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/930 /2005 - CU[DB] Date 03/11/2008

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

To :
THE COMMISSIONER OF CUSTOMS, CUSTOMS
COMMISSIONERATE, THE MALL, AMRITSAR

THE COMMISSIONER OF CUSTOMS, AMRITSAR — Appellant

Vs

M/S OSWAL FATS & OILS, PROP. — Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/540/08-CUS DATED 25.07.08

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 OSWAL FATS & OILS, PROP. NAHAR INDUSTRIAL ENTERPRISES LTD., VILLAGE JALADIWAL, DISTT.. LUDHIANA. PUNJAB.

2. Adv. / Consult MR. RUPINDER SINGH, ADV. C/O M/S OSWAL FATS & OILS. PROP. NAHAR INDUSTRIAL ENTERPRISES LTD., VILLAGE JALADIWAL. DISTT LUDHIANA PUNJAB
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
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

Customs Appeal No. 930 of 2005

[Arising out of the Order-in-Appeal No. 58-62/CUS/ APPEAL/LDH/2005 dated 20/07/2005 passed by The Commissioner (Appeals), Customs & Central Excise, Ludhiana.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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 Department Authorities?	:

CC, Amritsar — Appellant
[Shri B.K. Singh, Auth. Rep. (DR)]

Versus

M/s Oswal Fats & Oils — Respondent
[Shri Rupinder Singh, Advocate]

CORAM : **Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 25/07/2008.

Final Order No. C/540/08 Dated : 25/7/08

Per. S.S. Kang :-

Revenue filed this appeal against the impugned order, whereby the Commissioner (Appeals) set aside the enhancement of value of the imported goods on the ground that there was no reason to reject the transaction value.

2. Revenue relied upon the bill of entry dated 07/06/01 in which similar goods was cleared @ U.S. $ 130. The contention of revenue is that goods are to be assessed at the value declared by other importers.

3. Contention of respondent is that import was made during February to August 2001 and the declared value was U.S. $ 112 to U.S. $ 118 per M.T. The contention is that in respect of the previous import, during period July to October 2000, where the revenue enhanced the value in respect of the same goods imported by the respondent, the Tribunal set aside the order passed by the Customs Authorities reported as **Oswal Fats & Oils vs. Commissioner of Customs, Amritsar [2007 (220) E.L.T. 795 (Tri. – Del.)]**.

4. We find that in this case, the import is of palm acid oil. Applicant made import of the goods during the period in dispute

by declaring the same from U.S. $ 112 to U.S. $ 118 per M.T. which was enhanced to U.S. $ 130 per M.T. by the revenue. We find that Tribunal in respect of the earlier import, whereby the value was enhanced after rejecting the declared value, held as under :-

> "9. It is clear from the data on record that import prices varied vastly (between 250 U.S. $ and 130 U.S. $) during the period in question. According to the data presented by the appellant, price varied between 200 U.S. $ and 113, and 260 U.S. $ was an exception. It is clear that there existed no 'one fixed price' for Palm Acid Oil during the period and price fluctuation was the rule. In a case, where price variation is the rule and the variation is in a vide range, a particular transaction can be rejected only if there is evidence on information that the transaction in question was not a commercial transaction or that the price charged was lower on account of any of the reasons which have been taken note of in Rule 4 (2) of Customs Valuation Rules. Simple replacement of transaction value with the highest import price of comparable goods is not permitted by Section 14 or Rules of Customs Valuation. That would be contrary to the market reality that prices varied from seller to seller and sale to sale. In the present case, there is no specific evidence on record which brings out that the transaction between the appellant importer and its foreign suppliers located in Malaysia and Indonesia had been influenced by any non-commercial considerations and that invoiced prices did not reflect or reveal the real transaction values. The legal position is clear

that transaction value shall be accepted for valuation. In these facts and circumstances, we are of the opinion that transaction values were required to be accepted for assessments to Customs duty and the orders to the contrary are illegal. There is no basis for the finding of mis-declaration of value also. A purchase at a higher price by another importer does not render lower prices false.

5. In the present case also, there is no evidence that the transaction is influenced by any non-commercial consideration. In view of above decision, we find no merit in the appeal, the same is dismissed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK