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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/341 /2005 Date 19/03/2008

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

To :
ANAND TEXTILES
JAWAHAR NAGAR, BATALA ROAD, AMRITSAR

ANAND TEXTILES Appellant
Vs
C.C., THE MALL, AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/59/2008-CUS. DATED 13.03.08**

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
   C.C., THE MALL, AMRITSAR
   THE MALL, AMRITSAR
2. Adv. / Consult MR.SUDHIR MALHOTRA
   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. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Custom Appeal No. 341 of 2005
[Arising out of order in Appeal No. 40/Cus/Appeal/Ldh/04 dated 30.12.2004 passed by the Commissioner (Appeals). Customs & Central Excise. Ludhiana]

Date of Hearing/ Decision: 13.03.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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.	:	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 Anand Textiles

Appellant
[Rep. by Mr. Sudhir Malhotra, Advocate]

Vs.

CC, Amritsar

Respondent
[Rep. by Mr. Amit Jain, Authorised Representative (DR) for the Respondent]

CORAM: **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No C/59/08

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) dated 30.12.2004.

2. Heard both sides.

3. The relevant facts in brief are as follows:

(a) The appellant entered into an agreement dated 19.11.2002 with one M/s Mahey Brothers Pte. Ltd., Singapore engaging them as their buying agent to procure nylon filament yarn and polyester filament yarn from different overseas parties. As per agreement the buying agent was inter-alia required to open L/C for procuring materials and to undertake other services in relation to procuring the materials. As per the agreement, they were eligible for buying commission which included documentation and service charges and there was a ceiling for the buying commission which was 12% of the value of the consignment.

(b) Nine consignments were imported over a period of time with the said Singapore based party acting as buying agent. The appellant has entered into purchase agreements directly with the foreign suppliers. The invoices by the suppliers were in the name of the Singapore based buying agent with the appellant as the notified party. The appellant was making payments for consignments to the Singapore based buying agent who in turn was making payments to the suppliers. The other documents like bill of lading were in the name of the buying agent but also mentioned the appellant as notified party.

(c) In the investigation revealed that the appellant has paid around 10% of the value of consignment to the buying agent based on bills raised in the "name documentation and service charges".

(d) The original authority held that what was excludible in terms of rule 9 of the Valuation Rules is only buying commission and inasmuch as no break up of buying commission out of documentation and service charges were provided by the appellant. the same required to be added to the assessable value and accordingly he demanded duty and imposed penalty as well.

4. Learned Advocate appearing for the appellant submits that the Singapore based party is only a buying agent and no other services have been rendered by the said buying agent. They have rendered only the services as a buying agent; their standing guarantee for payment to the foreign supplier and the documentation were only incidental services and the amounts mentioned as documentation and service charges in the bills were only buying commission as mentioned in the agreement and. He relies on the decision of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd., vs. Collector of Customs reported in 1997 (89) ELT 7 (SC) wherein commission paid in similar circumstances which included charges towards documentation and guarantee were permitted to be excluded in arriving at the assessable value.

5. Learned Departmental Representative defended the order of the Commissioner (Appeals) and submitted that inasmuch as the appellant has collected only as documentation and service charges, the same cannot be treated as buying commission. Rule 9 of Customs Valuation Rules permits exclusion of only buying commissions and not all commissions.

6. We have carefully considered the submissions from both sides.

7.1. In the judgment relied by the appellant, The Hon'ble Supreme Court has taken note of the nature of services rendered by General Tyre International Company as the agent to M/s Apollo Tyres Limited which is as under:

"The agreement in Article 5 stated, so far as is relevant:

OPTIONAL PROCUREMENT SERVICES

5.1 ATL shall have the option and right to call for the services of GENERAL for procurement of any one or more items or equipment, machinery, spares, accessories and raw materials required for the PLANT, which ATL may elect to purchase, and GENERAL shall arrange for obtaining quotations and for rendering of all the related services, including inspection at the supplier's manufacturing site, furnishing for such supply of all necessary documentation, guarantees, data and manuals relating to and customarily supplied with, for installing, testing, operating and maintaining such equipment and machinery and the details as to the needs and procurement of spare parts and accessories therefore. Prior to placing of any firm order for purchasing any equipment, machinery, spares, accessories, or raw materials, GENERAL shall obtain quotations from responsible qualified suppliers thereof and shall submit quotations and GENERAL's recommendations to ATL for final approval and authorization to place such orders but no orders shall be placed by GENERAL unless approved and authorized in writing by ATL.

5.2 Unless otherwise mutually agreed in any given transaction, all equipment, machinery, spares, accessories, and raw materials purchased by GENERAL. In pursuance of ARTICLE 5.1 for ATL, shall be purchased by GENERAL directly in the name of ATL and ATL shall pay for the same including shipping, transportation charges and insurance premiums.

CONDITIONS OF PROCUREMENT SERVICES:

5.3 GENERAL agrees to observe the following norms in respect of procurement services to be rendered under this Article.

(c) For the obligations concerning optional procurement services referred to in this Article. ATL agrees to pay GENERAL , in U.S.$ three per cent (3%) on the F.O.B. value of such imported equipment. machinery. and /or raw materials for which GENERAL has rendered procurement services to ATL against ATL specific written request.

(d) The amount payable under Article 5.3(c) shall he paid against a quarterly consolidated invoice to be submitted by GENERAL after having taken into accounts such invoices of supplies (with two copies thereof) in respect of which dispatches have been completed by GENERAL and goods received and approved at ATL's PLANT. This payment shall be effected within ninety (90) days from the date of receipt of he consolidated invoices by ATL from GENERAL.".

7.2. After taking note of the factual position as above, the Hon'ble Supreme Court has held as follows:-

"7. Clearly, this was an agreement by which General was appointed the purchasing agent of the appellants in respect of such items of equipment for the tyre plant that the appellants opted to purchase through the agency of General. The provisions aforementioned make it clear that the appellants would see the quotations submitted to General by the various suppliers and would approve the same. They provide that the purchases from the suppliers would be made by the appellants. They provide that what the appellants would pay to General was a commission or remuneration to be computed on the basis of 3% of the value of each of the items of equipment. These provisions show beyond any doubt that the value of the items of equipment was not enhanced thereby. We, therefore, cannot accept the reasoning of the Tribunal".

8. We have gone through the documents like buying agent's agreement. contract with the foreign supplier, invoices, bill of lading etc. From these documents we find the role of M/s Mahey Brothers Pte. Ltd., Singapore to be only that of a buying agent. We have not been shown any evidence to the contrary.

9. Rule 9 of the Custom Valuation Rules clearly permits exclusion of buying commission and note to rule 9(1)(a)(i) also clarifies the term buying commission as "fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued". On going through the judgement of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. (supra) we find that the facts of the present case are substantially the same as facts of the said case. Therefore, we hold that the amount of about 10% of the value paid by the appellant to the Singapore based party is in the nature of buying commission only. It appears to be a case of difference in nomenclature in describing the said commission as documentation and services charges by the Singapore based agent. We, therefore, hold that the said amount is eligible to be excluded in arriving at the assessable value of the imported goods.

10. Therefore, we allow the appeal with consequential relief according to law.

(Order dictated and pronounced in the open Court)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]