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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/245 /2005 Date 16/04/2008

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

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

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

Vs

M/S SHANKAR MERCHANTS (P) LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/96/08-CUSTOMS DT. 08.04.08** 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 SHANKAR MERCHANTS (P) LTD.
   703, ASHOKA ESTATE, BARAKHAMBA ROAD, DELHI – 1.
2. Adv. / Consult MR. V.K. AGRAWAL, ADV.,
   C/O M/S SHANKAR MERCHANTS (P) LTD.
   703, ASHOKA ESTATE, BARAKHAMBA ROAD, DELHI – 1.
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

PER M. VEERAIYAN :

This is an appeal against the order of the Commissioner (Appeals) dated 30.12.2004. The Cross Objection No. 115 of 2005 is connected to this appeal.

2. Heard both sides.

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

(a) The respondent imported Patchouli Oil and declared a value of Rs. 117/- per kg. The Customs authorities conducted market inquiry about the value in the presence of CHA and also got the sample of the goods tested. The testing of sample has no relevance to the issue before us.

(b) On the basis of market inquiry conducted in India, the original authority enhanced the value from Rs. 117/- per kg. to Rs. 230/- per kg. and held that the same has been arrived under Rule 5 of the Customs Valuation Rules, 1988.

© Consequent to enhancement of value, he confirmed differential duty of Rs. 2,29,548/-; he also confiscated the goods and allowed the same on payment of redemption fine of Rs. 1,00,000/-; he also imposed a penalty of Rs. 60,000/-.

(d) The Commissioner (Appeals) did not find the method by which the value has been enhanced as legal and allowed the appeal of the respondent.

3. The learned DR submits that market inquiry was done in the presence of the CHA and the value was not disputed and, therefore, a detailed speaking order was not issued. The appellant filed the appeal before the Commissioner (Appeals) only as an after thought and that the

Commissioner (Appeals) should not have allowed the same. He reiterated the grounds of appeal mentioned in the Memorandum of Appeal.

4. We have carefully considered the submissions. The original authority has sought to enhance the value based on market inquiry and fixed the assessable value under Rule 5 of the Customs Valuation Rules. Rule 5 is applicable only when the value of the goods is sought to be compared with the value of other imported goods which are identical to goods under assessment. Such is also subject to adjustments for variation in commercial level, quantum of imports etc as envisaged therein. We are not able to appreciate the invocation of Rule 5 for fixation of assessable value based on local market inquiry by the original authority. In view of the above, the decision of the Commissioner (Appeals) cannot be held unreasonable.

5. The cross objection is really in the nature of submissions in support of the order of the Commissioner (Appeals).

6. The appeal of the Department is rejected. The cross objection is also disposed of.

(Dictated and pronounced in the open Court on the 8[nd] day of April, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay