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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. E/1039/2007 – SM[BR] Date 24/02/2009

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

To :
M/S DEVIDAYAL ALUMINIUM INDS. (P) LTD.
149, G.T.ROAD, SAHIBABAD, GHAZIABAD.

M/S DEVIDAYAL ALUMINIUM INDS. (P) LTD. Appellant
Vs
C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 197 / 2009 –SM[BR] dated 9.2.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
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 Puniabi 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 AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal No. 1039 of 2007

[Arising out of order-in-appeal No. 04-CE/GZB/2007 dated 12.01.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Ghaziabad]

Date of Hearing/Decision : 09.02.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Devidayal Aluminium Inds. (P) Limited — Appellant
[Rep. by Mr. Bipin Garg, Advocate]

Versus

CCE, Ghaziabad — Respondent
[Rep. by Mr. S. K. Bhaskar, DR]

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 197/09-SM (BR)

Per M. Veeraiyan

This is an appeal against the order of the Commissioner No. 04-CE/GZB/2007 dated 12.01.2007.

2. Heard both sides.

3. The appellant manufacture aluminium racks on which they claimed classification under chapter heading No. 7616.90 attracting 20% duty and subsequently they filed a fresh classification dated 10.02.1995 seeking classification under sub-heading 9018 attracting 5% of duty. There were clearances on 10.02.1995 and 13.02.1995 paying duty at higher rate of 20%. The appellant took suo-motu credit on 16.02.1995 which was a subject matter of separate proceedings and admittedly the credit taken has been reversed later in pursuance of Tribunal's order. The appellant claimed refund on 01.08.1995 which was after several rounds of litigation finally rejected by the original authority on 21.08.2006 and the said order has been upheld by the Commissioner (Appeals).

4. Learned Advocate submits that the rejection of the refund claim is on the ground that the classification list was received by the Department only on 17.02.1995 and that cannot be given effect in respect of clearances made on 10.02.1995 and 13.02.1995. He submits that such a view will defeat the purpose of provisions relating to demand and refund.

5. Learned DR reiterates the finding of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. There is no dispute that the product in question is classifiable under sub-heading 9018 as claimed by the appellant and subject to lower rate of duty. The appellant claims that clarificatioin list has been filed on 10.02.95. The only ground on which refund is rejected is that the classification list was received only on 17.02.1995 and, therefore, cannot be given effect to clearances on 10.02.1995 and 13.02.1995. I am not in a position to agree with this view. The date of filing of the classification list, or the date of approval cannot be considered as relevant date for determining classification or eligibility of exemption. In the above said circumstances, granting of retrospective approval ~~application~~ of classification list as

permissible and within the normal period of limitation, the Department is free to demand short levy and non-levy if any and reciprocally the assessees are entitled to claim refund. The view taken by the original authority and Commissioner (Appeals) are, therefore, not sustainable. The claims are admissible on merit. The orders are set-aside and the matter remanded to the original authority to consider and sanction the refund claim if otherwise found admissible.

7. The appeal is disposed of in the above terms.

[Dictated and pronounced in the open Court]

[M. Veeraiyan]
Member (Technical)

[Pant]