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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 07/07/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/52086-52088/2015-CU[DB] dated 13/05/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar(CUSTOMS Appeal Branch)

Application

Appeal

Name and Address of Appellant

1 C/Stay/698/2010 C/109/2010

**GLOBAL ASSOCIATES,
1/24 WHS KIRTI NAGAR,
NEW DELHI.**

2 C/Stay/699/2010 C/110/2010

**SH. VINOD KUMAR GUPTA
PARTNER OF
M/S GLOBAL ASSOCIATES,
1/24 WHS KIRTI NAGAR,
NEW DELHI.**

3 C/Stay/700/2010 C/111/2010

**SH. SURESH GUPTA
PARTNER OF
M/S GLOBAL ASSOCIATES,
1/24 WHS KIRTI NAGAR,
NEW DELHI.**

Name and Address of
Respondent

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**-C.C. (ICD) NEW DELHI
ICD, Tughlakabad, New Delhi
110020.**

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**-C.C. (ICD) NEW DELHI
ICD, Tughlakabad, New Delhi
110020.**

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

**K. K. Anand, Advocate
A-103, DEFENCE COLONY,
NEW DELHI,-110024**

8 Additional Party's Name & Address :

9 Bar Association, CESTAT, Delhi

10 Director Publications, Customs, Excise, I.P. Estate, Delhi

11 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

12 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

13 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

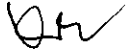
14 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

18 C.D.R. 19 Office Copy 20 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.**

Date of Hearing: 13.05.2015

For Approval & Signature :

**Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal Nos.C/109 - 111/2010-CU[DB]

[Arising out of Order-in-Original No.82/2009, dated 30.12.2009 passed by the CC, ICD, TKD, New Delhi]

M/s. Global Associates
Shri Vinod Kumar Gupta
Shri Suresh Gupta

Appellants

Vs.

CC, ICD, TKD, New Delhi

Respondents

Appearance

Ms. Surabhi Sinha, Advocate

- for the appellants

Ms. Suchitra Sharma, DR

- for the respondents

**CORAM: Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

Final Order Nos.52086 – 52088/2015, dated 13.05.2015



Per Mr. R.K. Singh:

Appeals have been filed against Order-in-Original No.82/2009, dated 30.12.2009 in terms of which a differential duty of Rs.3,03,521/- was demanded on 80 MT. of what the appellant declared to be Diethyl Hexyl Pthalate (DEHP) and penalties imposed on the appellant- assessee as well as on its partners Shri V.K. Gupata and Shri Suresh Gupta.

2. The appellant–assessee had imported 320 MT of what it declared to be DEHP, but filed Bill of Entry for only 80 MT thereof. The goods were allowed clearance after provisional assessment with the condition that the appellant would abide by the decision of the adjudicating authority in respect of the Show Cause Notice issued by Preventive Commissionerate, New Delhi under Section 18 of the Customs Act, 1962. The allegation against the appellant was that it had mis-declared Di-Octyl Pthalate (DOP) as DEHP and thereby undervalued the goods and evaded the impugned amount of duty. The primary adjudicating authority, after considering the matter essentially concluded as under:-

“19.12 From the foregoing discussion and technical material particularly the MSDS (Material safety data sheet) of the manufacturers of the goods in question it clear that DOP and DEHP possess the same characteristics. I observe that the investigations conducted in the case and the statements of Sh. Shishir Srivastava and Shri C.D. Anand also indicate that both these products can be alternatively used. While DEHP is chemically described in the invoice as Di Ethyl Pthalate and DOP as Di-Octyl Phthalate, DEHP (CAS No.[117-81-7] is also known as Di-octyl Phthalate (DOP). It is the phthalate ester of the alcohol 2-ethyl hexanol. (Source: DEHP information centre). The contentions of the importers to the contrary are at best an after thought and are, therefore, liable to be rejected, of the two

synonymous, that is DOP and DEHP, the latter happens to be more commonly used in the international market. However due to certain health concerns the trading activities of DEHP declined prompting the unscrupulous elements in India to exploit the situation where the product has been known as DOP and not as DEHP. They saw an opportunity to change the nomenclature of the product and undervalue it amidst publicized health concerns of the product DEHP. I further observe that since DEHP and DOP are same products and declared assessable value in the Bill of entry is liable to be rejected and should be determined at the contemporary prevalent rates in terms of Rule 5 of the Customs Valuation Rules as proposed in the SCN.

