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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/502, 526 & 548 /2005 Date 17/04/2008

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

To :
THE COMMISSIONER OF CUSTOMS, NEW DELHI

THE COMMISSIONER OF CUSTOMS, NEW DELHI Appellant
Vs
M/S D M INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/98 – 100/08-CUS 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 D M INTERNATIONAL
B-2, 38/18, EAST PATEL NAGAR,
NEW DELHI – 110008.

2. Adv. / Consult MR. V.K. AGRAWAL, ADV.
B-82, LAJPAT NAGAR – II,
NEW DELHI – 110 024.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal Nos. 502, 526 & 548 of 2005

(Arising out of Order-in-Appeal No. CC(A)CSP(66 to 70) D-II/05 dated 25.02.2005; CC(A)CSP(113 to 119) D-II/05 dated 08.04.2005; and CC(A)CSP(79 to 81) D-II/05 dated 17.03.2005 passed by the Commissioner of Customs (Appeals), Delhi).

DATE OF HEARING : 08.04.2008
DATE OF DECISION : 08.04.2008

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

Customs of Customs, New Delhi .... **Appellant**
(Rep. by S/Sh. Amit Jain & A.K. Madan, DRs)

VERSUS

M/s D.M. International .... **Respondent**
(Rep by S/Sh. Prem Rayan & V.K. Agarwal, Advocates)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)

Final ORDER NO. C/98 to 100/08

PER M. VEERAIYAN :

All these three appeals are by the Department against the orders of the Commissioner (Appeals) and a common respondent and a common issue are involved and, therefore, are being dealt with by a common order.

2. Heard both sides.

3. The respondent imported PU leather Cloth, Raxine in Rolls, Polyester Coated Fabrics, Polyester Knitted Fabric, Polyester Knitted Fabric in different colours and mix socks. The Department did not accept the value declared by the respondent and proposed enhancement of the value based on contemporaneous import prices. These goods were assessed on the enhanced value and duty was paid. According to the Department, the respondent accepted the enhancement of the value and paid the duty on higher value. The respondent filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) has by more or less identically worded orders, after mentioning that the appellant accepted the loaded price and paid duty without any protest on the enhanced value and took clearance of the goods, has held that the Department has loaded the value without any speaking order for rejecting the transaction value that there was no consent of the importer to the enhanced value. These findings appear to be contrary to his earlier findings that the importers have accepted the enhanced value.

4. The learned DR submits that the importer agreed to the enhancement of the price based on higher contemporaneous import prices and since there was consent for the same and no speaking order was issued. The learned DR also produced NIDB data relating the relevant period indicating import at higher contemporaneous

prices. Therefore, he submits that the findings of the Commissioner are erroneous. He also submits that in one case (A.No. C/526/05), the bill of entry no. 395287 dated 24.01.2005 dealt with by the Commissioner (Appeals), does not relate to import by the respondent.

5. The learned advocate appearing for the respondent submits that the order of the Commissioner (Appeals) is correct in law and the Department has not produced any evidence to the contrary before the Commissioner (Appeals).

6. We have carefully considered the submissions of both sides. The Commissioner (Appeals) is entitled to entertain appeals against the orders of assessment. He is also empowered to modify/reject or accept the orders of assessment in such appellate proceedings. However, when he is taking a decision different from what has been taken by the assessing authority, in all fairness, he ought to have gone into the reasons and the evidence relied upon for enhancement of the assessable value. We are informed that there is no system of a departmental representative being present in the proceedings before the Commissioner (appeals). In such a situation it would have been appropriate on the part of the Commissioner (Appeals) to have called for the evidence relied by the department. From the orders of the Commissioner (Appeals), we are unable to come to a conclusion that the same have been gone into by the Commissioner (Appeals) or that he gave such opportunity and that the department did not respond.

7. In view of the above, we deem it proper to set aside the orders of the Commissioner (Appeals) and remand the matter to him for fresh consideration. The Department is permitted to produce evidence claimed to have been relied up on in the assessment proceedings for enhancing the assessable value and also evidence about acceptance of enhanced value by the importer at the time of assessment. He shall pass the order after hearing the respondent as well.

8. The appeals are allowed by way of remand on the above terms.

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

(JUSTICE S.N. JHA)
PRESIDENT

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay