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: **27/03/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51182/2014-CU[DB]** dated **13/03/2014**

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/348/2009	**SURYANSH DIMONDS PVT. LTD.** SATYA CHAMBERS,2366, RAJGURU ROAD,PHARGANJ, NEW DELHI-110055
		Name and Address of Respondent
2	C/348/2009	**C.C. NEW DELHI (IMPORT & GENERAL)** New Custom House, Near I.G.I. Airport, New Delhi 110037.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

J. S. SINHA
4-E, 4TH FLOOR,
WORLD TRADE TOWER
BARAKHAMBA LANE,
NEW DELHI-01

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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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH
Court No.2

Date of hearing/Decision: 13.03.2014

<u>Appeal No.C/348/2009</u>

(Arising out of OIA No.CC(A)/Cus/ACU/100 to 103/2009 dated 30.4.09 dated 20.5.2013 passed by CC(Appeals), New Delhi)

M/s.Suryansh Diomonds Pvt.Ltd. **Appellant**

Vs.

CC, Import & General, New Delhi **Respondent**

Present for the Appellant: Sh.J.S.Sinha, Advocate
Present for the Respondent: Shri Rakesh Puri, DR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

FINAL ORDER No. 51182/2014

PER: D.N.PANDA

Learned Counsel submits that goods imported were eligible to benefit of concessional rate of duty under Notification No.21/02-Cus dated 1.3.2002. When appeal was filed against denial of benefit of exemption notification in the first round of litigation, the Tribunal remanded the matter condoning the delay for hearing the appeal on merit by learned Commissioner (Appeals). Consequent to remand by Tribunal by order dated 6.6.2008, learned Commissioner (Appeals) examined the issue but held that no claim of concessional rate of duty benefit at a belated stage calls for rectification under section 154 of Customs Act, 1962 (hereinafter referred to as "The Act").

2. It is the submission of appellant that substantial relief claimed is neither clerical error nor arithmetic mistake to invoke section 154 of the Act. Accordingly learned Commissioner (Appeals) should have examined the issue since similar such benefit has been given at the Bombay port to the same appellant. Therefore learned Commissioner (Appeals) should re-examine the benefit of exemption notification claimed.

3. Revenue agrees for re-examination of the matter by Commissioner (Appeals).

4. Apparent reading of section 154 of the Act throws light that the said section does not take care of the cases which require a detailed enquiry or discovery of facts since apparent mistakes are only meant to be corrected by that section. Substantial relief claim of the appellant requires examination by learned Commissioner (Appeals). Eligibility of the appellant to the concessional rate of duty under notification above whether permissible under the law needs to be ascertained. This is substantial question of facts and law. Accordingly controversy go out of purview of section 154 of the Act. We therefore send back the appeal to the Commissioner (Appeals) to call for all the details from Bombay Customs to look into the issue while examining the

present case afresh in light of law as well as requirement of the notification in question.

5. By this order, we do not say that learned Commissioner (Appeals) shall be merely guided by order passed by Bombay Customs. He shall examine the issue independently and pass appropriate order. At this stage, learned Advocate says that if time limit is prescribed appellant shall get justice expeditiously. There is no difficulty to entertain such prayer. If the appellant makes an application within one month of receipt of this order to the Commissioner (Appeals) for fixing of date of hearing, that authority shall fix appropriate date and granting fair opportunity of hearing to the appellant shall pass appropriate order within three months of conclusion of hearing.

6. In the result, appeal is remanded back to the Commissioner (Appeals) with the aforesaid direction.

(Dictated & pronounced in the open court)

25.3.2014	24.3.2014
(MANMOHAN SINGH)	**(D.N.PANDA)**
TECHNICAL MEMBER	**JUDICIAL MEMBER**

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