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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/411 /2005-414 /2005 Date 27/03/2008

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

To :
COMMISSIONER OF CUSTOMS, AMRITSAR
CUSTOMS COMMISSIONERATE, THE MALL,
AMRITSAR

COMMISSIONER OF CUSTOMS, AMRITSAR Appellant

Vs

M/S POLYGLASS ACRYLIC MANUFACTURING CO.(P)LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/ 63 – 66 / 08-CUSTOMS DT.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
   M/S POLYGLASS ACRYLIC MANUFACTURING
   CO.(P)LTD.
   89-90, INDUSTRIAL AREA, PHASE-I, PANCHKULA
2. Adv. / Consult
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 Nos. 411 - 414 of 2005
[Arising out of order in Appeal No. 19-22/CUS/APPEAL/LDH/05 dated 15.2.2005 passed by the Commissioner (Appeals-I), 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

CC, Amritsar — Appellant
[Rep. by Mr. Amit Jain, DR]

Vs.

M/s Polyglass Acrylic Manufacturing Co. Pvt. Limited — Respondent
[Rep. by Mr. V.K. Agrawal, Advocate]

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

Final **ORDER** No C/63-66/08

Per M. Veeraiyan:

These appeals are filed by the department against the common order of Commissioner (Appeals) No. 19-22/CUS/APPEAL/LDH/05 dated 15.2.2005.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(a) The respondent imported Acrylic Strips and filed bills of entries on 17.04.2004, 29.04.2004 and 01.05.2004 and declared the value as US$ 140 PMT in each case.

(b) The goods were examined (on first appraisement basis) before the assessment of the goods. On examination, the goods were found to be acrylic strips of varying length and width, length ranging between 2 ft. to 10 ft. and width from 1 inch to 9 inches. The value has been enhanced from US$ 140 PMT to US$ 320 PMT. There are endorsements in the bills entries by the representative of the importer to the effect that "value loading accepted".

(c) The respondent after paying the duty on the enhanced value filed appeal before the Commissioner (Appeals) who has allowed the appeal of the importer holding that there was nothing on record to show that the assessable value declared by the importer was not the sole consideration for sale.

4. The department seeks setting aside of the order of the Commissioner (Appeals). It was submitted that the importer having accepted the enhancement and having not asked for any speaking order should not have been granted relief by the Commissioner (Appeals). The Ld DR also

produced bill of entry No. 001370 dated 23.04.2004 relating to import of acrylic strips in different length and width by M/s North East Systems, Chandigarh through ICD, Ludhiana wherein the value declared was 320 US$.

5. Learned Advocate for the respondent submits that they took clearances accepting enhanced value to overcome the burden of mounting demurrages and they have filed appeal against the assessment orders. The assessment order did not rely on contemporaneous import on higher assessable value.

6.1. We have carefully considered the submissions made from both sides. We find that the value enhancement has been done rather casually. Even though in the bills of entry, there were endorsements to the effect that the value loading was accepted, there was no indication of the basis for such enhancement. We have also gone through the bill of entry relating to contemporaneous import now produced before us. Examination report in the said bill of entry reads as follows:-

> "Strips of varying width and length with width being less than 3" and length varying from 1 ft. to 6 ft."

6.2. There is overlapping of the dimensions between the imports under dispute and the import sought to be compared. If there were higher quantum of strips of bigger size then value would be higher. Wide range of dimensions in both consignments with out even broad segregation of quantity in different sizes makes comparison difficult if not impossible. Comparison in this case is not appropriate. No reliable inference can be drawn as to whether the two consignments are identical/ similar. Enhancing the assessable value without giving an opportunity to the importer looks arbitrary. Under these circumstances, the decision of the Commissioner (Appeals) in allowing the appeals of the importer cannot be held unreasonable. We hold that no valid ground has been adduced to interfere with the order of the Commissioner (Appeals).

6.3. The appeals are rejected.

(Operative part of the order pronounced in the open Court on 13.3.2008)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]