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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

Appeal No. C/274 /2006 - CU[DB] Date 24/09/2008

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

To :
M/S INDIAN TANNING INDUSTRIES
150 FT. JAJMAU ROAD, JAJMAU KANPUR
208010

M/S INDIAN TANNING INDUSTRIES Appellant
Vs
COMMISSIONER (APPEALS) CUSTOMS & CENTRAL EXCISE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/345 2008 CU|BR| dated 15.09.08 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
COMMISSIONER (APPEALS) CUSTOMS
117/7, SARVODAYA NAGAR KANPUR
2. Adv. / Consult MAJOR J.S. SODHI, CONSLT.
62, TAGORE ROAD, CANTT.,
KANPUR – 208 004.

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 - 3
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
13 Taxindiaonline.com Pvt.Ltd, B-XI/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 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.II
NEW DELHI

Customs Appeal No.274/2006 -Cus(Br)

(Arising out of order in appeal No. 394/Cus/Appl/KNP/05 dated 23.12.05 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur)

Date of Hearing/ Decision: 15.9.2008

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member(Technical)
Hon'ble Mr. P.K. Das, Member(Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

M/s. Indian Tanning Industries — Appellant
(Rep. by Maj J.S. Sodhi, Consultant)

Vs

CC, Kanpur — Respondent
(Rep. by Shri L.B. Yadav, DR)

Coram: **Hon'ble Mr. M. Veeraiyan, Member(Technical)**
Hon'ble Mr. P.K. Das, Member(Judicial)

Final **ORDER No.** C/345/08

Per M. Veeraiyan:

Heard both sides.

2. The Appellant imported a second hand Sammying & Setting Machine of 1997 make after subjecting the same to reconditioning. They produced a certificate of Chartered Engineer dated 23.1.2002 from the exporting country wherein the value was estimated to be 46,500 Euro. The Original Authority felt that the value declared was low and relying on contemporary import of similar second hand machine at the rate of 48,000 Euro, he enhanced the value from Rs.20,02,860/- to Rs.28,96,510/-; ordered recovery of differential duty of Rs.82,216/-; imposed penalty of Rs.25,000/-. On appeal, the Commissioner (Appeals) reduced the penalty to Rs.10,000/-.

3. The learned Consultant submits that there was no justification for rejecting the transaction value supported by the certificate of Chartered Engineer from the exporting country. The Original Authority has not furnished the reasons for enhancing the assessment in writing as is required under Rule 10-A of the Customs Valuation Rules. He also submits that the value of 91,000 Euro mentioned in the certificate of the Chartered Engineer related to the current price in 2002 and the price of the machine in 1997 was later on obtained by fax as 76,000/- Euro.

4. The learned DR submits that the authorities below have relied on a higher contemporary price relating to a machine of 1996 make and of better quality and hence enhancement of value and the imposition of penalty are justified as they have tried to mis-declare the value of the new machine as 76,000 Euro as against 91,000 Euro.

5. We have carefully considered the submissions from both the sides. There is no examination of consignment by any local Chartered Engineer. The certificate of the Chartered Engineer produced show the value as 46,650 Euro. The transaction value declared by them is in conformity with the value estimated by the Chartered Engineer. The clarification subsequently received confirmed that the price of new

machine in 1997 was only 76,000 Euro and the price of 91,000 Euro mentioned in the certificate was the price of new machine in the year of import. No valid reasons have been adduced to reject the transaction value which is in conformity with the estimated price mentioned in the certificate of the Chartered Engineer. Therefore, the order of the Commissioner (Appeals), and order of the original authority enhancing the value and imposing penalty require to be set aside. We clarify that the value declared by the importer shall be accepted for assessment purposes.

6. The appeal is allowed on the above terms.

(Order dictated and pronounced in the Open Court).

(M. Veeraiyan)
Member(Technical)

(P.K. Das)
Member(Judicial)

MPS*