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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/511 /2009 – SM[BR]   Date 12/01/2010

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

To :
M/S REGENT STRIPS PVT.LTD
LOHA BAZAR, MANDI GOBINDGARH, PUNJAB.

M/S REGENT STRIPS PVT.LTD   Appellant
Vs
C.C. (PREVENTIVE) AMRITSAR   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 66 / 2010 –SM[BR] dated 6.1.2010 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
   MR.SAURABH KAPOOR, ADVOCATE
   11-YADVINDRA COLONY, THE MALL, PATIALA 147001
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 511 of 2009-SM

(Arising out of Order-in-Appeal No. 152-155/CUS/LDH/08 dated 28.11.2008 passed by the Commissioner of Customs (Appeals), Chandigarh)

M/s Regent Strips Pvt. Ltd. Appellant

Vs.

CC, Amritsar Respondent

Date of Hearing: 22.12.2009

Appearance :

Appeared for Appeilant - Shri Saurabh Kapoor, Advocate
Appeared for Respondent - Shri I. Baig, SDR

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 66/2010 SM (BR) dated............

Per D.N. Panda:

Both sides are in controversy as to whether the goods imported and disputed in this Appeal through four Bill of Entries were properly assessed and refund whether arises.

2. Ld. Counsel Shri Saurabh Kapoor for the Appellant submits that following four Bill of Entries with the corresponding date of payment of duty and date of examination with the date of refund application gave rise to the refund noted against each.

S.No.	B.E. No. dated	Date	Date of examination	Refund Appl. Date	Refund amount
1.	119584 17.1.08	28.1.2008	1.2.2008	1.3.2008	14982
2.	119201 7.1.2009	15.1.2008	25.1.2008	1.3.2008	9602
3.	118617 22.12.2008	24.12.2007	21.1.2008	24.12.2007	23959
4.	118617 22.12.2008	7.1.2008	7.1/22/ 25.2.2008	7.1.2008	10798

3. ld. Counsel submits that any untrue statement or information furnished in the documents in relation to assessment of duty calls for appropriate assessment under Section 17(4) of the Customs Act, 1962 (hereinafter referred to as "the Act"). While that is the proposition of law and assessment is to be done in terms of Section 17 of the said Act, proviso to Section 149 of that Act enables an importer to amend entries in Bill of Entry and other statements filed in respect of import made. The amendment if any shall not go beyond the basis of document and evidence already in existence when the goods were cleared. This right to amend the documents for appropriate assessment of duty under Section 17 has safeguard provision for appropriate assessment of duty.

4. Ld. Counsel argues that when higher duty becomes payable, Section 17(4) of the Act comes to rescue of Revenue. Similarly, no exorbitant assessment is also called for by Section 17(4) since Section 17(2) requires proper assessment of duty and levy thereof, upon examination and test to be conducted. Section 17(3) calls for examination of various relevant documents for clearance of the goods to form the same as basis of assessment. Mandate of sub-section (2) of Section 17 is to carry out examination and testing so that the duty leviable should be assessed to meet the requirement

of Section 17(1) as well as Section 17(4) of the Customs Act, 1962. Therefore neither Section 17 nor Section 149 intended any hardship to be caused nor also loss of Revenue to be caused. These two Sections have provided safeguard provisions in law both for Revenue and assessee. Therefore no assessment can be deviated from the mandate of these Sections.

5. He relies on the decision of Hon'ble High Court of Punjab & Haryana in the case of **Bansal Alloys & Metals Pvt. Ltd. Vs. CC** reported in 2009 (240) ELT 483 and places para 17 and 18 of the judgement to argue that the Hon'ble High Court has taken note of the fact of law relating to refund and taken note **Flock India's** case and **Priya Blue's** case decided by the Apex Court and reported in 2000 (120) ELT 285 (SC) and 2004 (172) ELT 145 (SC) respectively. According to him, when the assessment has not reached to finality, the Appellant is at any stage prior to that has right to modification of the documents and statement to the extent permitted by proviso to Section 149 of the Act. There should not be mis-interpretation of the law laid down by the Hon'ble High Court of Punjab & Haryana in the above case of **Bansal Alloys** (supra) to construe the meaning of assessment under Section 17 and 149 of Customs Act, 1962.

6. He further submits that when the refund claims were made by the Appellant for the amounts aforesaid, the Authority was of the view that the assessment did not giving rise for refund for which no refund shall be entertainable. Such a view is erroneous when the

assessment itself needs modification for the reason that the examination having been done on the aforesaid dates, result of such examination should have resulted with a proper assessment. But the assessee was never been intimated as to any assessment whether was done for which assessee's refund application is entertainable according to its facts and circumstances of the case in terms of proviso to Section 149 of the Act.

7. Ld. DR Shri Baig vehemently opposes to the entire submissions of the ld. Counsel on the ground that the assessment having been completed and that not been challenged, cannot be challenged by refund application subsequently in absence of any Appeal. The refund applications were rightly rejected following the decision in the case of Collector Vs. Flock (India) Pvt. Ltd. and in the case of Priya Blue(Supra).Therefore appeal of the Appellant is unsustainable.

8. Heard both sides and perused the record.

9. The issue before the ld. Commissioner (Appeals) was whether all the four refund claims of the appellant was admissible in absence of any challenge to the assessment order passed in respect of the Bill of Entries. But the Appellate order nowhere brings out when the assessment orders were passed in respect of four Bill of Entries aforesaid. Unless an assessment order has been passed under Section 17, Section 149 comes to rescue of the Appellant. The Appellant is at liberty to amend the Bill of Entries for the quantity of

the goods received upon import and such fact not controverted by examination done by Authority in terms of Section 17(2) of the Act. There was short supply of the goods by exporter. This is not in dispute. When the examination done on the aforesaid dates resulted with examined quantity noticed by the examining officer, that should have seen light of the day in the assessment order of the Authority below. In absence of the factual finding through assessment, if any, it cannot be said at this stage that the assessment was completed and that has reached to finality. There is no record available with the ld. DR to show the dates of assessment, which is required to be looked into to resolve the dispute. In view of such observations and deficiencies in the Appellate order and also law having been laid down by the Hon'ble High Court of Punjab & Haryana as to the proper assessment of the Bill of Entry in terms of Section 17 and enforcement of right permitted by Section 149 of Customs Act, 1962, the matter calls for remand to the ld. Appellate Authority below to spell out the date of assessment, if any made and result of such assessment in respect of the quantity of goods. If any assessment has not been made, proper assessment should be made for the imported quantity on the basis of examination done without any arbitraryness. All these aspects being pre-requisite for bringing the same to record for proper administration of justice, ld. Appellate Authority below shall calls for the record of the Authority below and record appropriate finding. He should take into consideration the law laid down by the Apex Court in the case of Priya Blue and Flock India (supra) as well as law laid down by the

Hon'ble High Court of Punjab & Haryana in the case of Bansal Alloys (supra) and hear the Appellant granting fair opportunity as well as pass a reasoned and speaking order.

10. In the result, the matter is remanded for proper fact finding to the ld. Appellate Authority setting aside the impugned order.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM