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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/284 /2007 - CU[DB] Date **17/01/2011**

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant

Vs

M/S PRIMA TELECOM LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order C/33/ 2011 CU|DB|** dated 14.01.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S PRIMA TELECOM LTD.
C-11, SECTOR-1, NOIDA-201301
(U.P.)
2. Adv. / Consult
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM,
NEW DELHI-110066

COURT NO. IV

Customs appeal No. 284 of 2007

[Arising out of Order-in-Appeal No. CC(A)10/ACU/D-I/2007 dated 16.1.2007 passed by the Commissioner of Customs (I&G), New Delhi]

Date of Hearing: 13th January, 2011

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial);
Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C. (I&G), New Delhi — Appellant

Vs.

M/s. Prima Telelcom Ltd., — Respondent

Present for the Appellant :Shri K.K. Jaiswal, DR
Present for the Respondent :None

Coram:Hon'ble Smt. Archana Wadhwa, Member (Judicial);
Hon'ble Shri M. Veeraiyan, Member (Tec hnical)

Final **ORDER NO.** 933/11 **DATED** 14.1.11

PER ARCHANA WADHWA:

Being aggrieved with the order passed by the Commissioner (Appeals) Revenue filed the present appeal. We have heard Shri K.K. Jaiswal, learned D.R. appearing for the Revenue.

2. As per facts on record the respondents are engaged in the manufacture of modem and multiplexes. They imported various spares and parts and filed a Bill of Entry for the same declaring various prices. Duty was paid on the declared value and the goods were cleared. However, at the time of clearing the last consignment on 4.12.2004, they detected that the value shown in two invoices by the supplier was higher than the contracted purchase price. They took up the matter with the supplier who apologized and informed that logistic department have delivered shipment under wrong invoices. They accordingly received the corrected invoices from the supplier. Payment by the respondent was made to the supplier in terms of purchase order and they subsequently received the corrected invoices. The total of the invoices was in excess of US$ 480 as compared to remittance sent to the supplier in terms of the purchase order.

3. In the above background, the respondents filed refund claim of excess duty paid by them. They also produced all the relevant documents on record along with remittance certificate from Corporation Bank, K.G. Marg, New Delhi. The Original Adjudicating Authority also called for bank attested invoices, calculation slip, C.A. certificate to show that burden of Customs duty has not passed on

to the customers and balance sheet etc. The said documents were supplied by the respondents.

4. Adjudicaing Authority examined and verified the documents and accepted the assessee's stand that the duty was paid on the higher side, by mistake. However, he rejected the refund claim on the ground that the assessment order was not put to challenge by the importer, in terms of Hon'ble Supreme Court decision in the case of Priya Blue Industries Ltd., reported in 2004 (172) ELT 145 (SC). Accordingly, he held that this is not the case covered under the provision of Section 154 of the Customs Act, 1962 i.e. correction of clerical error. He, accordingly, rejected the assessee's claim of refund.

5. On appeal filed against the adjudication order the Commissioner (Appeals) observed that the fact of showing higher value in the invoices issued by the supplier as compared to the contracted rate in the purchase order is not being disputed by the department. He also noticed that the supplier of the goods has submitted a written apology vide their letter dated 10.1.2005. They had also sent revised invoices. The payment to the overseas supplier is as per purchase order and in terms of the revised invoices. He also observed that the adjudicating authority has not disputed or challenged the above fact. He, accordingly, allowed the appeal by observing as under:-

"From the above it is clearly established that it is a case of omission covered under section 154 of the Customs Act 1962.

Section 154 of the Customs Act 1962 empowers the proper officer of the customs to make correction in any decision or order arising therein from any accidental slip or omission. As could be seen that the excess duty has been paid due to incorrect invoices raised by the overseas supplier who has also submitted apology in this regard. The Appellant also filed the Bills of Entry on the basis of the value mentioned in the invoices without comparing the same with the contracted price. Therefore the excess duty was paid on account of the accidental slip or omission and is covered under section 154 of the Customs Act 1962. The observation made by the Adjudicating Authority in this regard that the case is not covered under section 154 is incorrect."

6. Revenue is aggrieved with the said order, and hence, the present appeal. After going through the grounds of appeal, we find that the fact of wrong invoices issued by the supplier does not stand disputed by the department. If that be so, this is a clear case of wrong calculation and clerical error. In view of this, ratio of Supreme Court decision in the case of Priya Blue Industries Ltd. (supra) would not be applicable. In fact, we note that there was no 'lis' between importer and the department challenging the assessment order. This being a case of wrong mentioning of the price in the invoice, other than the one agreed upon purchase order, is a clear case of clerical error covered by the provision of Section 154 of the Customs Act. No infirmity can be found in the order of

the Commissioner (Appeals). We, accordingly, reject the appeal filed by the Revenue.

(Pronounced in the open Court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

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