19.13 From the above, I found that the department is able to discharge its onus to classify the goods correctly as DOP and do the valuation correctly. Hence, none of the case laws submitted in the defense of the party regarding onus of classification needs to be discussed. The argument that the party was not bound to disclose all the synonymous of the goods, under import, also does not hold much water as proper declaration of synonymous would have led the party to pay higher rate of duty. **This shows that there is a conscious effort on the part of the party to mis-declare by not declaring the synonyms and avail payment of lesser duty.** (emphasis added)

Having thus concluded he passed the impugned order confirming the aforesaid demand, interest and penalties.

3. The appellant has contended that (i) the impugned goods were provisionally released under the condition that it will abide by the decision of the adjudicating authority in respect of Show Cause Notice issued by Preventive Commissionerate, New Delhi. The said Show Cause Notice issued by the Preventive Commissionerate, New Delhi was dropped vide Order-in-Original No.15/Commr/HKT/09, dated



29.07.2009, but the commissioner (the adjudicating authority in the present case) has not followed the same, thereby disregarding the judicial discipline. (ii) There is no evidence of any under-valuation and no grounds have given for rejecting the transaction value. Even if it is conceded that DEHP and DOP are same product, there was no mis-declaration as there was no requirement of declaring all the synonyms of the goods imported. The chemicals can be of different quality and while revising the value, the adjudicating authority has not taken into account the quality of the product. It cited the CESTAT judgement in the case of **CC, New Delhi Vs. Vee Kay Polycoats Ltd. [2013 (292) ELT 254 (Tri. – Del.)]** wherein it was held that DEHP and DOP, though can be used inter-changeably are different products although in several respects they are similar also.

4. Ld. Departmental Representative essentially supported the impugned order.

5. We have considered the contentions of the appellant and also perused the impugned order. We find that the adjudicating authority has come to a finding that DEHP and DOP are the same product and therefore the declared assessable in the Bill of Entry is liable to be rejected. We find this argument ~~is~~ rather untenable in-as-much-as even if DEHP and DOP are the same product in the opinion of the adjudicating authority, it does not follow therefrom that the appellant had mis-declared the goods as DEHP in place of DOP and if there is no mis-declaration, then the very ground for rejecting the transaction value disappears. To hold the appellant guilty of mis-declaration on the ground that it did not mention in the Bill of Entry all the synomys of the

impugned goods is completely devoid of logic, reason, rationale and legal basis. There is no requirement under Customs law that all the synonyms of the goods imported must be declared failing which it will be tantamount to mis-declaration. The contention of the appellant is that the impugned goods were released provisionally on the condition that it (the appellant) would abide by the decision of the adjudicating authority in respect of Show Cause Notice issued by the Preventive Commissionerate and that Show Cause Notice has been adjudicated in favour of the appellant and therefore the commissioner in the present case should have followed the said decision also has force but notwithstanding that we do not find any basis to reject the transaction value on the basis of the observations of the adjudicating authority that *"due to certain health concerns, the trading activity of the DEHP declined prompting the unscrupulous elements in India to exploit the situation where the product has been known as DOP and not as DEHP. They saw an opportunity to change the nomenclature of the product and undervalue it amidst publicized health concerns of the product DEHP"*. At best, the said observations could be a ground for raising suspicion but are devoid of any evidentiary basis. Indeed in the case of *CC, New Delhi Vs. Vee Kay Polycoats Ltd. (supra)*, CESTAT held that the technical literature shows that DOP and DEHP are used interchangeably and that the contention of manufacturer of the products and importer cannot be brushed aside that the products were different in quality and price. Indeed in para 13 of the said order, CESTAT observed as under:-

"13. The evidences produced by Revenue can at best create a doubt but cannot prove a case of undervaluation because of three main reasons. Firstly, the case is made about quality of

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goods which are already cleared and there are no samples of goods available to prove or disprove the rival submissions about quality. Secondly, no investigations are carried out about the claim that the goods in question were in fact sold at low prices, corresponding to the import prices, to end users. Thirdly, there is no proof of remittance of any additional amount by the importer to the supplier abroad."

6. In the light of the foregoing analysis, we do not find the impugned order sustainable and therefore the same is set aside and the appeals allowed.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

SSK