shall file a refund claim for 4% CVD ("said additional duty of Customs") paid on imported goods and shall pay*

*on sale of the said goods "appropriate Sales Tax or VAT as the case may be". Hence, it is clear that there is no stipulation in the notification that the exemption is available only if the rate of ST/VAT is equal to or higher than the rate of additional duty of Customs; nor is there a condition that if the rate of ST/VAT happen to be lower than 4%, the refund would be restricted to the lower amount. As such, it is clarified that it will not be appropriate to reduce the refund amount in such a situation and the entire 4% CVD, if otherwise found eligible, shall be refunded".*

It is evident from the above clarification of CBEC that even if VAT / Sales tax was less than 4%, the appellant was entitled to refund of SAD which was 4% so long as VAT/ sales tax was paid. In other words, so long as appropriate VAT/ Sales tax was paid, SAD refund was admissible even if the appropriate sales tax/ VAT was less than SAD; if the sales tax / VAT was NIL, So be it. In other words what is required in terms of the said notification is payment of appropriate sales tax/ VAT regardless of the rate thereof. It logically follows that if the appropriate rate of sales tax/ VAT was NIL then the appropriate sales tax/ VAT paid will also be NIL

5. In the light of the foregoing discussions, we find that the impugned order is not sustainable. Accordingly we set aside the same and allow the appeals with consequential relief, if any.

(Justice G. Raghuram)
President

(R. K. Singh)
Member (Technical)

*Pant*