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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/712 /2008 – SM[BR]

Date 11/08/2009

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 (I) PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 902 / 2009 –SM[BR] dated 28.7.2009 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 (I) PVT. LTD.
   A-216 TO 220, ANSAL CHAMBER-I, BHIKALI CAMA PLACE, NEW DELHI
2. Adv. / Consult
   NONE;--------------

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Customs Appeal No.712 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.CC(A)CUS/274/2008 dated 8.8.2008 passed by the Commissioner of Central Excise (Appeals), New Delhi]

Date of Hearing/ Decision:28.07.2008

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?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

CC, New Delhi ...Appellants
[Rep. by Shri Istikhar Baig, DR]

Vs.

M/s. Swatch Group (I) Pvt. Ltd. ...Respondent
[Rep. by None.]

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

Final Order No.902/2009 SM (BR)/Dated:28.07.2009

Per P.K. Das:

Heard ld. DR on behalf of the Revenue. None appeared on behalf of the Respondent.

2. Respondent filed refund claim of Rs.7,65,129/-. Original Authority sanctioned the refund claim following the decision of the Larger Bench in the case of M/s. Hindustan Fertilizer Corporation Vs. CC reported in 1993 (63) ELT 648 (Tribunal) and the provisions of Section 154 of the Customs Act, 1962. It has been observed by the Original Authority that the excess duty has been paid due to arithmetical mistake. Revenue filed appeal before the Commissioner (Appeals), which was rejected.

3. Hence, Revenue filed this appeal.

4. Ld. DR submits that the Larger Bench decision was over-ruled by the Five Member Bench of the Tribunal in the case of Polymer Paints Vs. CC, Bombay reported in 2001 (137) ELT 1275 (Tribunal-LB). He submits that in view of that, the respondents changed the stand before the Commissioner (Appeals) and a new case was made out as the refund is on account of short shipment. He submits that this fact was not before the Original Authority. He also submits that the Commissioner (Appeals) passed the order without examining the facts of the case.

5. After hearing ld. DR and on perusal of the records, I find force in the submission of the ld. DR. It is seen that the Commissioner (Appeals) sanctioned the refund claim on the ground of short shipment, which was not before the Original Authority. I noticed that the impugned order was passed without giving reasonable opportunity to the Revenue. It is fit and proper that the matter should be examined by the Original Authority.

5. In view of that, the impugned orders are set aside and the matter is remanded back to the Original Authority to decide the refund claim afresh after considering the submissions and evidences placed by the respondents. The appeal filed by the Revenue is allowed by way of remand.

Order dictated & pronounced in open court on 28.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.