TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. C/200 /2005-201 /2005 - CU[BR] Date 16/09/2008

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

To :
COMMISSIONER OF CUSTOMS (GENERAL),
NEW DELHI

COMMISSIONER OF CUSTOMS (GENERAL), NEW DELHI Appellant

Vs

SATISH LUTHRA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/337-338/08-CUS DATED 10.09.08 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 SATISH LUTHRA,
C 165, PUSHPANJALI ENCLAVE,
PITAMPURA, DELHI-110034

M/S. RAMAKRISHNA SALES PVT. LTD.
10-11, OLD LAJPAT RAJ MARKET,
DELHI 110006

2. Adv. / Consult MR.L.P ASTHANA, ADV.,
R-163, SECOND FLOOR, G.K. -1,
NEW DELHI - 110 048.

3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT. New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-X1/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Brancl

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL NO. 200-201 OF 2005

[Arising out of Order-in-Original No. 39/ADj/RSS/04 dated 29.11.2004 passed by the Commissioner of Customs (General), New Delhi]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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?	
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 Departmental authorities?	

Shri Satish Luthra,
M/s. Ramakrishna Sales Pvt. Ltd., Appellants

Vs.

C.C., New Delhi Respondent

Appearance:

Shri L.P. Asthana & Shri A. Jaju, Advocates for the appellants;
Shri R.K. Verma, Departmental Representative, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 18th June, 2008

FINAL ORDER NO. C/337-338/08 **dated** 10/9/08

Per S.S. Kang:

The appellants M/s. Ramakrishna Sales (P) Ltd. and Sri Krishna Export (India) Ltd. (proprietorship concern of Shri Satish Luthra) filed these appeals against the impugned order whereby demands of custom duty were confirmed and penalties were imposed.

2. The appellants in all made import of 82 consignments of electronic components at various ports. Out of 82 bills of entry in respect of 21 bills of entry, the value was loaded by the customs authorities and the goods were cleared after paying appropriate duty on the loaded value. Thereafter a show cause notice was issued on 11.2.2002 in respect of all imports on the ground that the appellants mis-declared the description as well as value of the goods. The case of the Revenue is that Shri Satish Luthra, Director of Ramakrishna Sales (P) Ltd. was appointed distributor of M/s. Philips Semi-conductors Ltd. to sell various types of Philips brand electronic goods. In the capacity of distributor, Shri Satish Luthra instructed Philips Semi-conductors Ltd. to supply Philips electronic components to various suppliers at Hong Kong and Singapore. The goods supplied by Philips Semi-conductors Ltd. to Hong Kong & Singapore were imported into India under the

consignments in question by suppressing the value and brand of the goods. The Adjudicating authority confirmed the demands and imposed penalties.

3. Contention of the appellants is that the allegation against the appellants is that the consignments imported from Singapore are of the same goods which were supplied by Philips Semi-conductors to Singapore firm and the same goods were imported into India under the invoices by Singapore firm showing lower value and without mentioning brand. In respect of the goods imported from Hong Kong the export declarations filed at Hong Kong ports showing much higher value than declared in India at the time of import. In respect of imports made from Singapore the contention is that in show cause notice it is alleged that sometime 2 or 3 invoices of Philips Semi-conductors were consolidated and then supplied to the appellants and the Revenue relied upon in respect of only 2 invoices and there is reference of 5 other invoices of Philips Semi-conductors alleged to be consolidated and supplied to the appellants against one invoice. The contention is that no doubt, the Revenue obtained copies of invoices from Philips Semi-conductors in respect of goods supplied to Singapore parties, however, failed to co-relate the same with the goods imported by the appellants. In respect of import from Hong Kong contention is that the exporter at Hong Kong subsequently amended the export declarations regarding which, proceedings were initiated and penalties were imposed by the competent

authority. To this effect evidence were produced before the Adjudicating authority but the same was not considered on the ground that the same is after thought.

4. The appellants also submitted that the consignments under question were duly examined at the time of import and the examination report shows ~~that~~ the same are as per declaration and in respect of 21 bills of entry the value was enhanced on the basis of valuation data available with the customs authorities. The appellants had not challenged that enhancement and paid the duty at enhanced value. The contention of the appellants is that there is no co-relation in respect of goods supplied by Philips Semi-conductors Ltd. to Singapore with the goods imported by the appellants and export declaration filed by the Hong Kong exporter were subsequently amended the declaration, therefore, demands are not sustainable.

5. The contention of the Revenue is that the appellants filed bills of entry at the time of clearance of goods by mentioning general description of the goods, such as ICs, Transistors, etc. Specific model, brand and makes were intentionally and willfully not declared so as to suppress the value of the goods. The Revenue also relied upon the invoices issued by Philips Semi-conductors Ltd., vide which certain quantity of goods were supplied to Singapore based firm on the basis of instruction of Shri Satish Luthra and the same quantity of the same items were imported by the appellants into India vide invoice issued by

Singapore firm. In respect of the goods imported from Hong Kong the contention is that the export declaration filed by the exporter were of the higher value then declared with the Indian customs. Therefore, demand were rightly made.

6. We find that the appellants made import from Hong Kong and Singapore. The allegation of the Revenue in respect of imports made from Singapore is that Shri Satish Luthra, who ~~were~~ was distributor of Philips Semi-conductors, placed orders with Philips Semi-conductors for supply of the items to Singapore and the same were imported into India by suppressing value of the goods. During arguments Revenue was directed to co-relate the invoices supplied by Philips with the invoices submitted with the customs authorities by the appellants. The Jt. CDR wrote to the Director, Revenue Intelligence and the Director, Revenue Intelligence vide letter dated 13.6.2008 informed that based on the record available it is not possible to co-relate more documents, in addition to the documents already co-related by the Intelligence Officer. During hearing Revenue was directed to produce the examination report of the goods covered under the relevant bills of entry. The Director, Revenue Intelligence asked the concerned Commissioner to supply the same and the concerned Commissioner informed the Director, Revenue Intelligence vide letter dated 11.4.2008 that bills of entry till the year 2002 have been destroyed. The contention of the appellants is that only in respect of 3 invoices the Revenue is able to co-relate that the goods supplied by Philips to Singapore were diverted to India. As the allegation is that the goods supplied by Philips to Singapore firm were imported into India by suppressing the value of the goods, therefore, Revenue has to co-relate the items supplied to Singapore with the items imported into India and as this exercise had not been carried out by the Adjudicating authority, therefore, the matter requires re-consideration

by the Adjudicating authority in this regard. In respect of import made from Hong Kong we find that the exporters filed revised declaration before the competent authority and proceedings were initiated and penalties were imposed on the exporters. The appellants produced the copies of proceedings before the competent authority whereby the exporters were penalized. This plea cannot be brushed aside on the ground that the same is after thought. The Adjudicating authority has to consider the proceedings which were before the competent authority in respect of the exporters declarations filed at Hong Kong and relied upon by the Revenue to say that the appellants suppressed the value before the Indian Customs. This issue also requires re-consideration by the lower authority afresh. In these circumstances impugned order demanding duty and imposing penalties on the present appellants is set aside and the matter is remanded to the Adjudicating authority to decide afresh after affording opportunity of hearing to the appellants.

(Pronounced on 10 · 9 · 08)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

~~Dated 29th August, 2008~~
RK