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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/430 /2009-431 /2009 – SM[BR] Date 29/10/2009

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

To :
M/S SINGHANIA CHEMICALS,
577/8A, VISHWAKARMA STREET, GILL ROAD,
LUDHIANA.

M/S SINGHANIA CHEMICALS, Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1337 - 1338 / 2009 -SM[BR] dated 15.10.2009 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.G.S.BHANGOO
   H.NO. 5, SECTOR-10A, 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)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

2. M/S SINGHANIA CHEMICALS,
577/8A, VISHWAKARMA STREET, GILL ROAD, LUDHIANA.

# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
## West Block No. 2, R.K. Puram, NEW DELHI

**COURT No. III**

**CUSTOMS APPEAL NO. 430-431 of 2009-SM**

[Arising out of Order-in-Appeal No. 17-18/Rev/Ldh/09 dated 7.6.2009 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

**Dated of hearing/decision: 15th October, 2009**

**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 |

M/s. Singhania Chemicals — Appellants

Vs.

C.C., Amritsar — Respondent

**Appearance:**

Shri Vikrant Kakaria & Shri Saurab Bassi,
Advocates for the appellants;
Shri R.K. Saini, SDR for the Revenue

**Coram:**

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

**FINAL ORDER NO.** 1337-1338/2009 SM (BR) **dated**

## Per P.K. Das:

These appeals arise out of common order and, therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants filed refund claim of Rs. 5,47,146/- of Additional Customs duty in pursuance of Customs notification No. 102/2007 dated 14.9.2007. It has been alleged that the appellants had failed to fulfill the condition NO. (b) of para 2 of the said notification. The original authority sanctioned the refund claim. Revenue filed appeal before the Commissioner (Appeals) whereby order of the Adjudication authority was set aside. Hence, the appellants filed these appeals.

3. Learned Advocate on behalf of the appellants submits that notification No. 102/07-Cus (supra) requires to mention in the invoice that no credit of additional customs duty shall be admissible. He submits that the appellants had given certificate in all the invoices certifying that they have not given the credit of additional customs duty in this invoice (to the buyers). He further submits that they have produced the Chartered Accountant certificate. In addition to that they have submitted certificate from the buyers that no additional customs duty was allowed to them. Hence, the original authority rightly sanctioned the refund

claim. He submits that the Commissioner (Appeals) did not dispute any of the evidences. It is his submission that there is no requirement in the notification to mention the particular words in the invoices.

4. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that it is well settled that the conditions of the exemption notification are required to be fulfilled. He further submits that the notification requires that the words "no credit of additional duty of customs levied under Sub-section (5) of Section 3 of the Customs Tariff Act, 1975 shall be admissible," should be mentioned in the invoice. It is contended that, if the conditions of notification were violated, they are not eligible for the refund.

5. After hearing both sides and on perusal of the records, for the purpose of proper appreciation, the relevant portion of the notification is reproduced below:-

> "2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled:
>
> (a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;
>
> (b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible."

6. It appears that appellants fulfilled the condition of Clause (a) to (e) of para 2 of the said notification except it was not worded in the invoices as the words used in the notification as alleged. It is seen that the

notification requires that the said invoice shall specifically indicate that no credit of additional duty of customs shall be admissible. The appellants had given certificate on the invoices as under:-

"We do hereby certify that we have not given the credit of additional customs duty in this invoice."

7. It is apparent from the certificate that credit of additional customs duty in this invoice have not been given. There is no requirement in the notification to use particular words in the invoices. I find that the original authority, after examining the C.A. certificate and other documents sanctioned the refund on the ground that there will be no unjust enrichment as it has been mentioned on the invoices issued by them that additional custom duty shall not be admissible to customers. This fact was not disputed by the Commissioner (Appeals). Hence, there is no justification to deny the refund claim.

8. In view of the above discussion, impugned order of the Commissioner (Appeals) is set aside. Orders of the original authority are restored. Appeals filed by the appellants are allowed.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK