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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/299 /2005 - CU[DB] &C/605/07 Date 23/10/2008

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

To :
COMMISSIONER OF CUSTOMS, JAIPUR
NEW CENTRAL REVENUE BUILDING, STATUE
CIRCLE, JAIPUR
COMMISSIONER OF CUSTOMS, JAIPUR Appellant

Vs

M/S RADIANT ACRYLIC Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/420-421/08 CU[DB] Dated 16.10.08

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
M/S RADIANT ACRYLIC
40/1, VILLAGE-SINGHU DELHI
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2. Adv. / Consult
MR.K.KUMAR 15-B, DDA Flats(MIC) Rajouri Garden,. New Delhi

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
15 Office Copy
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing:23.9.2008
Date of pronouncement: 16-10.2008

Customs Appeal Nos.299 of 2005 & 605 of 2007

Arising out of the order in appeal No.2 (MPM)Cus/JPR-I/2005 dated 25.1.2005 and No.14 (GRM)Cus/JPR-I/2007 dated 11.6.07 passed by the Commissioner (Appeals),Customs, Central Excise , Jaipur I.

For Approval and Signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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?	No
2	Whether it should be released under Rule 27 of 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

Appellant		Respondent
C.C.E., Jaipur	vs.	M/s Radiant Acrylic
Radiant Acrylic	vs.	C.C.E., Jaipur

Appearance:

Shri Sumit Kumar, Authorized Departmental Representative (DR) for the Revenue and Shri P.C. Jain, Advocate for the assessee

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. C/420-421/08

Per M. Veeraiyan:

These two appeals (Department's appeal No.C/299/2005 and party's appeal No.C/605/07) relate to import by the same party and from the same supplier and involve a common issue and therefore, are being dealt with by a common order. The matter is before the Tribunal for the second time having been remanded to the original authority to finalise the provisional assessment prior to initiating any penal action.

2. Heard both sides.

3.1 The relevant facts, in brief, in party's appeal No.C/605/2007 are as follows:

a) M/s Radiant Acrylic imported a consignment and filed bill of entry No 50 dated 10-6-96; declared the description as acrylic sheet off cuts; declared the value as US $ 308 per M.T.; declared the net quantity as 47,739 kg. and overall value as Rs. 5,45,685.

b) On examination, in addition to declared quantity of acrylic sheet off cuts, it was found to contain multi-wall panels weighing 4730 kgs.

c) In pursuance of the order of remand, the original authority finalized the assessment enhancing the assessable value as Rs.12,69,264/- and demanded differential duty of Rs.6,33,132/-.

d) On appeal, the Commissioner (Appeals) upheld the order of the original authority vide his order dated 30.5.07 and rejected the appeal and hence the party is again in appeal before the Tribunal.

3.2 The relevant facts, in brief, in appeal No.C/299/05 by the department are as follows:

a) The respondent imported a consignment of acrylic sheet off cut and filed bill of entry No.53 dated 21.6.96 declaring the value as US $ 308 per M.T. for acrylic sheet off cuts, and value as US $ 500 per M.T. for multi-walled panels.

b) The goods imported under bill of entry No.53 dated 21.6.96 was identical to the consignment covered by bill of entry dated 50 dated 10.6.96 from the same supplier in Belgium and sold by the same party in Singapore.

c) The original authority enhanced the value and finalized the assessment demanding differential duty of Rs.6,02,248/-.

d) On appeal by the party, the Commissioner (Appeals) allowed the appeal of the party. Hence the Department is in appeal.

