FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/02/2017

To

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

Final Order No. A/70215/2017-SM[BR] dated 22/02/2017

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

Application	Appeal	Name and Address of Appellant
1	C/54608/2014	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Camco Multi Metal Limited Plot No. 73, Sector-25,,, FARIDABAD ,HARYANA

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

4 Bar Association, CESTAT, Allahabad

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

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

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No.C/54608/2014-CU[SM]

Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/84/14 dated 29.04.2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

---

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

---

Commissioner of Customs, Central Excise & Service Tax, Noida.
...APPELLANT(S)

VERSUS

M/s Camco Multi Metal Limited
...RESPONDENT (S)

APPEARANCE

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department (s)
None for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT: 29.11.2016

FINAL ORDER NO.- 70215/2017

Per Mr. Anil Choudhary :

The issue in this appeal is, whether the Ld. Commissioner (Appeals), under the fact that the respondent-assessee have lost some of the original documents including the Bill of Entry, have rightly directed to allow the refund of SAD subject to verification of the documents, observation of the procedures and compliance of the conditions for the relevant period.

2. The brief facts are that the respondent-assessee imported Aluminium scrap under various bills of entry during January, 2012 to February, 2012 and paid Customs and other duties. The imported goods were subsequently sold on payment of appropriate VAT/CST. The respondent-assessee, thereafter, filed refund claims for refund of SAD in terms of Notification No.102/2007-CUS. The SCN dated 31.05.2013 was issued proposing to reject the refund claim for non-fulfillment of condition of notification read with Circular No.06/2008 – CUS, 16/2008 – CUS and 18/2010 – CUS. The assessee replied that original bill of entry, TR-6 challan have been lost in transit and they submitted photocopy of Bills of Entry dated 01.08.2012/31.07.2012 further stating that as per para 2(e) of notification, they have filed all the relevant documents for processing of the refund claim. The Adjudicating Authority was pleased to reject the refund claim on the ground that filing original copy of Bill of Entry is a statutory requirement, which cannot be substituted by any other documents and the copy of FIR/Bills Diary, is general in nature and not specific. Being aggrieved, the respondent-assessee preferred appeal before Ld. Commissioner (Appeals), who have been pleased to allow the appeal with the direction to grant the refund by verifying the available

documents and further observing that the Adjudicating Authority erred in not accepting the photocopy of Bill of Entry. Further erred in treating the original bill of entry is a mandatory requirement for the refund claim being processed. Further observed that CBEC circular No.06/2008 -CUS provides that the jurisdictional Commissioner/Chief Commissioner of respective Custom House should ensure that there is no delay in disposal of the 4% of SAD-refund claims in terms of Notification No.102/2007 - CUS. Whenever refund claim is sanctioned, necessary defacement of the original Bill of Entry may be carried out to ensure that in no case refund is entertained on the same documents for same goods, covered under Bill of Entry again. Learned counsel further urged that on the reading of notification together with the aforementioned circulars, the list of documents do not include the original Bill of Entry. It was also observed that where original Bill of Entry or challan is missing, even assuming that the original challan or bill of entry is missing and that such document is necessary for processing the refund, nothing prevents the authority from making the refund after obtaining an indemnity bond, though legally that even is not mandatory. If assessee has lost original document that does not mean that, he should loose his right to claim legitimate refund, due to him, for that reason alone. It is a usual practice in such cases to make refund after obtaining an indemnity bond, which would certainly safeguard the interest of the Revenue, in the matter against any possible future claim on the basis of the missing document. It was also urged that the respondent-assessee have submitted photocopy of Bill of Entry duly attested by the Bank and accordingly, the rejection of refund claim was rightly held to be bad. The learned counsel have also urged that in the enclosed copy of the intimation given to the Police Station, Suraj Nagar, wherein the date of acknowledgement is shown as 01.08.2014, the same is inclusive of two list, one for the bill of entry and other for TR-6 challans.

3. The Ld. AR for Revenue, relies on the Order-in-Original and the grounds of appeal of the Revenue. The grounds of the revenue are that as the CBEC Circular prescribes for defacement of the bill of entry, on grant of refund, the filing of original bill of entry is essential and no refund can be granted in absence of the same.

4. Having considered the rival contentions, I find that bill of entry is nowhere required to be submitted in original. Secondly, the Circular No.06/2008 – CUS provides that the Bill of Entry may be defaced. The word may indicate that it would be preferably done but not essentially done. Accordingly, it is held that the filing of the original Bill of Entry is not an essential document for processing of refund in terms of Notification No.102/2007–CUS read with Notification No.06/2008 – CUS. Accordingly, I hold that there is no error in the order of the Ld. Commissioner (Appeals). Hence, the appeal of Revenue is dismissed. The Adjudicating Authority is directed to grant the refund within a period of 60 days from the receipt of a copy of this order, if not granted so far, with interest as per rules.

(Dictated & Pronounced in the open Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
23/03/17

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001