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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/386 /2005-390 /2005 Date 08/04/2008

Assistant Registrar

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

To : M/S G.D.MISHERDHATU LTD.
KHASRA NO.15 / 23 / 1 PRAKESH VIHAR,
SHAHBAD DAULATPUR, DELHI – 42.

M/S G.D.MISHERDHATU LTD. Appellant

Vs

COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/83-87/08-CUSTOMS DT.31.03.08** 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
   COMMISSIONER OF CUSTOMS, INLAND CONTAINER DEPOT, T
   INLAND CONTAINER DEPOT, TUGHLAKABAD, DELHI
2. Adv. / Consult
   MR.K.C. SACHAR, ADV.
   F.B.19, TAGORE GARDEN NEW DELHI-27
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)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI, COURT NO.1

CUSTOMS APPEAL NOS. 386 TO 390 OF 2005
[Arising out of order in appeal No. CCA/CSP(19-25)D-II/2004 dated 28.1.2004 passed by the Commissioner of Customs (Appeals), Delhi-II].

Date of Hearing/Decision: 31.3.2008

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 G.D. Misherdhatu Ltd. — Appellant
[Rep. by: Shri K. Sachar, Advocate]

Versus

Commissioner of Customs, New Delhi — Respondent
[Rep. Shri B.K. Singh, DR]

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

Final **ORDER** No C/83 to 87/08

Per M. Veeraiyan:

These appeals arise out of common order-in-original dated 28.12001 relating to same appellant.

2. Heard both sides.

3. The appellant imported during the period February 2002 to April 2002 goods namely electrolytic manganese metal and SS turning scrap. The

original authority enhanced the value in respect of electrolytic manganese metal from 800 US$ PMT to 890 US$ PMT and enhanced the value of SS turning scrap from 430 US$ to 520 US$. This enhancement has been done in pursuance of the Standing Order No.7/99 dated 5.11.1999 issued by the Commissioner of Customs, ICD which was issued for the purpose of bringing uniformity in the assessment of non-ferrous scrap and non-ferrous prime metals. The prices were enhanced by the original authority based on LME prices pertaining to November 2001. The decision of the original has been upheld by the Commissioner (Appeals).

4. The learned advocate for the appellant submits that LME prices are only guideline values. In their case the actual transaction price should have been taken for assessment purpose. Enhancing the value after ignoring the actual transaction price and merely basing on a higher LME prices relating to an earlier period is not legal. The learned advocate also relies on the decision of the Tribunal in the case of **M/s. Shiva Alloys Pvt. Ltd.** reported in 2006 (196) ELT 212 which also arises out of the same impugned order of the Commissioner (Appeals).

5. We have carefully considered the submissions from both sides. The LME prices are at best indicative of the prevailing prices and the same cannot be taken as final and conclusive. In this case the authorities below have chosen to rely on the LME prices prevailing in November 2001 in respect of the imports which have been taken place during February to April 2002. Further, the Tribunal has allowed the appeal of appellant identically situate namely **M/s. Shiva Alloys Pvt. Ltd.** arising from the very same order-in-appeal of the Commissioner (Appeals).

6. In the light of the above and following the above decision, we allow, with consequential relief, the present appeals also.

[Dictated and pronounced in the open Court]

[Justice S.N.Jha]
President

[M. Veeraiyan]
Member (Technical)

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