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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/129 /2005 - CU[DB] Date 10/11/2008

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

To :
MOHAN SALES (INDIA)
3767-68, PARMANAND STREET,
DARYAGANJ, NEW DELHI-110002

MOHAN SALES (INDIA) Appellant
Vs
C.C.(PREVENTIVE) Respondent

I am directed to transmit herewith a certified copy of Final order No. C/568/08-CUS DATED 21.10.08 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
C.C.(PREVENTIVE), NEW CUSTOM HOUSE,
NEAR I.G.I. AIRPORT, NEW DELHI 110037.
2. Adv. / Consult
MR.BIPIN GARG, ADV.
B-1/1289,A-VASANT KUNJ, 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
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

COURT – II

CUSTOMS APPEAL NO. 129 OF 2005

[Arising out of Order-in-appeal No. CC(A)255/DELHI-I/ACU-IMP/2004 dated 19.11.2004 passed by the Commissioner of Customs (Appeals), 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?	

M/s. Mohan Sales India — Appellants

Vs.

C.C., New Delhi — Respondent

Appearance:

Shri Atul Gupta, Advocate for the appellants;
Shri Vijay Kumar, Departmental Representative, for the Revenue;

Coram:

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

Date of Hearing: 21st October, 2008

FINAL ORDER NO. C/ 568/08 **dated** 21/10

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order passed by the Commissioner (Appeals). Brief facts of the case are that the appellants made import of Integrated Circuits (I.C.) and filed Bill of Entry. The value declared by the appellants was enhanced. As the goods ~~was~~ were mis-declared in respect of value, the assessing authority also imposed redemption fine and penalty. Order was passed on the Bill of Entry which is an appealable order. The appellants asked for speaking order. While passing the speaking order the adjudicating authority also afforded opportunity of hearing to the appellants but the appellants did not avail~~ed~~ that opportunity. Thereafter, the reasons for rejecting the declared value and imposition of penalty had been conveyed. The appellants filed appeal against the adjudication order and the same was dismissed by the Commissioner (Appeals).

3. Contention of the appellants is that the assessment was made by the Additional Commissioner Smt. Praveen Mahajan without affording opportunity of hearing. In the adjudication order value was enhanced

and redemption fine and penalty was imposed on the Bill of Entry. Thereafter, appellants asked for speaking order. The reasons for enhancing the value, imposition of redemption fine and penalty were conveyed by another Dy. Commissioner of Customs Shri Dilip Kumar. Contention of the appellants is that as Shri Dilip Kumar had never dealt with the matter, therefore, the order passed by Shri Dilip Kumar is not sustainable. It is also the contention of the appellants that Revenue has not produced any evidence to show that similar goods are being imported at a higher value, therefore, the impugned order rejecting the declared value is not sustainable.

4. Contention of the Revenue is that, before passing the assessment order on the Bill of Entry opportunity of hearing was granted to the appellants by the then Additional Commissioner of Customs. Value was enhanced on the basis of import made by other importers like M/s. Bharat Electronics Ltd., M/s. Viprar Continental (P) Ltd. and M/s. Super Cassette Industries. Contention is that M/s. Super Cassette Industries had imported the consignment of similar Integrated Circuits and declared unit price higher than declared by the appellants. Same is the case in imports made by other importers. The appellants had not produced any price-list of the manufacturer of imported goods. Even the country of origin was not disclosed by the appellants. In the invoice produced by the appellants it is certified that the goods are of South Korea/Japanese origin. As the similar Integrated Circuits has been

imported at higher value by other importers, contention of the appellants is not sustainable. We find that the main contention of the appellants is that speaking order was passed by officer other than the officer who made assessment. We find that during examination it was found that

and fine & penalty has been imposed

the value of the goods was mis-declared. Value was enhanced by the Additional Commissioner after affording opportunity of hearing to the

Addl. Commissioner's [illegible] order [illegible]

appellants. The assessment ~~order~~ is an appealable order under the Customs Act. However, the appellants asked for speaking order and the reasons were conveyed by the subsequent officer who also afforded opportunity of hearing which was not availed by the appellants. Therefore, as the assessment order passed on the Bill of Entry is appealable order and reasons were conveyed by the subsequent officer by affording opportunity of hearing, hence, no prejudice has been caused to appellants.

5. The value of the imported goods was enhanced on the basis of imports of similar goods made by other importers like M/s. Bharat Electronics Ltd., M/s. Viprar continental (P) Ltd. and M/s. Super Cassette Industries. The appellants before the lower authorities had not produced any price-list of the manufacturer or the country of origin certificate. The invoice under which goods were imported only certify that the goods are of South Korean/Japanese origin. In these circumstances, as the appellants failed to produce any evidence in support of their declared value and Revenue enhanced the value on the

basis of import of the similar goods made by other importers we find no merit in the appeal. Appeal is rejected.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 22nd October, 2008
RK