

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

Dated: 15/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/53125-53126/2015-CU[DB] dated 02/09/2015

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/3277/2010 C/572/2010	GROVERSONS, 4-LAKSHMI RATTAN MARKET, OPP. GOVT. OF INDIA PRESS, NIIT, FARIDABAD.

2	C/Stay/3278/2010 C/573/2010	SH. SANJEEV GROVER M/S GROVERSONS, 4-LAKSHMI RATTAN MARKET, OPP. GOVT. OF INDIA PRESS, NIIT, FARIDABAD.
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**Name and Address of
Respondent**

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

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

**Rajesh Chhibber, CAS
ASSOCIATES
A-403, 414-415 SOMDUTT
CHAMBER-I, 5, BHIKAJI
CAMA PLACE,
NEW DELHI-110066**

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

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

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

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

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

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

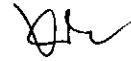
13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

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



Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. I

Date of hearing / decision : 02.09.2015

For Approval and 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 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	

Customs Appeal Nos. 572 - 573 of 2010

(Arising out of order-in-appeal No. ICD/79 – 80/2010 dated 10.08.2010 passed by the Commissioner of Customs, New Customs House, New Delhi).

M/s Groversons
Sanjeev Grover

Appellant

Vs.

CC, New Delhi

Respondent

Appearance:

Sh. Rajesh Chhibber, Advocate for the appellant-assessee
Sh. Ranjan Khanna, DR for the Revenue

Coram:

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

53125 - 53126/2015

Final Order No.

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Per: R. K. Singh:

Appeals have been filed against order-in-appeal dated 10.08.2010 passed in respect of primary adjudication order dated 22.10.2009 the order portion of which is reproduced below.

"(a) I reject the declared unit price of US\$ 280 PMT of the goods imported by them under bill of entry No. 563799 dt. 12.01.2007 under Rule 12 of the Valuation Rule read with section 14 of the Customs Act, 1962 read with rules 4 and 10A of the Customs Valuation (Determination of Prices of the Imported Goods) Rules, 1988. I re-determine the value of the said goods as US\$ 420 PMT.

(b) I held goods weighing 97.09 MT of Mixed Fatty Acid revalued at Rs.18,40,995/- liable for confiscation under sections 111(d) & 111(m) of the Customs Act, 1962. In this case, since the goods have already been released provisionally on execution of Bond. I impose a Redemption fine of Rs. 1,00,000/- (Rs. One lakh only) in lieu of confiscation on M/s Groversons (Importer).

(c) I order to demand customs duty amounting to Rs.7,33,104/- against bills of entry Nos. 563799 dt. 12.01.2007 under section 28(2) of the Act and order to appropriate the customs duty amounting to Rs. 6,00,142/- already paid at the time of clearance and also recovered interest to under Section 28AB of the Customs Act, 1962.

(d) I impose penalty of an amount equal to the total amount of differential duty Rs. 7,33,104/- on M/s Groversons, under Section 114A of the Customs Act, 1962.

(e) Since it is a case of proprietorship firm, separate penalty is not being imposed on Smt. Rama Grover, Proprietress.

(f) I impose a penalty of Rs. 50,000/- (Rupees fifty thousand only) on Sh. Sanjeev Grover for his role in abetting the act of omission and commission discussed hereinabove under Section 112 of the Customs Act, 1962.

(g) The bond/ bank guarantee executed by the importer, on account of provisional assessment/ release of the subject goods, are ordered to be enforced/ encashed towards payment of duty, redemption fine and penalty imposed hereinabove".

2. We find it useful to reproduce the entire (impugned) order in appeal and the relevance of so doing will become apparent on perusal of the same.

"The following two appeals mentioned against each of them have been filed against Order-in-Original No.561/2009, dated 26.10.2009 passed by the Additional Commissioner of Customs, SIIB, ICD, Tughlakabad, New Delhi.

S. No.	Appeal No.	Appellant's Name & Address	Filed on
1	ICD/347/2010	Sanjeev Grover, 4 Laxmi Rattan Market, Opp Govt. of India Press, NIT, Faridabad	24.12.2009
2	ICD/348/2010	M/s Groversons, 4 Laxmi Rattan Market, Opp Govt. of India Press, NIT, Faridabad	24.12.2009

Pursuant to information received by SIIB that crude palm oil is being imported in the garb of mixed fatty acid oil, and also on the basis of statements of Shri Anil Arora and Sh. Rakesh Kumar, both indenting agents, the consignment of the appellant was seized. The goods were sent to test and test reports indicated that goods were fatty material and not fatty acid oil, as declared. The value in case of fatty material attracts higher value, as per contemporaneous import. The details has been discussed in the OIO.

Sh. Rajesh Chibber, Advocate appeared and re-iterated the submissions contained in the appeal petition. He argued that the case has been built on the basis of statements of external indenting agents, and these cannot be held as true, without corroborative evidences. He further argued that the value of goods have been increased without any basis. All his pleas have been considered in the OIO and no new plea has been taken up during the course of hearing.

I have examined the issue. I find that the case has been built on the strength of the samples drawn in import of 3 of 5 containers, in which subject goods had been shipped.

This is fairly representative. Since, the findings of the test results are not in dispute, it is certain that the appellant has mis-declared the goods to achieve certain pecuniary advantages, at the cost of Revenue. Loading of value has been discussed in the OIO, it appears to be OK. Reliancon data of contemporaneous import – value would have further strengthened the case of the department. Department has not been able to bring out any other evidences regarding involvement of importer and Sh. Sanjeev Grover in such import.

Therefore, keeping the above in view, the value loading is upheld as per the rationale appearing in the OIO and Redemption Fine of Rs.50,000/- only appears appropriate as per the facts and considering the involvement of Rs.1.05 lacs excess duty. The differential duty demand is upheld. Penalty under Section 114(a) to the extent of differential duty involved is upheld. Sh. Sanjeev Grover's involvement in this case has not been brought out, hence, penalty imposed on him is set aside and penalty of Rs.10,000/- only appears correct as per facts of the case.

OIO is modified and the appeals are disposed off accordingly".

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3. It is evident from the foregoing order-in-appeal that the loading of value has been upheld on the ground that it has been discussed in the order-in-original. From the order-in-original we find that the loading has been upheld only on the basis of the statements of the indenters with no corroborative evidence. Indeed, the Commissioner (Appeals) himself observed that such loading appears to be O.K. and that reliance on data of contemporaneous import value would have further strengthened the case of the department. This itself shows that Commissioner (Appeals) is not convinced about the sustainability of loading. The Commissioner (Appeals) has also observed that "department has not been able to bring out any other evidence regarding involvement of importer and Shri Sanjeev Grover in such import" and also that "Shri Sanjeev Grover's involvement in the case has not been brought out". In such a situation the question of penalty on Sanjeev Grover would simply not arise. Regarding enhancement of value from US \$ 280 PMT to US\$ 420 PMT the primary adjudicating authority has noted as follows:

"(b) Shri Rakesh Kumar, an indenting agent for Palm Fatty Acid Distillate for various importers in India and several Malaysian firms, in his voluntary statement dated 03.11.2006, inter-alia, stated that the prevailing prices of PFAD (Palm Fatty Acid Distillate) was around US\$ 340 PMT in Malaysia; that the landed cost of PFAD in India was around US\$ 440 PMT which included US\$ 340 PMT for the goods, US\$ 50 PMT for drumming and US\$ 50 PMT as freight charges; that the local importers and traders asked him to arrange the invoices at price in the range of US\$ 180 PMT for mixed acid oil and US\$ 210 PMT for PFAD; that accordingly, he contacted the suppliers in Malaysia to issue invoices in the range of US\$ 210 PMT; and that the suppliers agreed on invoicing those goods at that rate with the condition that the difference of invoice rate and actual rate would be sent to them in advance.

(c) Shri Anil Kumar Arora, the other indenting agent in his voluntary statement dated 06.11.2006, inter-alia, also stated that the prevailing price of PFAD (Palm Fatty Acid Distillate) which at the time of import was being declared as Mixed Fatty Acid (MFA) by the Indian importers was around US\$ 320 to 350 PMT in Malaysia; that the landed cost of PFAD in India was around US\$ 430 to 440 PMT; that on the request of Indian importers in India, he used to ask the suppliers in Malaysia to issue invoices in the range of US\$ 210 to 220 PMT for PFAD and US\$ 180 to 190 PMT for MFA; that the suppliers used to issue invoices for the consignments on these prices; that the PFAD and the Mixed Fatty Acid which were being so declared by the importer, were one and the same thing; that he received US\$ 3 to 5 PMT as commission for the deals brokered by him".



4. Thus enhancement of value has been done merely on the basis of the statements of the indenters who too spoke about value of the said goods in Malaysia. Enhancement of value merely on the basis of such statements of the indenters in the absence of any inculpatory statement of the assessee – appellant and without the support of value of any contemporaneous imports of identical / similar goods is totally unsustainable particularly when the impugned goods came from UAE and not from Malaysia. When the allegation of undervaluation is not sustainable the question of RF and penalty simply does not arise.

5. In view of the foregoing, we set aside the impugned order and allow the appeals.



(Justice G. Raghuram)
President



(R. K. Singh)
Member (Technical)

Pant