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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

Dated: **31/10/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/54162/2014-CU[DB]** dated **22/10/2014**

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/392/2009	**M.R.TRACTOR & TROLLEY,** DALDA BUILDING CHOPSANI ROAD, JODHPUR, (RAJ.)
		Name and Address of Respondent
2		**C.C.(JODHPUR)** HQ at New Central Revenue Building, Statue Circle, C Scheme, Jaipur 302005.

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Copy To
3 Advocate(s) / Consultant(s):

Om. P. Agarwal & co.
56, Section - 7, N.P.H Road,
Jodhpur,Rajasthan

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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 CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:22/10/2014

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	N.
2	Whether it should be released under Rule 26 of 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

Customs Appeal No.C/392/2009-CU(DB)

M.R. Tractor & Trolley — Appellants

Vs.

CC, Jodhpur — Respondent

Appearance:
Shri O.P. Agarwal, C.A. for the appellants.
Shri Amresh Jain, AR for the respondent.

Coram:
Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Technical Member

Final Order No. 54162 /Dated:22.10 2014

Per Archana Wadhwa:

After hearing both the sides, we find that the appellants imported a consignment of old and used tyres with a declared value of Rs.5,72,765/-. Inasmuch as the importation of used and old tyres is restricted and requires a licence in terms of the Foreign Trade Policy, the consignment was not ~~declared~~ cleared by the Customs, as the appellant could not produce the licence. The issue as regards the valuation of the consignment was also taken up and a belief was entertained that the value declared by the appellant is on the lower side. It was also found that as against the declared quantity of 2637 pieces of tyres, the actual number was found to be 2661 pieces.

2. For all the above reasons, proceedings were initiated against the appellant proposing enhancement of the value, based upon some contemporaneous imports, confiscation of the goods on the charges of the mis-declararation in quantity, undervaluation and non-production of the licence.

3. The said proceedings resulted in passing of an order passed by the original adjudicating authority establishing the charge of mis-declararation in quantity as also non-production of the licence. The Adjudicating Authority also enhanced value to Rs.15,87,652/-. He further confiscated the goods with an option to the assessee to redeem the same on payment of redemption fine of Rs. 3 Lakhs and imposed penalty of Rs.50,000/-.

4. On appeal against the above order, the Commissioner (Appeals) upheld the ~~valuation~~ violation of the provisions of the Foreign Trade Policy. However, as regards valuation, he agreed with the appellant that details of the contemporary imports are not available in the impugned order. However, he rejected the assessee's stand that the transaction value should be accepted by observing that the appellant have not been able to produce any evidence to substantiate the transaction value. He, accordingly, rejected the assesse's submissions on enhancement of the value. However, he reduced the redemption fine to Rs.1.75 lakhs and upheld the penalty to Rs.50,000/-.

5. Hence, the present appeal.

6. Ld. Advocate appearing for the appellant has not disputed the fact that the goods were imported without a proper import licence issued by the authorities in terms of the Foreign Trade Policy. As regards quantity variation,

he submits that the same is negligible being to the tune of 24 pieces. As regards ~~violation~~ valuation, he submits that the Revenue has not been able to produce any evidence to first reject the transaction value. He accordingly prays for setting aside the enhancement and reducing redemption fine and penalty on account of violation of Foreign Trade Policy.

7. Ld. DR appearing for the Revenue reiterates the reasonings of the Authorities below.

8. We agree with the ld. Advocate that 24 excess pieces of tyres cannot be held to be a malafide mis-declaration in the quantum of tyres when the total number was more than 2500 pieces. As regards valuation, we find that the appellant having declared the transaction value, it was for the Revenue to rebut the same by production of evidence. The Appellate Authority has already observed that there is virtually no contemporenous imports as no details are given. Otherwise also, we find that two different imports d 'old' and 'used' items can never be identical inasmuch as the value of the same would depend upon the number of factors including the usage years as also the condition of the goods. The Appellate Authority has rejected the transaction value by observing that the appellant has not produced any evidence to substantiate the same. We find no merits in the above reasonings of the Commissioner (Appeals). The appellant having produced the invoice, in support of its declared value, has done his part of the duty. If the Revenue is not happy with the said declared transaction value, it is they who have to produce the evidence. There being none in the present case, we find no reasons to enhance the assessable value.

9. However, as the appellant have admitted violation of Foreign Trade Policy, the goods are confiscable and penalty is imposable. Keeping in view that we have set aside the findings of the under-valuation, we reduce the

redemption fine to Rs.75,000/- and penalty to Rs.25,000/-. The impugned order is modified accordingly and the appeal is disposed of in the above terms.

28/10/14
(Archana Wadhwa)
Member (Judicial)

28/10/14
(Rakesh Kumar)
Member (Technical)

Ckp.