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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/424 /2008-SM[BR] Date 11/08/2008

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant
Vs
M/S SWATCH GROUP (INDIA) PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1115 /2008 –SM[BR] dated 26.6.2008 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
   M/S SWATCH GROUP (INDIA) PVT. LTD.
   5TH FLOOR, DLF CENTRE,
   SANSAD MARG,
   NEW DELHI
2. Adv. / Consult SHRI VIVEK TITUS, REP.
   M/S RESPONDENT;-----------
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar

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

C/Appeal No.424/08-SM

(Arising out of order in appeal No.CC(A)/Cus/I&G/D.1/127/08 dated 27.2.08 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?

N

CC, New Delhi — Appellant
(Rep. by Shri B.S. Suhag, DR)

Vs

M/s Swatch Group (India) Pvt Ltd — Respondent
(Rep. by Shri Vivek Titus, Rep.)

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

Date of Hearing: 26.6.08

Final Order No. 1115 /2008-SM(BR)

Per P.K. Das:

The Revenue filed this Appeal against the order of Commissioner (Appeals) whereby the adjudication order was set aside and the refund was allowed subject to verification of factor of undue enrichment.

2. After hearing both the sides and on perusal of the record, it is seen that the Adjudicating Authority rejected the refund claim on the ground that the respondents had not challenged the Bill of Entry before the Appellate Authority. He has followed the decision of the Hon'ble Supreme Court in the case of CC Kanpur Vs Flock India Pvt Ltd reported in 2000 (120) ELT 285 (SC).

3. The Commissioner (Appeals) allowed the refund claim. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"In the present case, the department did not pass any assessment order or speaking order with regard to any dispute with regard to Rate of Duty, Classification, Valuation and ITC. It is a case where excess duty was paid due to inadvertence caused because of declaration of value of the impugned goods as Rs. 2,70,000/- instead of correct value of Rs.27,000/-. Thus, excess duty was paid due to mistake apparent on record. Further, the appellant submitted a copy of B/E No. 637981 dated 14.5.07 where the RSP of the above said model was declared Rs.27,000/- and the assessing officer had cleared the same. Thus the document was on record at the time of assessment of the present case and it was a mistake in terms of section 149 of the Customs Act, 1962 and the requirement of the said Section 149 is fulfilled in the case."

4. The learned DR relied upon the decision of the Hon'ble Supreme Court in the case of Priya Blue Industries reported in 2004 (172) ELT 145. In this case, the petitioner paid the duty under protest and filed the refund claim. No appeal was filed against the Bill of Entry.

5. In the present case, the Respondents inadvertently declared the value of Rs.2,70,000/- instead of Rs.27,000/-. It appears that it is a case of mistake apparent from record which can be rectified under Section 149 of the Customs Act, 1962. So, I do not find any merit in the Appeal of the Revenue. Accordingly, the appeal is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*