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**CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**
**SINGLE MEMBER APPEAL BRANCH**

Appeal No. C/207 /2008 – SM[BR] Date 31/10/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. KANPUR
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant
Vs
M/S UNIQUE INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1396 /2008- **SM[BR]** dated **22.102008**

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

**Copy to :**
1. Respondent
   M/S UNIQUE INTERNATIONAL
   980-D, WAZIDPUR,
   JAJMAU,
   KANPUR.
2. Adv. / Consult
   NONE;--------

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

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

## Custom Appeal No. 207 of 2008-SM

(Arising out of Order-in-Appeal No. 395/CUS/APPL/KNP/2008 dated 17.1.2008 passed by the Commissioner (Appeals), Central Excise & Service Tax, Kanpur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

| | | |
|---|---|---|
| **1.** | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | |
| **2.** | Whether it would be released under Rule 27 of the 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. | |

CC, Kanpur — Appellant

Vs.

M/s Unique International — Respondent

Appearance:
Shri R.K. Verma, DR - For appellant
None - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 22.10.2008

Final Order No. 1396/08-SM(BR)....dated 22.10.08

***Per S.S. Kang:***

When the case was called none appeared on behalf of the respondent in spite of notice, therefore, appeal is being taken up in absence of the respondent.

2. Heard ld. DR. Revenue filed this appeal against the impugned order whereby Commissioner (Appeals) given a direction in a refund claim to recheck the correct amount of freight includible in the assessable value for the purpose of calculating the custom duty. The Commissioner (Appeals) further held that if it is found to be lesser, as claimed by the importer, the refund of excess amount should be sanctioned and should not be denied on technical grounds.

3. The contention of the Revenue is that the appellant made import of goods and filed a Bill of Entry by mentioning the freight on which Custom duty was payable. The Bill of Entry was assessed by the proper officer and as per the assessment order duty was paid and goods were got cleared. The appellant had not challenged assessment order, however, filed a refund claim seeking the refund of excess duty paid. The contention of the Revenue is that in the case where the assessment order has been passed by the proper officer without challenging the assessment order the refund is not maintainable. The Revenue relied upon the decision of Hon'ble Supreme Court in the case of **Priya Blue Industries Vs. CCE** reported in 2004 (172) ELT 145. In the present case, the refund claim was filed by the

importer without challenging the assessment order under which the duty has been paid. The Hon'ble Supreme Court in the case of **Priya Blue Industries** (supra) held that refund claim contrary to assessment order not maintainable without order of assessment having been modified in appeal or reviewed. The officer considering refund claim cannot sit in appeal over an assessment made by a competent officer. In view of the above decision, as the refund claim was filed without challenging the assessment order, the impugned order is not sustainable hence set aside. The appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM