

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

Dated: 02/07/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/52064/2015-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/1121/2010, C/202/2010 C/MISC/518/2010		HINGORA INDUSTRIES LTD.(TRADING DIVISION) 104, Empire State Building, Ring Road, Surat, Gujarat.
		Name and Address of Respondent
2		-C.C.E. INDORE Manik Bagh Palace, Post Box No. 10. Indore 452001 (M.P.)

Copy To

3 Advocate(s) / Consultant(s):

**Alok Barthwal, Adv
227-B&C BASNI TRADE
CENTER,
581/5, M.G. ROAD,
INDORE,
MADHYA PRADESH**

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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

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

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

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

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

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

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

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

14 C.D.R. 15 Office Copy 16 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 : 13.5.2015

Appeal No. C/202/2010-CU(DB)

(Arising out of Order-in-Appeal No. IND-I/229/209 dated 30.9.2009 passed by the Commissioner (Appeals), Central Excise & Customs, Indore)

For Approval & Signature :

Hon'ble Mr. 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?	
2.	Whether it would 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 Department Authorities?	

M/s Hingora Industries Ltd.

Appellant

Vs.

CCE, Indore

Respondent

Appearance:

None - for the Appellant

Ms. Suchitra Sharma, D.R. - for the Respondent

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

F. Order No. 52064/2015

Per R.K. Singh :

Appeal is filed against Order-in-Appeal No IND – I/229/2009 dated 30/09/2009 which upheld the order in original dated 23/02/2008 in terms of which the assessable value of polyester partially oriented yarn imported by the appellant was revised upwards from US dollars 0.70 per Kg. USD 0.91 per kilogram.

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2. Briefly stated, the appellant had entered into an agreement with the supplier to import 10,000 Mts. of polyester partially oriented yarn in two phases for which discounted price of US dollars 0.70 per kilogram was negotiated. It imported the said goods at the said price but before the entire quantity as per the contract could be imported, anti-dumping duty was imposed making the import of the said goods unviable and therefore the appellant stopped importing the goods after the imposition of anti-dumping duty and the supplier also cancelled the agreement and did not charge any extra amounts for the goods already supplied at the rate of US dollars 0.70 per kilogram. The primary adjudicating authority revised the value upwards on the ground that as the entire quantity as per the contract had not been imported, the appellants were not entitled to various discounts as per the said contract.

3. Although no one has appeared on behalf of the appellant, as there is no request for adjournment either, we proceed to decide the appeal on merit. The appellant in its appeal has contended that they had imported more than 6600 Mts. of the said goods up to the time when the anti-dumping duty was imposed making further imports unviable and that the supplier understood the reasons for its not importing any more and did not charge any additional amount for cancelling the contract. Thus, for the imports the transaction value was US dollars 0.70 per Kg. and therefore

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there was no basis for revising the value upwards to US \$ 0.91 Kg.

4. The Ld D.R. contended that as the discounts were based upon the import of the contracted ^{quantity}~~quality~~, the discounts could not be permitted and so the revision of value was sustainable.

5. We have considered the contentions of both sides. It is a fact that the entire quantity as per the contract was not imported and only a quantity of about 6600 MTs. was imported when the anti-dumping duty was imposed making further imports unviable for the appellant. It is also a fact that the supplier did not demand any additional amount on the ground that the entire quantity as per the contract was not imported. It is not the Revenue's case that any additional amount was paid to the suppliers for the goods already imported for not importing the entire quantity as per the contract. Indeed there was a very valid reason for not importing the entire contracted quantity because the imposition of anti-dumping duty, which could not have been foreseen at the time of entering into the contract, made the imports unviable for the appellant. Thus, it was not a case of manipulation or stratagem. The transaction value remained US \$ 0.70 Kg. and there is no legal basis to reject the same. We find that earlier also in the appellant's own case, the Commissioner (Appeals) vide Order-in-Appeal No. IND-I/12/2005 dated 28.1.2005 had ordered

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finalisation of provisional assessment at the contracted rate of US dollars 0.74 per Kg. in spite of the fact that the entire quantity as per the contract had not been imported. Appeal against the said order in appeal dated 28/01/2005 filed by Revenue before CESTAT was dismissed vide final order No. C/232/2003 dated 11.6.2008. Still at the time of finalisation, the value was revised upwards to USD 0.86 per Kg vide order in original No. 41/customs/final assessment/ICD/Pith/2009 dated 05/03/2009 essentially on the ground that the appellant had not imported the entire quantity as per the condition of the agreement. The appeal against the said order in original was decided in favour of the appellant vide Order-in-Appeal No. IND-I/157/2009 dated 30/7/2009. The Revenue's appeal against the same order in original dated 05/03/2009 was dismissed by Commissioner (Appeals) vide Order-In-Appeal No. IND-I/209/2009 dated 18.9.2009.

6. In the light of the analysis above, we set aside impugned order and allow the appeal.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

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