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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/402 /2005 - CU[DB] Date 04/12/2008

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

To :
COMMISSIONER OF CUSTOMS,
ICD, TKD, NEW DELHI.

COMMISSIONER OF CUSTOMS, ICD, TKD, NEW DELHI. Appellant

Vs

M/S ROUNAK ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order** No.C/643/08-CUS. DATED 28.11.08

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

M/S ROUNAK ENTERPRISES

L-2/12. NEW MAHAVIR NAGAR, NEW DELHI.
2. Adv. / Consult H.S. MEW, ADV.,
52-B, UPKAR APPTS., MAYUR VIHAR PHASE-I,
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

Assistant Registrar

(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:28.11.2008

Customs Appeal No.402 of 2005

Arising out of the order in appeal No.CC(A)CSP(73) D-II/05 dated 9.3.05 passed by the Commissioner(Appeals), Customs, New Delhi.

For Approval and Signature:

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

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

Appellant	Respondent

C.C., ICD,TKD, New Delhi vs. M/s Rounak Enterprises

Appearance:

Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue and Shri H.S. Mew, Advocate for the respondent

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

Final Order No. C/643/08

Per P.K. Das:

Revenue filed this appeal against the order in appeal No. CC(A)CSP(73) D-II/05 dated 9.3.05 passed by Commissioner (Appeals).

2. The relevant facts of the case, in brief, are that, the respondent imported Gautemala Cardamoms vide Bill of Entry No.406741 dated

4.2.2005 declaring the value US $ 2500 PMT. The value was enhanced to US $ 2900 PMT. The respondent accepted the loaded price and paid duty without any protest. The respondent filed appeal before Commissioner (Appeals) against the enhancement of the value. The Commissioner (Appeals) set aside the assessment order and allowed the appeal of the respondent.

3. After hearing both sides and on perusal of the record, we find that the main contention of the learned DR is that the respondent accepted the enhanced value and deposited the duty without any protest. He submits that Commissioner (Appeals) set aside the assessment order without examining the record. He also submits that the Revenue has sufficient material for enhancement of the value which was not considered by the Commissioner (Appeals). He relied upon the decision of the Tribunal in the case of C.C., New Delhi vs. Polyglass Acrylic Mfg. Co. P. Ltd. – 2008 (227) ELT 488 (Tri-Del.). The learned Advocate on behalf of the respondent submits that they had contested the loaded value and no material was placed for enhancement of the value by the Revenue.

4. On perusal of the order of the Commissioner (Appeals), we agree with the submission of the learned DR. We find that the Commissioner (Appeals) had not examined records in respect of the loading of the value and passed the order on the basis of the submission of the respondent. On identical situation, we find that the Tribunal in the case of C.C., New Delhi vs. Polyglass Acrylic Mfg. Co. P. Ltd. (supra) remanded the matter to the adjudicating authority to issue a speaking order after giving proper opportunity of hearing to the respondent. The relevant portion of the said order is reproduced below:

> *" 8. In the present proceedings, we are mainly concerned with the manner in which the present order has been passed. It appears that the materials produced before us by the learned DR regarding the higher contemporaneous import price have not been considered by the Commissioner (Appeals). Under these circumstances, without expressing any opinion on the merits of the case, we deem it proper to set aside the order of the Commissioner (Appeals) and also*

the order of assessment and remit to the original authority to issue a speaking order specifically referring to the material said to have been relied upon for enhancing the value and after giving a reasonable opportunity of hearing to the respondent. The respondent is permitted to make written submissions within a period of one month from the date of receipt of this order and the original authority shall decide the case expeditiously thereafter but within two months from the date of expiry of time granted for filing of submissions by the respondents.

5. In view of the above discussion, we set aside the impugned order and the matter is remanded back to the adjudicating authority to decide afresh after giving proper opportunity of hearing to the respondent. As the matter relates to the year 2005, we direct the respondent to file written submission within one month from the date of receipt of this order and thereafter, the adjudicating authority shall decide the case expeditiously within two months .

6. Appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/