TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/260 /2008-SM[BR] Date 11/08/2008

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.

C.C. (PREVENTIVE) AMRITSAR — Appellant
Vs
M/S DEV STEEL FORGING INDUSTRY — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1118 /2008 –SM[BR] dated 28.5.2008 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
   M/S DEV STEEL FORGING INDUSTRY
   SODAL ROAD, JALANDHAR.
2. Adv. / Consult SHRI SUDHDIR MALHOTRA ADV.
   13 –R, HUKAM CHAND COLONY D.A.V.COLLEGE
   JALANDHAR
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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Customs Appeal No.260 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.5/Cus/Appl/Ldh/2008 dated 11.1.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:28.5.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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

Commissioner of Customs, Amritsar ...Appellants
[Rep. by Shri A.K. Rastogi, DR]

Vs.

M/s. Dev Steel Forging Industry ....Respondent
[Rep. by Shri Sudhdir Malhotra, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No..1118/08 SM (BR)........./Dated:28.5.2008

Per P.K. Das:

The facts of the case as per records, in brief, are that the Respondent purchased DEPB Scrips No.3010003505 dated 2.5.2000 and availed exemption of customs duty on a consignment imported under Bill of Entry No.211 dated 14.7.2000. Subsequently, it was found that DGFT Authority cancelled DEPB Scrips for submission of forged shipping bills. It was found that M/s. Megna Impex had forged shipping documents. A show cause notice dated 31.7.2002 was issued proposing demand of duty and penalty on all the parties. The Adjudicating Authority confiscated the imported goods valued at Rs.20,114.00 and imposed redemption fine of Rs.10,000.00 and ordered recovery of duty ofRs.8,037.00 with interest from the Respondent, importer of the goods. He refrained from imposing penalty on the Respondent and imposed penalties on the other parties. The Commissioner (Appeals) set aside the Adjudication Order against the Respondent. Hence the Revenue filed this appeal before this Tribunal.

2. Ld. DR on behalf of the Revenue submits that it is a case of fraud and therefore, the Respondent is not entitled to get any benefit under the law. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Customs, Amritsar Vs. ATM International reported in 2008 (222) ELT 194 (P & H). He also relied upon the decision of the Tribunal in the case of Abhishek Exports Vs. Commissioner of Customs, Cochin – 2007 (208) ELT 155 (T-B).

3. Ld. Advocate on behalf of the Respondents reiterates the findings of the Commissioner (Appeals). He submits that the demand of duty is barred by limitation. He also submits that the Adjudicating Authority observed that the Respondent is a bonafide purchaser of the goods, therefore, extended period of limitation cannot be invoked. He relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Customs, Vs. M/s. Leader Valves Ltd.– 2007 (218) ELT 349 (P&H), which has been upheld by the Hon'ble Supreme Court, by Order dated 10.3.2008, in Special Civil Petition No.CC 3493/2008 (Commissioner of Customs, Jalandhar Vs. M/s. Leader Valves Ltd.).

4. After hearing both the sides and on perusal of the records, it is seen that the Adjudicating Authority observed that there is nothing on record to infer that the Respondent had purchased the freely transferable DEPB scrip otherwise in a bona fide manner and utilised the same towards debit/exemption of duty. There is no allegation that the Respondent has colluded with the exporter, who obtained the DEPB scrips by fraudulent means and the Adjudicating Authority had not imposed any penalty under Section 112 of the Customs Act, 1962 on the Respondent. Proviso to sub-section (1) of Section 28 provides that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted. In the present case, I find that there is no allegation that the importer has not paid the duty by reason of collusion or any wilful mis-statement or suppression of facts, therefore, the demand of duty on the basis of proviso to sub-section (1) of Section 28 of the Act is not sustainable.

5. The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Customs Vs. Leader Valves Ltd. (supra), on the identical issue, dismissed the Revenue's appeal, which has been upheld by the Hon'ble Supreme Court. I find that he Commissioner (Appeals) passed the order following the decision of the Hon'ble High Court in the case of Leader Valves Ltd. (supra) . Ld. DR relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of ATM International (supra), relates to whether in the facts and circumstances of the case, assessee-respondents are liable for penal action under Section 112 (b) of Customs Act, 1962, on account of fraudulent availment of

Duty Exemption Pass Book (DEPB) benefit on the basis of forged Bank Certificate of Export and Realisation (BCER). In the present case, the Adjudicating Authority held that penalty is not imposable under Section 112 of the Customs Act, 1962 on the Respondent, which were not challenged by the Revenue at any point of time. So, the case law relied upon by the ld. DR is not applicable. On the other hand, the demand of duty was confirmed, which is barred by limitation. Hence, I find that the demand of duty is not sustainable, the confiscation of the goods and imposition of redemption fine are also not maintainable. Accordingly, I do not find any reason to interfere the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 28.5.2008.

(P.K. Das)
Member (Judicial)

Ckp.