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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/746 /2008 – SM[BR] Date 12/10/2009

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 STEEL LINKS, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1219 / 2009 –SM[BR] dated 20.8.2009 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 STEEL LINKS,
   G.T.ROAD, MANDI GOBINDGARH (PUNJAB)
2. Adv. / Consult SHRI SAURABH KAPOOR ADV.
   141, SECTOR 27-A, CHANDIGARH

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)
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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. 746 OF 2008-SM

[Arising out of Order-in-Appeal No. 106/CUS/Rev/LDH/2008 dated 2.9.2008 passed by the Commissioner (Appeals) Custom & Central Excise, 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?	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.

C.C., Amritsar Appellant

Vs.

M/s. Steel Links Respondents

Appearance:

Shri S.K. Bhaskar, SDR for the Revenue;
Shri Saurabh Kapoor, Advocate for the assessee

Coram:

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

Date of hearing/decision: 20th August, 2009

FINAL ORDER NO. 1219/2009 SM(BR) **dated** ________

Per P.K. Das:

Revenue filed this appeal against order-in-appeal No. 106/CUS/Rev/LDH/2008 dated 2.9.2008 whereby refund of Rs. 36,315/- sanctioned by the original authority, was upheld and the appeal filed by the Revenue was dismissed.

2. Learned D.R. on behalf of the Revenue reiterates the grounds of appeal. He submits that the respondents paid duty on the basis of assessed Bill of Entry. They had not challenged the Bill of Entry in respect of excess payment of duty before the Commissioner (Appeals). It is covered by the decision of the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. vs. C.C. (Preventive), reported in 2004 (172) ELT 145 (SC). He has also submitted that the assessing authority cannot re-open the assessment order.

3. Learned Advocate on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that due to clerical mistake weight of scrap in weighment slip No. 18426 was wrongly mentioned as 26.920 M.T. instead of 16.920 M.T. Thus, the respondents paid excess custom duty on 10 M.T. He also submits that re-assessment was done in accordance with the provisions of Section 149 of Customs Act, 1962. He relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of Bansal Alloys & Metals Pvt. Ltd. vs. C.C.,

Amritsar vide Order dated 9th July, 2009 in CUSAP No. 14 of 2009 (O&M).

4. After hearing both sides and on perusal of the records, I find that the Revenue has not disputed the fact in the grounds of appeal that there was a clerical mistake on the weight of scrap on weighment slip. The Commissioner (Appeals) observed that it is not the case of correction of clerical mistake or error arise from accidental slip or omission but, in this case re-assessment has been made on account of difference in earlier ascertained weight and finally ascertained weight of the goods. Thus, re-assessment was done under Section 149 of the Act, which provides amendment of documents. Proviso to Section 149 of the Act provides that no amendment on Bill of Entry or Shipping Bill or Bill of Export shall be so authorized to be amended after imported goods have been cleared for home consumption except on the basis of documentary evidences which are still exists at the time when the goods were cleared, deposited or exported, as the case may be. In the present case, it is evident that the documents as amended were in existence at the time when the goods were cleared. It is seen that the Hon'ble Punjab & Haryana High Court on the identical situation allowed the refund claim in the case of Bansal Alloys & Metal Pvt. Ltd. Finding of the Hon'ble Court is reproduced below:-

> "The competent authority under Section 27 of the Act, subject to fulfilment of the conditions laid therein, was fully

competent to exercise its discretion and in view of provisions of Section 149 of the Act permit the amendment of Bill of Entry, on the basis of documentary evidence (examination report Ex. A/1), which was in existence at the time the goods were cleared, and order refund of excess duty paid and collected. It is apparent from the record that in the present case the proper officer/assessing officer who assessed the duty and was competent under Section 149 to permit the amendment in the Bill of Entry was the Assistant Commissioner of Customs, who is also the competent authority before whom the refund application is maintainable. It is further apparent from the record that the application for refund, duly maintainable was made before the Assistant Commissioner of Customs, who vide his order dated 31.12.2007 (Annexure A/3) sanctioned the refund of excess duty. Therefore, in our considered opinion, the finding recorded by the Commissioner (Appeals) that the Assistant Commissioner was not competent to pass the refund order is not sustainable and we hold that the claim of refund of excess duty paid by the appellant-importer/assessee was maintainable and was rightly sanctioned by the competent authority. The impugned orders passed in appeal by the Commissioner (Appeals) and the learned Tribunal are thus not sustainable. Hence, the claim of refund of excess duty paid by the appellant-importer/assessee in the facts of the case is allowed."

5. Learned D.R. strongly relied upon the decision of the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. (supra). I find that the Hon'ble Punjab & Haryana High Court in the case of Bansal Alloys & Metals Pvt. Ltd. while passing the decision considered the decision of the Hon'ble Supreme Court in the case of Flock (India) Pvt. Ltd. & Priya Blue Industreis Ltd. as under:-

> "In Flock (India)'s case (supra) the question involved was with regard to rate of duty leviable under the Central Excise Act, 1944 read with Central Excise Rules. The assessee therein claimed that product in question was wrongly classified under a particular tariff item number instead it ought to be classified under a different item number and therefore, claimed refund of the differential duty. The Assessing Officer under Rule 173-B was required to make an inquiry as he deemed fit and approve the classification as he considered necessary and thereafter to make all the clearances of the goods. The case being of disputed assessment involving an adjudication process of the nature envisaged under the rules, the Hon'ble Supreme Court held that the claim for refund of assessee could not be entertained in view of the assessment order not having been challenged despite being appealable. The Hon'ble Supreme Court in Priya Blue's case (supra) followed the view expressed in Flock (India)'s case (supra) although the refund claimed by the assessee was under the Customs Act, 1962. In Priya Blue's case

(supra) the importer paid the duty assessed under protest. Therefore, it was held that without assessment order having been modified in appeal or reviewed a claim for refund could not have been made."

6. In view of the above discussion and the decision of the Hon'ble Punjab & Haryana High Court, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK