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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/229 /2006 - CU[DB] Date 25/11/2008

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

To :
TARUNVIR INTERNATIONAL
CHANDIGARH ROAD, KHANNA, LUDHIANA.

TARUNVIR INTERNATIONAL Appellant
Vs
COMMISSIONER OF CUSTOMS, AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/612/08-CUS DATED 19.11.08 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
   COMMISSIONER OF CUSTOMS, AMRITSAR
   CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR.
2. Adv. / Consult
   MR.SUDHIR MALHOTRA, ADV., 13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 229 of 2006

[Arising out of Order-in-Original No. 77/Cus/Appl/Ldh/2005 dated 30.8.2005 passed by Commissioner (Appeals) Central Excise, Ludhiana]

For approval and signature:

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

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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

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M/s. Tarunvir International — Appellant

Vs.

Commissioner of Customs
Amritsar — Respondent

Appearance:

Mr. Sudhir Malhotra, Advocate for the Appellant
Mr. Sunil Kumar, DR for the Respondent

CORAM:

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

Date of Hearing/Decision: 19.11.2008

Final **ORDER NO. C/612/08**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner No. . 77/Cus/Appl/Ldh/2005 dated 30.8.05.

2. Heard both sides.

3. Relevant facts in brief are as follows:

(a) The appellant imported five old electric motors and declared the assessable value as 1100 Oman Riyal (around Rs. 23,000/- per piece).

(b) The department referred to three Chartered Engineers and each of them gave different values, according to one assessable value comes to Rs.50,000/- per piece, according to another it was Rs.31,824/- per piece and according to the third, the assessable value should be Rs. 63,650/- per piece.

(c) As the electric motors were old and used, they required a licence for import and the appellant was not having the required licence.

(d) The original authority held that import has taken place without a licence, and hence the goods are liable for confiscation and adopted the assessable value as the highest of the three based on the certificates by the Chartered Engineers and accordingly demanded the duty. He imposed redemption fine of Rs.Two lakhs and imposed a penalty of Rs. One lakh. Commissioner (Appeals) upheld the assessable value adopted but reduced the redemption fine from Rs.Two lakhs to Rs.50,000/- and penalty from Rs.One lakh to Rs. 35,000/-.

4. Learned advocate submits that the goods were old and used and required lot of reconditioning before the same could be used. This was evident from the reports of three Chartered Engineers as well. The redemption fine sustained by the Commissioner (Appeals) and penalty imposed are high and assessable value were also high and therefore, it is highly uneconomical for them to clear at this level of dues. He also submits that huge demurrage have been incurred so far.

5. Learned DR reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions made from both the sides. The department having chosen to refer to three experts, were not free to adopt the highest of the assessable value and no reasons have been given for ignoring the other two prices. Therefore, we hold the assessable value to be adopted should be Rs.31,824/- which is the lowest given by the Chartered Engineers. The duty liability will accordingly be re-worked. The import required a licence and having been imported without the licence, confiscation requires to be upheld. However, taking into account the heavy demurrage incurred and also considering the lowering of the assessable value, we are inclined to further reduce the redemption fine from Rs.50,000/- to Rs. 10,000/- (Rupees Ten thousand only)

and personal penalty is further reduced to Rs.5,000/- (Rupees Five thousand only).

7. The appeal is disposed of on the above terms.

(Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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