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: **18/07/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52806/2014-CU[DB]** dated **04/07/2014**

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/391/2009	**NAMRATA ENTERPRISES,** KHAGAL MOHALLA FULLA ROAD, JODHPUR, RAJASTHAN.
		Name and Address of Respondent
2		**C.C.(JODHPUR)** HQ AT NEW CENTRAL REVENUE BUILDING, STATUE CIRCLE, C SCHEME, JAIPUR 302005.

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Copy To

3Advocate(s) / Consultant(s):

OM. P. AGARWAL & CO.
56, SECTION - 7, N.P.H ROAD,
JODHPUR,RAJASTHAN

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

Date of Hearing/Decision:04.07.2014

Customs Appeal No. C/391 of 2009-CU(DB)

[(Arising out of Order-in-Appeal No.09/DK/CUS/JPR-II/09 dated 27.03.2009 passed by the Commissioner of Customs & Central (Appeals),Jaipur (Rajasthan)].

M/s. Namrata Enterprises ....Appellant

Vs.

CC, Jodhpur .....Respondent

Appearance:
Shri O.P. Agarwal, CA for the appellant.
Ms. Ranjana Jha, AR for the respondent.

Coram :
Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

Final Order No. 52806/Dated:4.7.2014

Per D.N. Panda:

Shri Agrawal, ld. Chartered Accountant submits that there is an incongruity in the operative portion of the Appellate order. Ld. Commissioner (Appeals) in para-10 of the order specifically set aside that part of the adjudication order which deals with the enhancement of value of the used Tyres and Used Tyres with Metallic Frames. He allowed the relief on that count. In para-12, he dealt about the quantity aspect of Tyres imported with or without Metallic Frames. He considered that there was no gravity on the issue for confiscation and seizure. Therefore, he reduced redemption fine and penalty. While ld. Commissioner (Appeals) allowed relief on these two aspects as above, in para-13 of his order, he limited declaration of relief as per para-12 only.

2. Learned DR supports the order passed by Adjudicating Authority.

3. Considering the difficulties expressed above, it would be proper to modify para-13 of the appeal order passed by ld. Commissioner (Appeals) to be read as appeal allowed in terms of para-10 and 12 of the order of Commissioner (Appeals).

4. Shri Agrawal further submits that when there was allegation made by Revenue, burden of proof lies on the Revenue to satisfy that value of the contemporaneous imports was higher than the value declared by appellant calling for enhancement. But there was no evidence adduced by the Department to support such allegation. Accordingly no undervaluation can be alleged.

5. Shri Agrawal, ld. CA submits that the resultant exercise, on valuation aspect shall not yield significant duty or revenue. When the department failed to support its allegation bringing contemporaneous import evidence, Revenue's contention is liable to the rejected.

6. Contentions of Shri Agrawal on the issue of undervaluation arising as above was examined. His averments are found to be correct when Revenue failed to discharge burden of proof, [illegible] there cannot be a case of undervaluation against appellant even though learned DR supports orders of the Adjudicating Authority below.

7. In the result, the appeal is allowed to the extent indicated above.

(Rakesh Kumar) 17/7/14
Technical Member

15/7/2014
(D.N. Panda)
Judicial Member

Ckp.

(5)

FAX : 011-26108426

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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: **25/10/2016**

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

Stay/Misc Order No. **MO/51274/2016-CU[DB]** dated **14/10/2016**

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.**

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/ROM/56210/2014	C/391/2009	**NAMRATA ENTERPRISES,** KHAGAL MOHALLA FULLA ROAD, JODHPUR, RAJASTHAN.
			Name and Address of Respondent
2			-C.C.(JODHPUR) HQ at New Central Revenue Building, Statue Circle, C Scheme, Jaipur 302005.

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

Om. P. Agarwal & co.
56, Section - 7, N.P.H Road,
Jodhpur,-Rajasthan

4 Bar Association, CESTAT, Delhi
5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
7 Director Publications, Customs, Excise. I.P. Estate, Delhi
8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
9 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
10 MS Knowlegde Processing Pvt. Ltd.(Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
11 TaxIndiaOnline.com Pvt. Ltd., B-XI/8183, Vasant Kunj, New Delhi - 110070
12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
13 The ICFAI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. **15** Office Copy **16** Guard File **17** Second Folder

25/10/16
Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

NOTE : The above said matter has been fixed for verification of compliance on ________________ before the Registrar.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Misc. Application No. C/ROM/56210/2014-[DB]
Appeal No. C/391/2009-[DB]

M/s Namrata Enterprises ... Appellant

Vs.

C.C.(Jodhpur) ...Respondent

Appearance:
(On Merits) for the Appellants
Sh. S.K. Sheoran (AR) for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing /decision: 14.10.2016

Misc Order No. 51274 /2016

Per Archana Wadhwa:

ROM application has been filed in terms of Final Order No. 52806 dated 4.7.2014. The appellants have made a prayer to dispose of the ROM on the basis of their grounds taken in the application. Accordingly, we have heard Ld. DR appearing for the Revenue.

2. As per the facts on records, the appellants imported used tyres with and without metallic frame. The mis-declaration as regards quantum of the tyres as also value of the same was noticed by the Revenue, ~~so~~ on the basis of which proceedings were initiated against them, resulting in enhancing the value, confiscating the goods and imposing penalties. The said penalty

was also imposed on the ground of policy violation as the appellant was not having valid license of import the goods.

3. On appeal against the order of original adjudicating authority, Commissioner (Appeals) set aside the charge of under-valuation in respect of used tyres with metallic frames. However, upheld the under valuation of tyres without metallic frames and the mis-declaration in quantum as also the findings of policy valuation. The Redemption fine (RF) was reduced to Rs. 1.75 Lakhs and penalty was reduced to Rs. 25,000/- for valuation of policy and reduced the penalty to Rs. 50,000 for mis-declaration in quantity of value.

4. The said order of Commissioner (Appeals) was challenged before the Tribunal vide its final order dated 4.7.2014, the under valuation of tyres without metallic frames was set aside. However, it seems that as there was no challenge to the mis-declaration in quantum and policy violation, the said findings were upheld.

5. The appellants grievance is that with the setting aside of enhancement of valuation, the Tribunal should have given further relief in RF and Penalty, whereas there is no discussion by the Tribunal as regards the quantum of RF and Penalty.

6. On going through the final order No. 52806 dated 4.7.2014, we find the above averments made by the appellant, to be correct. By setting aside the undervaluation aspect, the Tribunal observed that appeal is allowed to that extent, without adverting to the quantum of RF and Penalty.

7. Accordingly, we allow the ROM and proceed to decide the quantum of RF and Penalty.

8. On being questioned, Ld. DR appearing for the Revenue has not been able to give us exact differential duty amount in respect of the undervaluation. However, he has drawn our attention that the duty involvement in respect of undervaluation of both types of tyres i.e. with metallic frames and without metallic frames would be around 2.5 Lakhs. We note that out of the said, the Commissioner (Appeals) had already extended the benefit on the ground of undervaluation of metallic tyres. We also note that roughly the quantum of both the types of tyres imported by the appellant was almost identical. Thus, leading us to belief that the duty difference in respect of both the types of tyres. was almost same. Accordingly, we reduce the RF from Rs. 1.75 Lakhs to Rs. 1 Lakh and penalty of Rs. 50,000/- imposed on the said account to Rs. 25,000/-. However, we make it clear that a separate penalty of Rs. 25,000/- imposed on account of Policy violation is not being interfered with.

9. ROM application is disposed of in above terms.

(Dictated and Pronounced in the open Court)

(Ashok K. Arya)
Member(Technical) 17/10/16

(ArchanaWadhwa) 17/10/16
Member(Judicial)

Neha