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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/734 /2007 - CU[DB] Date **26/04/2012**

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

To :
M/S ANUPAM PRODUCTS LTD.
69, SHIVAJI MARG, NAJAFGARH ROAD,
NEW DELHI – 110 015

M/S ANUPAM PRODUCTS LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/119/ 2012 CU[DB]** dated 28.03.2012 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
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult
MR.M.A.RANGASWAMY,ADV
D-2, DEFENCE COLONY,NEW DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar

(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3

Customs Appeal No.734/2007

(Arising out of OIA No.CC(A)/CUS/ICD/D-II/Rev./156/07 dt.9.10.07 passed by the CCE(A), New Customs House, New Delhi-37)

Date of Hearing/Decision: 28.03.2012

For approval and signature:
Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, 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.

M/s.Anupam Products Ltd. — Appellant

Vs

CC, ICD, TKD, New Delhi. — Respondent

Present for the Appellant: Shri Naveen Mullick, Advocate
Present for the Respondent: Shri K.P.Singh, AR

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** C/A/119/12-Cus'

PER: ARCHANA WADHWA

The appellant imported electrolytic Tinplate sheets prima, for use as inputs in their own factory, who is manufacturing the tin containers. They filed bill of entry for clearance of the same by discharging basic customs duty @ 10%. However, subsequently, they filed refund claim on 15.4.05, for Rs.99,234/- on the ground that BCD chargeable under customs heading 72.10 was @ 5% whereas they had paid BCD @ 10%.

2. The said refund claim was adjudicated by the Assistant Commissioner. He sought verification from the concerned appraising group, who clarified that the goods ~~have been~~ attracted @ 5% BCD in terms of Notification No.21/2002-Cus dt.1.3.02, whereas the appellant have actually paid higher BCD. In view of the above, he sanctioned the refund claim of Rs.85,584/-, after taking note of the quantum of mdovat credit availed by the appellant. The said order of the Assistant Commissioner was appealed against by the Revenue before the Commissioner (Appeals).

3. The appellant authority vide his impugned order allowed the Revenue's appeal on the sole ground that the assessment order was not put to challenge by the importer and as such, in terms of law declared by the Hon'ble Supreme Court in the case of Priya Blue Industries vs. CCE-2004 (172) ELT 145 (SC), the refund cannot be sanctioned to the appellant.

4. The said order of the Commissioner (Appeals) is challenged before us.

5. After hearing both sides, we find that the rate of basic customs duty, in respect of imported goods was @ 5%, whereas the appellant had discharged their duty liability @ 10%. The sole ground on which the Commissioner (Appeals) set aside the Assistant Commissioner's

order was that the importer had not filed any appeal against the assessment order and have directly filed the refund claim. He has observed that without setting aside the assessed bill of entry, refund claimed by the appellant, cannot be sanctioned.

6. We find that no doubt the law on the above issue stands declared by the Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. However, applicability of the said declaration of law by the Supreme Court was examined by the Hon'ble Delhi High Court in the case of Aman Medical Products Ltd. vs. CC, Delhi-2010 (250) ELT 30 (Del.), wherein it was held that the assessment order is required to be challenged by the assessee when there is dispute or 'lis' between the importer and the Revenue. In the absence of any adversarial assessment order, non filing of appeal against the assessed bill of entry, where there is no 'lis' between the importer and the Revenue at the time of clearance of the goods, will not debar importer of his right to file refund claim. The above finding stand arrived at by the Hon'ble Delhi High Court after examining the provision of section 27 of Customs Act, 1962. In the present case also, we find that there is no 'contest' or 'lis' between the appellant and the department at the time of clearance of the goods. The~~y~~ payment of higher rate of duty by the appellant is by way of inadvertent mistake without taking the benefit of notification. Admittedly, the benefit of said notification, was available to the importer. As such, it is clear case of payment of higher duty due to ignorance. Identical facts were available in the case of Aman Medical Products Ltd. decided by the Delhi High Court. As such, we are of the view that the appellants are

entitled to refund of excess duty paid by them. Accordingly, the impugned order is set aside and the order of the original authority is restored.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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