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: 29/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70316/2017-SM[BR] dated 22/03/2017

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/54832/2014	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307

	Name and Address of Respondent
2	Progressive Alloys I Pvt Ltd 26/7, Village Sahibabad, Daulatpur,,, DELHI,

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

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

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

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

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

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

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

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

Asstt. Registrar

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

Appeal No. C/54832/2014-CU[SM]

Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/112/14 dated 29.05.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida.

Commissioner of Customs & Central Excise, Noida ...APPELLANT

VERSUS

M/s Progressive Alloys(I) Pvt. Ltd. ...RESPONDENT

APPEARANCE

Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department.
None for assessee-respondent.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 22. 03. 2017

FINAL ORDER NO.- 70316/2017

Per Mr. Anil Choudhary :

The issue in this appeal by the Revenue is whether the refund claim of S.A.D. (Special Additional Duty in lieu of Sales Tax) paid at the time of import have been rightly refused on the failure of the respondent to file original copy of the bill of entry and the relevant challans.

2. The respondent-assessee an importer, had imported Nickel Cathode under bill of entry No. 7545351 dated 31/07/2012. The imported goods were subsequently sold on payment of appropriate

VAT/CST and thereafter the respondent filed refund claim for Rs.5,50,103/-. The respondent could not submit the original copy of bill of entry and the respective challans as they had been lost by him. The respondent, at the time of filing the refund claim on 26/07/2013 had also filed copy of FIR and an indemnity bond in respect of the lost bill of entry and respective challans. The Adjudicating Authority vide impugned order denied the refund claim of Rs. 5,50,103/- as the respondent could not submit the original bill of entry and the relevant challans. The Adjudicating Authority neither issued a deficiency memo nor issued show cause notice, thereby denied any opportunity of hearing. The learned Commissioner (Appeals) took notice of the facts that the Adjudicating Authority failed to consider the FIR and the indemnity bond filed. Further, the Adjudicating Authority failed to follow the law and procedure adopted by the Customs Department in case of loss of bill of entry and TR-6 Challans. However, the documents on record of the Adjudicating Authority like copy of bill of entry and TR-6 Challan, C.A. certificate, self declaration, sale invoices, Ledger account, documents evidencing payment of appropriate VAT etc. were rejected without giving any reason and/or opportunity of hearing. The learned counsel also took notice of the finding recorded by the Authority below that he found that the respondent have fulfilled all the required conditions as per the provisions of Notification No. 102/2007-CUS readwith Board Circular No. 6/2008-CUs readwith Circular No. 16/2008-CUS and failed to follow the instructions of the Board. The learned Commissioner (Appeals) took notice of the provisions of law that filing of original bill of entry and/or original TR-6 Challan is not a prerequisite for processing of refund claim under

Avr

Notification No. 102/2007. Accordingly, in view of the Board circulars, he directed the court below to allow the refund subject to verification of the documents on record.

3. Being aggrieved the Revenue is in appeal before this Tribunal on the ground that Para-II of CBEC Circular No. 16/2008-CUS provides –

> *"Wherever refund claims are sanctioned necessary defacement of the original bill of entry may be carried out in order to ensure that in no case refund is entertained on the same grounds for same goods covered under a bill of entry again".*

4. Having considered the grounds of appeal of Revenue and on perusal of the records I hold that filing of original bill of entry and/or TR-6 Challan is not a mandatory or essential document for the processing of refund under Notification No. 102/2007-CUS. Accordingly, I direct the Adjudicating Authority to complete the verification process within a period of 60 days from the date of receipt of the copy of this order, if not done so far, and to disburse the refund immediately thereafter with interest as per Rules.

5. Thus, appeal of Revenue is dismissed. The respondent-assessee is entitiled to consequential benefits in accordance with law.

(Order was dictated in the open Court)

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

patel/-

प्रमाणित प्रति / Certified True Copy
23/04/2017
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