4. The learned Advocate appearing for the party made the following submissions:

a) The consignments originated from Belgium. The Belgium party M/s Gemini Corporation is an aggregator i.e. who collects acrylic sheets off cuts from different parties for subsequent sale. They sold the gods to Singapore based party namely, M/s Sineximco Pvt. Ltd. The goods in containers have been shipped from Belgium party to India as per advice by the Singapore Party.

b) The relevant transaction is the one between the Indian importer and the Singapore based supplier. The Singapore party and Indian importer have entered into a oral contract at a price of 308 US $ per M.T. There is no evidence that the importer in India has sent any money in excess of what has been mentioned in the invoice raised on them by the Singapore party.

c) At what price the Singapore supplier purchased the consignment from the Belgium party is not relevant. The documents collected by officials of Indian High Commission through Belgium Customs regarding the export declaration and invoice of the Belgium party to the Singapore party cannot be relied.

d) Further, the acrylic sheet cuts have been imported by other importers at about the same time at prices even lower the prices declared by them and hence their prices should be accepted.

5. Learned DR submits that the goods have been directly shipped from Belgium; that the declaration and documents filed with Belgium Customs by the supplier shows a higher price of 750 per MT; that the Singapore supplier could not have sold at a price lower than the price at which M/s Gemini Corporation sold to them. Once evidence of this nature is produced, the burden to prove the genuineness of the price declared by them is shifted to the importer.

6.1 We have carefully considered the submission of both sides. The Belgium based party M/s Gemini Corporation has purchased from several parties the impugned goods at varying prices; they have invoiced the same goods to the Singapore based party at a price at 750 US $ per MT CIF Nhava Sheva. It is not disputed that for the same goods only the Singapore party has raised the invoice. It appears that the supplier is closely known to the importer and the level of trust between the two is high as seen from the claim that the transaction between Indian importer and Singapore party is on the basis of oral contract which is rather unusual in the international trade. It does not stand to reason the Singapore party who has purchased the same 750 US $ PMT will sell at 308 US $ PMT by them. The Indian importer has not chosen to correspond to his supplier seeking any explanation for the said unusual transaction.

6.2 If the invoice price by Belgium party to the Singapore Party is correct then the invoice price by the Singapore Party to the Indian importer, obviously cannot be correct. A suggestion was made by the Belgium party might have over-declared the value to avail export incentive. This suggestion has to ignored, as the Belgium Customs authorities who have conducted "checking of origin and value of acrylic sheet exported to India" have not suspected the price declared to them by M/s Gemini Corporation.

6.3. Theoretically, the price declared by Belgium exporter could be wrong or the price declared by the Indian importer could be wrong. Both cannot be correct and one of them has to be wrong. However, the transaction between the Indian importer and the Singapore supplier is said to be based on oral contract and in addition to the declared quantity it was found there was other goods. Therefore, the transaction between the Indian importer and Singapore supplier is not reliable. Under these circumstances, the price declared by the Indian importer based on the invoice of the Singapore supplier who is intermediate trader has been rightly rejected and the price has been rightly enhanced by the original authority

6.4 Both the consignments emanated form the same Belgium based supplier. The import has taken place in close proximity in point of time. All the evidences have been supplied to the importer in connection with the dispute relating to Bill of Entry No.50 dated 10.6.96. The same evidence are applicable to bill of entry No.53 dated 21.6.96. The show cause notice issued in connection with later bill of entry has reference to the dispute and evidence relating to previous bill of entry No.50 dated 10.6.96. The claim that copies of documents have not been supplied once again and therefore, there is violation of principle of natural justice is not acceptable. There is no reason to adopt different prices in respect of these two consignments.

7. Therefore, the enhancement of value and demand of differential duty while finalizing the assessment is correct in law. Therefore, the order of the Commissioner (Appeals) in upholding the decision of the original authority relating to bill of entry 50 of 10.6.96 is to sustained. The party's appeal is, therefore, rejected. On the same ground the Department's appeal relating to bill of 53 of 21.6.96 is allowed and the order of Commissioner (Appeals) is set aside and the order of the original authority is restored.

8. The party's appeal is, therefore, rejected and the Department's appeal is allowed.

(Pronounced in open Court on 16 .10.2008)

(Justice S.N.Jha)
President

(M. Veeraiyan)
Member (Technical)

scd/