

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

Appeal No. C/521 /2005-523 /2005 - CU[DB]

Date 11/11/2008

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

To :
M/S K G S EXPORTS LTD
1-3, KIRTI NAGAR, NEW DELHI
110015

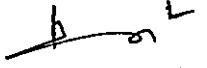
M/S K G S EXPORTS LTD

THE COMMISSIONER OF CUSTOMS, NEW DELHI

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. C/589-591 2008 CU[DB] dated 07.11.08
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

THE COMMISSIONER OF CUSTOMS, NEW DELHI

ICD, TUGHLAKABAD, NEW DELHI

2. Adv. / Consult

MR.PIYUSH KUMAR,ADV

B-25,LAJPAT NAGAR-III,N.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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

8 Excise & Customs cases, B-37, Sector -I, 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

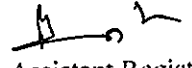
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70 (Old No. 88), Thvagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-1

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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. 521-523 OF 2005

[Arising out of Order-in-appeal No. CC(A)CSP(108-110)D-II/2004 dated 15.4.2004 passed by the Commissioner (Appeals), Customs, 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. K.G.S. Exports Ltd.

Appellants

Vs.

CC (ICD), Tughlakabad,
New Delhi

Respondent

Appearance:

Shri L.P. Asthana, Advocate for the appellants,
Smt. Archana P. Tiwari, Jt. CDR, Departmental Representative, for the Revenue;

Coram:

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

Date of Hearing: 7th July, 2008

FINAL ORDER NO. C/589-591/08 dated 7/11/08

Per S.S. Kang:

The appellants filed these appeals against the impugned order passed by the Commissioner of Customs (Appeals). Brief facts of the case are that the appellants made import of Velcro Tape (Hook & Loop tape) and claimed classification under Heading 5806.32 of Customs Tariff. Revenue was of the view that the imported goods are classifiable under tariff heading 5806.10 of the Tariff and the appellants also under-valued the goods with intend to evade duty.

2. The adjudicating authority upheld the classification as proposed by the Revenue and after relying upon the Bill of Entry No. 240845 dated 19.1.2001 filed by M/s. Fancy Fashion enhanced the value of the goods and imposed penalty.

3. The appellants filed appeal and the Commissioner (Appeals) upheld the classification on the ground that the appellants conceded that the classification of the imported goods are under Tariff Heading 5806.10 of the Tariff and also upheld the adjudication order in respect of value as the value was enhanced on the basis of Bill of Entry filed by M/s. Fancy Fashion.

4. Contention of the appellants is that the finding of the Commissioner (Appeals) that the appellants conceded in respect of classification are not correct finding. The appellants never conceded in respect of classification. The appellants relied upon the affidavit filed by the Counsel appeared before the Commissioner (Appeals) in this regard. In respect of value of the goods, contention of the appellants is that the Tribunal in the case of Viva International vs. C.C., Delhi, reported in 2005 (183) ELT 410 (Tri.-Del.) held that the value of the imported Velcro Tape enhanced on the basis of import made by Fancy Fashion vide Bill of Entry dated 19.1.2001 is not sustainable and the Tribunal also held the classification of Velcro Tape as claimed by the appellants in the present case.

5. Contention of the Revenue is that the appellants conceded before the Commissioner (Appeals) in respect of classification, therefore, appellants cannot raise the issue of classification before the Tribunal. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Primella Sanitary Products Pvt. Ltd. vs. CCE, Goa, reported in 2005 (184) ELT 117 (SC). The contention of Revenue is also that the goods imported by the appellants are similar to the goods imported by Fancy Fashion, therefore, the value was enhanced accordingly.

6. First, we take up the issue of classification of the goods. The Commissioner (Appeals) in the impugned order decided the issue of classification on the concession made by the Counsel. The Counsel

appeared before the Commissioner (Appeals) filed an affidavit denying the same. The Revenue relied upon the decision of the Supreme Court in the case of Primella Sanitary Products Pvt. Ltd. (supra) where concession was made before the adjudicating authority as well as before the Appellate Tribunal. In this situation the Hon'ble High Court held that concession cannot be withdrawn in the appeal filed before the Hon'ble Supreme Court. In the present case there is no concession made before the adjudicating authority in respect of classification. The appellants contested the classification proposed by the Revenue and the Counsel for the appellants denied the concession as recorded in the Order-in-Appeal. Therefore, ratio of the decision of the Hon'ble Supreme Court is not applicable in the facts of the present case. As the issue of classification had not been decided on merit by the Commissioner (Appeals), therefore, this issue requires re-consideration by the Commissioner (Appeals) afresh after affording opportunity of hearing to the appellants.

7. In respect of value of the goods enhanced on the basis of Bill of Entry filed by Fancy the Revenue relied upon the decision of the Tribunal in the case of Viva International (supra) wherein the Tribunal set aside the enhancement of value of Velcro Tape enhanced on the basis of Bill of Entry filed by Fancy Fashion. The Tribunal held as under:-

“As per Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 the value of the imported goods shall be transaction value. Rule 4 of the Valuation Rules defines transaction value which means the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of the Valuation Rules. The appellants have also produced the manufacturers invoice for the verification of the Department and the Department has not doubted the veracity of the said invoices. The department has enhanced the assessable value only on the basis of Bills of Entry filed by M/s. Fancy Fashions. We have already held that no material has been brought on record by the Revenue to show that the goods imported by M/s. Fancy Fashions was similar or identical to the goods imported by the appellants herein. The provisions of Rule 6 of the Valuation Rules become applicable only when the goods are similar. The expression “similar goods” has been defined in Rule 2(e) of the Customs Valuation Rules. According to the said rule, similar goods means, imported goods which have like characteristics and like component material which enable them to perform the same function and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and existence of the trade mark and produced in the country in which the goods being valued were produced and produced by the same person who produce the goods being valued or where no such goods are available, goods produced by

a different person. When the goods imported by the Appellants and goods imported by Fancy Fashions have not been compared as no claimed by the Revenue that the requirement of definition of similar goods have been complied with. We, therefore, set aside the impugned Order and allow both the appeals.”

In the present case we find that the appellants made import of the goods of Chinese origin whereas in the case of Fancy Fashions the goods are of Taiwan origin. In these circumstances value enhanced on the basis of import made by Fancy Fashions is not sustainable, hence, set aside.

Appeals are disposed of as indicated above.

(Pronounced on 07-11-2008)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 24th October, 2008

RK