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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/62, 96-97 /2006 - CU[DB] Date 11/12/2008

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

To :
M/S SAMAR POLYTEX LTD
SHOP NO. 57, HUDA COMMERCIAL COMPLEX,
PHASE-I, M.I.E.BAHADURGARH, HARYANA.

M/S SAMAR POLYTEX LTD Appellant

Vs

THE COMMISSIONER OF CUSTOMS, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of Final order No. C/646-648/08-CUS. DATED 26.11.08

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
INLAND CONTAINER DEPOT, TUGLAKABAD, NEW DELHI
2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25.LAJPAT NAGAR-III,N.DELHI
S.D.R
I.C.D.R.
Bar association. CESTAT. New Delhi
M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
Nidheshak publications. I.P.Estate. new Delhi
Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
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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:26.11.2008

Customs Appeal Nos.62, 96 to 97 of 2006

Arising out of the order in original No.97/05, 99/2005, 98/2005 all dated 22/23.11.2006 passed by the Commissioner, Customs, Tuglakabad, 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?	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

Appellant — Respondent

M/s Samar Polytex Ltd. vs. C.C., Tuglakabad, New Delhi

Appearance:

Shri Piyush Kumar, Advocate with Ms. Neena Rawat, Advocate for the appellant and Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. C/646 to 648/08

Per M. Veeraiyan:

These three appeals by the same appellant involve same issue and therefore, are being dealt with by a common order.

2. Heard both sides.

3. The appellant imported consignment of Hooks and Loops (Velcro Tapes) and declared the value as 0.48 US $ per 25 pair metres in respect of 20 mm variety , 0.59 US $ per 25 pair metres in respect of 25 mm variety and 0.77 US $ per 25 pair metres in respect of 50 mm variety. The Commissioner enhanced the above values from 0.48 to 1.68, from 0.59 to 2.069 and from 0.77 to 2.695 US $. The above enhancement was done relying on 3 quotations found in the internet in respect of Velcro Tapes and also relying on the enhanced assessable value in respect of import by one M/s Dox Industries vide Bill Entry No.105284 dated 31.5.04.

4. Learned Advocate for the appellant challenges the orders of the Commissioner on the following grounds:

- The internet quotations relate to costlier nylon Velcro tapes, whereas what they have imported is of polyester – nylon mix variety(70% polyester and 30% nylon). The quotations relied upon related to supplies from Taiwan whereas they have imported from China. No contemporaneous import price of the similar goods has been relied upon by the Department, as the price adopted was not the actual import price but the price enhanced by the Department which has been reportedly accepted. The Bill of Entry relating to Dox Industries based on which enhancement was made has not been supplied. It is, therefore, not clear as to the nature/ composition of the goods imported by Dox Industries and comparison of the prices was not proper.

5. Learned DR reiterates the findings of the Commissioner. However, he admits that the internet quotations, as seen from the record, refer to nylon - Velcro Tapes.

6. We have carefully considered the submissions. The principles based on which the declared transaction value can be rejected and value of cotemporaneous can be adopted are well settled. A comparison of prices of goods of two distinct varieties,(i.e. nylon with polyester-nylon mix) and that too from two different countries is not permissible. Further, the

price adopted was not the actual import price but the price enhanced by the Department which has been reportedly accepted. Such an enhanced price can not be treated as transaction value of similar goods sought to be compared. We have not been shown any evidence of actual higher import price of similar goods which can be adopted for the present import. In view of the above, the orders of the Commissioner enhancing the assessable value cannot be sustained.

7. The appeals are allowed with consequential relief.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/