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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/232 /2008-SM[BR]

Date 22/05/2008

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

To :
M/S SUZUKI POWERTRAIN INDIA LTD.

MR. VINEET AGARWAL, COMPANY SECRETARY &
MANAGER LEGAL,
PLOT NO. 1, PHASE-3-A,
IMT MANESAR, GURGAON
M/S SUZUKI POWERTRAIN INDIA LTD. Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No. 800 /2008 -SM[BR]** dated **8.5.2008**

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

   C.C. NEW DELHI (IMPORT & GENERAL)

   NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

2. Adv. / Consult SHRI V.P. GUPTA CON.

   M/S APPELLANT;-------------

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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.232/08-SM

(Arising out of order in appeal No.CC(A)/Cus/I&G/D.I/338/07 dated 19.12.07 passed by the Commissioner of Central Excise (Appeals), New Delhi)

For approval and signature:

Hon'ble Mr.P.K. Das, 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?

2. Whether it should 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?

No

M/s Suzuki Powertrain India Ltd — Appellant
(Rep. by Shri V.P. Gupta, Consultant)

Vs

CCE, New Delhi — Respondent
(Rep. by Shri A.K. Rastogi, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 8.5.08

Final Order No. 850 /2008-SM(BR)

Per P.K. Das:

The Appellants filed this appeal against rejection of refund claim.

2. After hearing both the sides and on perusal of the record, I find that the Appellants filed Bill of Entry of the imported goods which was reassessed and the Appellants paid duty under protest. The Appellants also filed a refund claim for payment of excess amount of duty against the Bill of Entry. The Adjudicating Authority examined the refund claim but rejected the same on the ground that the Bill of Entry was not challenged before the Appellate Authority and followed the decision of the Hon'ble Supreme Court in the case of CCE Kanpur Vs M/s Flock India reported in 2000 (12) ELT 285 (SC). The Commissioner (Appeals) upheld the order.

3. The learned Consultant submits that the Appellants paid duty under protest against the re-assessed Bill of Entry and the Assistant Commissioner had not passed any speaking order on the re-assessed Bill of Entry and therefore, the Appellants have not filed any appeal before the Commissioner (Appeals). He submits that in view of the facts of the case, the decision of the Hon'ble Supreme Court in the case of Flock (India) (supra) is not applicable

4. The learned DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd Vs CC (Prev.) reported in 2004 (172) ELT 145 (SC) following the decision of Flock (India) Pvt Ltd (Supra) held that refund claim contrary to the assessment, is not maintainable without order of assessment having been modified in appeal.

5. After hearing both the sides and on perusal of the record, I find that in the case of Priya Blue (India) Ltd (Supra), the petitioner filed Bill of Entry. The amount of duty was paid under protest as assessed under Bill of Entry

and then filed the refund claim on the ground that duty had been wrongly levied.

6. I find that the facts in the present are identical to the case of Priya Blue Industries Ltd (Supra). In the said case, the Hon'ble Supreme Court observed that refund claim is contrary to assessment order not maintainable unless the assessment order is challenged before the Appellate Authority.

7. It is seen that the Hon'ble Supreme Court followed the earlier decision of the Supreme Court in the case of Flock (India) Ltd (Supra). In view of that, I do not find any merit in the appeal of the Appellants. Accordingly, the appeal filed by the Appellants is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*