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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/247 - 248 & 795 / 2008 -SM[BR] Date 04/09/2009

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

To :
M/S STAR PLY LAM LTD.
SCO.34, SECTOR-26-D,CHANDIGARH.

M/S STAR PLY LAM LTD. Appellant
Vs
C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1112 – 1114 / 2009-SM[BR] dated 16.7.2009 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
   C.C. (PREVENTIVE) AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult SHRI VIKRANT KAKARIA ADV.
   N/V;----------------------------------
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
18. M/S STAR PLY LAM LTD.
    SCO. 34, SECTOR 26-D, CHANDIGARH.
19. M/S STAR PLYLAM LTD.
    SCO-34, SECTOR 26 -D , CHANDIGARH

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CUSTOMS APPEAL NO. 247-248 & 795 OF 2008-SM

[Both rising out of common Order-in-Appeal No. 167 & 168/Cus/Appl/Ldh/07 dated 17.12.2007 & 41-42/CUS/REV/LDH/2008 dated 17.4.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Jallandhar (Hqr. at Chandigarh)]

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	N.
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yh.

ST/247 & 248/08

M/s. Star Ply Lam Ltd., Appellants

Vs.

CC, Amritsar Respondent

E/795/08

CC, Amritsar Appellant

Vs.

M/s. Star Ply Lam Ltd., Respondent

Appearance:

Shri Vikrant Kakaria, Advocate for the appellants/Importer;
Shri S.N. Srivastava & Shri Iskitkhar Baig, SDR for the Revenue

Coram:

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

Date of hearing/decision: 16th July, 2009

FINAL ORDER NO. 1112 TO 1114\2009 SM (BR) **dated** ____

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all are being taken together for disposal.

2.1 Relevant facts of the case, in brief, are that M/s. Star Ply Lam Ltd. (hereinafter referred to as "importer") imported Fibre board classifiable under Customs Tariff heading No. 44111300 of the Schedule to the Customs Tariff Act. They filed two bills of entry which were duly assessed to CVD @ 16% and the importer deposited the entire amount of duty. Subsequently, it was noticed that rate of CVD were reduced to 8% from 16% vide notification No. 23/2007-CE dated 3.5.2007. Hence, the importer filed applications for amendment/re-assessment of bills of entry. They have also filed refund claims for Rs. 1,85,192/- and Rs. 2,25,415/- in respect of two bills of entry. The Appraiser re-assessed the bills of entry and approved by the Asst. Commissioner, Refund claims were sanctioned on the basis of re-assessment of bills of entry. In the meantime, the importer filed two appeals against the assessed bills of entry before the Commissioner (Appeals) challenging the assessment of bills of entry. However, the importer received refund claims as per order of the Asst. Commissioner and, therefore, they requested before the Commissioner (Appeals) to permit to withdraw their appeals. By order-in-appeal dated 17.12.2007 the Commissioner (Appeals) dismissed the appeals filed by the importer as being infructuous.

2.2 Subsequently, the importer found that the Revenue filed appeal before the Commissioner (Appeals) against the orders of refund claim. By order-in-appeal dated 17.4.2008 the Commissioner (Appeals) dismissed the appeals filed by the Revenue. Hence, the Revenue filed appeal No. 795/08 against Order-in-appeal dated 17.4.2008. As the Revenue filed appeal challenging refund orders, the importer also filed appeal Nos. 247-248/08 against order-in-appeal dated 17.12.2007.

3. Learnd D.Rs. on behalf of the Revenue reiterate the grounds of appeal filed by the Revenue. They submit that the Appraiser re-assessed the bills of entry ~~which were~~ approved by the Asst. Commissioner which is not permissible under the law. They submit that assessment order is appealable order which cannot be re-assessed by the same authority. They relied upon the decision of the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. vs. C.C. (Prev.), reported in 2004 (172) ELT 145 (S.C.). Regarding appeal filed by the importer, it is contended by the

learned SDRs that importer withdrew appeal before the Commissioner (Appeals) and, therefore, no remedy is available before the Tribunal.

4. Learned Advocate on behalf of the importer submits that they have filed applications for re-assessment/amendment of bills of entry. In this context, the learned Advocate produced letter dated 29.5.2007 addressed to the Asst. Commissioner of Customs. He submits that amendment/re-assessment can be allowed after clearance of the goods. In this context, the learned Advocate relied upon the Tribunal's decision in the case of Senka Carbon Pvt. Ltd. vs. CC, Chennai, reported in 2007 (216) ELT 397 (Tri. –Chennai) and Taksal Pharma Pvt. Ltd. vs. CC, Airport, Mumbai, reported in 2008 (232) ELT 345 (Tri.-Mumbai). It is his submission that in view of the decisions of the Tribunal, appeal filed by the Revenue is liable to be rejected. Regarding appeals filed by the importer, he submits that the importer withdrew the appeals as the refund claim was received by them. He submits that they have filed appeal before Tribunal on the basis of subsequent development in the matter, as the Revenue challenged refund claims. It is his submission that after considering the subsequent development in the matter, order of the Commissioner (Appeals) in their appeal may be set aside.

5. After hearing both sides and on perusal of the records, it is seen that the importer requested for re-assessment/amendment of the bills of entry as they paid excess duty. Original authority allowed the refund claims on the basis of re-assessment of the bills of entry. Hon'ble

Supreme Court in the case of Priya Blue Industries Ltd. (supra) held that once an order of assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an appeal that order stands. The learned Advocate failed to show any provision for re-assessment of bills of entry. In any event, there is a provision for amendment of bills of entry under Section 149 of the Customs Act. In this connection, learned Advocate also drew attention of the Bench to Section 154 of the Customs Act which provides for correction of clerical mistake, etc. I find that re-assessment of bills of entry by the Appraiser and approval by the Asst. Commissioner is contrary to law, cannot be accepted. However, the appellants also requested for amendment of the bills of entry which was not considered by the original authority. The Commissioner (Appeals) proceeded on the basis of amended bills of entry even after clearance of the goods would be permissible but in the present case original authority has not amended the bills of entry and re-assessed bills of entry which is not permissible under the law.

6. The Tribunal in the case of Senka Carbon Pvt. Ltd. (supra) held that Section 149 provides for amendment of bill of entry even after the clearance of goods provided the amendment is made on the basis of documents and were available at the time the goods were cleared. As such, the impugned orders are set aside. Appeal filed by the Revenue is allowed and the matter is remanded back to the original authority to

decide afresh after considering the amendment of bills of entry in the light of the decision of the Tribunal.

7. Regarding appeal filed by the importer, I find that the importer withdrew the appeals as they got refund. Appeals were dismissed as infructuous. Submission of the learned Advocate is that order passed by the Commissioner (Appeals) would be set aside on the basis of subsequent development in the matter. I find that appeals were dismissed as infructuous and, therefore, importer may apply before the Commissioner (Appeals) to consider the matter on the basis of subsequent development and the Commissioner (Appeals) shall decide the matter in accordance with law.

8. All the appeals are disposed of in the above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK