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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/322 /2005 Date 17/04/2008

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

To :

ICD, TKD, NEW DELHI

C.C., ICD, TKD, NEW DELHI Appellant

Vs

M/S. K.D.EXPORTS Respondent

I am directed to transmit herewith a certified copy of Final order No. **C/101/08-CUS. DATED 10.04.08**

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. K.D.EXPORTS,
2861, BHAGAT SINGH STREET NO.5, 3RD FLOOR,
CHUNAMANDI, PAHARGANJ, NEW DELHI
2. Adv. / Consult MR. V.K. AGRAWAL, ADV.
B-82, LAJPAT NAGAR – II,
NEW DELHI – 24.
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)

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. 322 of 2005
[Arising out of order in appeal No. CC(A) CSP (338) D-II/04 dated 30.12.2004 passed by the Commissioner of Customs (Appeals) New Customs House, New Delhi]

Date of Hearing/ Decision: 10.04.2008

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

CC, ICD, New Delhi — Appellant
[Rep. by Mr. B.K. Singh, DR]

Vs.

M/s K.D. Exports — 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/101/08

Per M. Veeraiyan

This is an appeal by the Departmental against the order of the Commissioner (Appeals) dated 25.1.2005.

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

(a) The respondent imported three consignments of Polyester fabrics in October 2004 and two consignments of PU Leather Cloth in November 2004. The goods were examined as per the examination order in the presence of CHA. Subsequently, the Assessing Authority has enhanced the value based on NIDB data and assessed duty was paid.

(b) The party filed appeal to the Commissioner (Appeals) against the five assessments orders. By a common order-in-appeal, Commissioner held that the Department has not adduced any evidence to reject the value and that no legally permissible steps were followed in enhancing the assessable value and accordingly held that the assessment orders enhancing the assessable value were not legal and proper.

3. Learned DR submits that the enhancement of the value was based on NIDB data reflecting the contemporaneous import at higher prices. The respondent accepted the enhancement of assessable value and paid the duty accordingly. The party did not request for a speaking order at any stage and did not protest the raising of the assessable value. The Commissioner has not called for the records from the Department and did not seek any clarification and decided the appeal based on the submissions of the respondent.

4. Learned Advocate for the respondent submits that they never accepted to the enhancement of the value. The enhancement has been done suo-moto by the Assessing Officer. They had no alternative but to pay the duty so that the demurrage was avoided; the goods were cleared for their immediate use and that their investment was not blocked. The entries in the Bill of entries also do not show that the respondent accepted for the enhancement.

5. We have carefully considered the submissions and perused the bill of entries and the endoresments relating to examination and enhancement of the value. We find that in the case of bill of entry No. 387940 dated 01.11.2004, the declared value of US$ .32 was enhanced to US$ 0.448 per meter. Subsequently in respect of bill of entry No. 389742 enhancement has been made from 030 US$ to 0.448 stating that the party has already imported the same item vide bill of entry No. 387940 dated 01.11.2004. We find this noting is misleading. For the consignment relating to the bill of entry dated 1.11.2004 the value was enhanced only by the Department. It is not a case of the respondent importing at the assessed value of .448 US$. Learned DR produced NIDB data relating to the year 2005 and claimed that imports had taken place at prices substantially higher the prices declared by the respondent. He was not able to specifically indicate any specific contemporaneous import price relating to the relevant period based on which the prices were enhanced. We also find that certain ad hoc and arbitrary enhancements to the extent of 40 cent per meter etc. have been adopted. Such an enhancement has been made apparently without disclosing the proposal for enhancement and seeking acceptance of the same from the respondent. In none of the bill of entries we find any endorsement to the fact that the respondent or the representative have accepted such enhancement. In the absence of acceptance, speaking orders specifying the grounds should have been issued.

6. Under these circumstances, we do not find any valid grounds to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Department is rejected.

(Dictated and pronounced in the open Court)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]