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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/205 /2009 – SM [BR] Date 20/10/2009

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

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

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**. 1286 / 2009 –SM[BR] dated 17.9.2009

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
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)
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Assistant Registrar
(SM Appeal Branch)

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

Customs Appeals Nos.205 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.124/REVCUS/LDH/08 dated 17.10.2008 of the Commissioner of Customs (Appeals), Chandigarh]

Date of Hearing/ Decision:17.09.2009

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? :
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

M/s. Regent Strips (P) Ltd. ...Appellants
(Rep. by Shri Saurabh Kapoor, Advocate)

Vs.

CC, Amritsar ....Respondent
(Rep. by Shri V.K. Saxena, Jt. CDR)

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

Final Order No. 1286/2009-SM(BR)/Dated:17.09.2009

<u>Per P.K. Das:</u>

The relevant facts of the case, in brief, are that the appellants filed Bill of Entry no.117140 dated 02.11.2007 for import of 102.800 M.T. of

Heavy Melting scrap and paid duty as per the assessed bill of entry on the basis of invoice.

2. Subsequently, the Customs officers examined the cargo and the said consignment was found as 95.430 MT. as per the custodian's weighment slip in respect of the containers. Thus, a quantity of 7.370 M.T. was found short. Accordingly, the appellants filed refund claim of Rs.29,701/- on 20.11.2007. The Original Authority sanctioned the refund claim. Revenue filed appeal before the Commissioner (Appeals), whereby the Adjudication Order was set aside. Hence, the appellants filed this appeal.

3. Ld. Advocate on behalf of the appellants submits that they have not challenged the classification, levy and valuation of the goods. It is his submission that the refund claim relates to short shipment, which was detected by the customs officers and the Bill of Entry can be amended under Section 149 of the Customs Act, 1962. He submits that the Commissioner (Appeals) set aside the adjudication order following the decision of the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. Vs. CC (Preventive) – 2004 (172) ELT 145 (SC), wherein the importer filed bill of entry and claimed that the duty have been wrongly levied. It is his contention that in the present case there is no such challenge by the appellant. He submits that in the facts and circumstances of the case, the decision of the Hon'ble Punjab & Haryana

High Court in the case of Bansal Alloys Metals Pvt. Ltd. Vs. CC, Amritsar - 2009 (240) ELT 483 (P&H) is squarely applicable.

4. Ld. Jt. CDR reiterates the findings of the Commissioner (Appeals). He submits that there is no dispute that the appellants paid the duty as per assessed Bill of Entry. He also submits that the appellants have not challenged the Bill of Entry before the Appellate Authority. It is his submission that the Assessing authority cannot reopen the assessed Bill of Entry. In this context, he drew the attention of the Bench to the relevant portion of the decision of the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd.(Supra) He submits that the Hon'ble Supreme Court clearly held that the officer considering a refund claim cannot sit in appeal over an assessment made by a competent officer.

5. After hearing both the sides and on perusal of the records, I find that the appellants have not disputed the classification, levy and valuation of the assessed Bill of Entry. It is revealed from the Adjudication Order that the appellants deposited the duty as per assessed Bill of Entry on the basis of invoices. The cargo was examined by the Customs Staff and found the consignment of 95.430 M.T. Thus, it is a case of short shipment of the goods, which was detected by the customs examination staff. Section 149 of the Customs Act, 1962 provided that the proper officer may in his discretion authorise any document, after it has been presented in the customs authority, to be amended except on the basis of

documentary evidence, which was re-examined at the time of clearance as the case may be. In the present case, the proper officer allowed the refund claim, after considering the documentary evidence as it was existed before clearance of the goods.

6. It is seen that the Hon'ble Punjab & Haryana High Court in the case of Bansal Alloys & Metals Pvt. Ltd. Vs. CC, Amritsar – 2009 (240) E.L.T. 483 (P&H), on the identical issue, set aside the order of the Tribunal and allowed the refund claim. The relevant portion of the said decision is reproduced below:-

> "18. In our humble opinion, keeping in view the provisions of Section 17 which does not involve the process of adjudication as envisaged under the Excise Act read with Rules under consideration in Flock (India)'s case (supra), the ratio of the cited cases is not applicable to the facts of the present case as herein there is no dispute regarding the duty leviable. It is a case of improper exercise without the authority of law by the Assessing Officer/Assistant Commissioner. In the facts of the instant case, there being no dispute regarding duty leviable on examination of goods, it was the responsibility of the assessing/proper officer to re-assess (in view of provisions of sub-section (4) of

Section 17) and correctly determine the duty leviable in accordance with law before clearing the goods for home consumption. He having failed to do so, had caused great injustice to the appellant/importer and it was open for the importer/assessee to file an application for refund under Section 27 of the Act without taking recourse to filing of an appeal. 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 exercise 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."

7. The decision was relied upon by the ld. Jt. CDR in the case of Priya Blue Industries Ltd. (supra), whereby the importer filed the refund claim on the ground that the duty had been wrongly levied. In the present case as already stated that the appellants is not contesting the levy of duty. In the case of Priya Blue Industries Ltd. (supra) the Hon'ble Supreme Court followed the earlier decision in the case of Collector Vs. Flock (India) Pvt. Ltd. - 2000 (120)) ELT 285 (SC), wherein the

assessee filed the refund claim alleging that the products in question were wrongly classified under Tariff Item No.22 B of the erstwhile Central Excise Tariff. In the present case, there is no dispute of the classification of goods. Hence, the case law relied upon by the ld. Jt.CDR would not applicable in the present case.

8. In view of the above discussions and respectfully following the decision of the Hon'ble Punjab & Haryana High Court in the case of Bansal Alloys & Metals Pvt. Ltd., the impugned order of the Commissioner (Appeals) is set aside and the order of the Original Authority is restored. The appeal filed by the appellant is allowed.

Order dictated & pronounced in open court on 17.09.2009.

(P.K. Das)
Member (Judicial)

Ckp.