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/41 /2006,212 /2006,221 /2006 - CU[DB] Date 02/12/2008

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

To :
M/S SINDHWANI & CO., MAJITH MANDI,
AMRITSAR, PUNJAB

M/S SINDHWANI & CO Appellant

Vs

THE COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/618-620/08-CUS. DATED 20.11.08 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
   AMRITSAR
2. Adv. / Consult
   MR.H.S.MEW, ADV., 52 B, UPKAR APPTS,
   MAYUR VIHAR PHASE EXTN, DELHI-91

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

17. M/S BHAI PRADHAN SINGH & SONS,
    553, KATRA ISHWAR
    BHAWAN KHARI BAOLI, DELHI.

Assistant Registrar
(Customs Appeal Branch)

18. M/S. H N INTERNATIONAL (HUF)
    GANDHI GALI, KATRA ISHWAR BHAWAN,
    KHARI BAOLI, DELHI

CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram,
NEW DELHI

COURT NO.III

Customs appeal No. 41, 212 & 221 of 2006-Cus

(Arising out of order in appeal No. 213-215/CUS/JAL/05 dated 27.10.2005 passed by the Commissioner of Customs (Appeals), Chandigarh)

For approval and signature:

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

---

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

---

M/s. Sindhwani & Co.,
M/s. H.N. International,
M/s. Bhai Pradhan Singh & Sons — Appellants
Reptd. By Shri H.S. Mew, Advocate

Vs.

CC, Amritsar — **Respondent**
Rep. by Shri Fateh Singh, D.R.

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

Date of Hearing/Date of decision: 20.11.08

Final **Order No.** C/618-620/08 **/2008**

Per M. Veeraiyan:

These 3 appeals arise out of common order-in-appeal and involve common issue and, therefore, are being dealt with by a common order.

2. We heard the learned Advocate representing M/s. Sindhwani & Co. and M/s. H.N. International. None appeared for the other appellants. Heard learned D.R.

3. The appellants imported Pista Kernal through the port of Kandla and filed Bill of Entry for clearing the same claiming exemption under notification No. 76/03-Cus, read with notification No. 33/03-Cus; they produced certificate of origin indicating origin of the said Pistachio as Afghanistan and claimed the exemptions based on Indo-Afghan Preferential Trade Agreement. The examining officer felt that the impugned goods are different from what are normally imported from Afghanistan. Accordingly, samples were drawn from the consignments and the said samples were sent to Indian High Commission in Kabul. The High Commission official appeared to have shown the samples to some traders who gave their opinion that some samples are of Iranian origin and others are of Tajakistan origin. Based on the above

verification report the original authority as well as Commissioner (Appeals) have held that Pistachio (Pista kernel) is not of Afghan origin and, therefore, not eligible for exemption under the said notification.

4.1 Learned Advocate assailed the impugned order on the ground that verification report received from Kabul cannot be relied upon. According to him, his client subsequently visited Kabul and verified ~~that~~ the profile of persons who have issued opinion and they are small shop-keeper and to consider that they have over view of all varieties of Pistachio produced in Afghanistan will not be proper and legal. The verification by the appellants at Kabul has been conveyed to the adjudicating authority vide their letter dated 25.2.2004.

4.2 He also submits that there was no justification to question the genuineness of certificate of origin. He relies on the report of the Counselor Commercial of Embassy of Afghanistan dated 23.7.2003 which confirmed that "authorized signature on the certificate of origin issued in Kabul are correct. This has been done according to Indo-Afghan Preferential Trade Agreement".

5. Learned D.R. reiterated the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. No reliable evidence has been produced that Pistachio (Pista kernel) imported by the appellants were from a country other than Afghanistan. Merely relying on opinion of some traders whose expertise has not

proved will not be proper. Based on such report to ignore certificate of origin which has been duly confirmed to be genuine by the Emabssy of Afghanistan will also not be proper. We are, therefore, of the considered view that the orders of the Commissioner (Appeals) cannot be sustained.

7. Accordingly, impugned orders are set aside and appeals are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK