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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/315 to 321 & 323/2005 C/CO/106 – 112/05 Date 02/07/2008

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 B.S.ENTERPRISES — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/145 TO 152/08 **Customs** dated 23.6.08

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 B.S.ENTERPRISES

   45 A, GALI NO.2, VIJAY NAGAR, BATALA ROAD, AMRITSAR.
2. Adv. / Consult Sh.N Singh, conslt., 5/77, 16 Samaj Kalyan Apartments Vikas Puri, N.Delhi
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)

Other addresses overleaf

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Custom Appeal No. 315 to 321 & 323 of 2005-CST Br.
With CO/106 to 112/05

(Arising out of Order-in-Appeal No. CC(A)CSP (48 to 53) (54 to 56), (24 to 33), (19 to 25), (46), (35 to 39), (6 to 9), (34) D-II/04 dated 11.2.2005, 15.2.05, 31.1.05, 25.1.05 passed by the Commissioner of Customs (Appeals), New Delhi)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR. 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

CC, New Delhi — Appellant

Vs.

M/s B.S. Enterprises — Respondents
M/s Guru Kripa Textiles
M/s KDB Trading
M/s Guru Kripa Textiles
M/s KDB Trading
M/s G.G. Textiles
M/s Y.S. Enterprises
M/s Nipison Plastics Pvt. Ltd.

Appearance:
Shri B.K. Singh, DR - For appellant
Shri P.C. Jain, Advocate & Shri N. Singh, Consultant - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 23.6.2008

Final Order No. C/145 to 152/08 dated 23/6/08

Per S.S. Kang:

Heard both sides.

2. Common issue is involved, therefore, the appeals are being taken up together.

3. The Revenue filed these appeals against the orders in appeal whereby the Commissioner (Appeals) set aside the enhancement of declared value, for assessment, on the ground that the value was enhanced without any basis and there is no ground for rejection of the value declared by the importer.

4. Now, the ld. DR submitted before us that there are numerous imports made by other importers of similar goods which had declared higher value. The Revenue also relied upon the decision of the Tribunal in the case of CC Vs. M/s Polyglass Acrylic Mfg. Co. P. Ltd. - Final Order No. C/105/08 dated 3.4.2008

wherein a similar situation, the matter was remanded to the adjudicating authority to decide afresh.

5. The contention of the respondent is that the value declared by the appellant was enhanced without any basis and Commissioner (Appeals) wrongly held that the importers consented to the assessment on the higher value. The respondents are also submitted that the impugned order is passed in accordance with law laid down by the Hon'ble Supreme Court in the case of M/s Eicher Tractors Ltd. reported in 2000 (122) ELT 321. As the respondent submitted that there is no basis for rejection of the value declared by the importer, therefore, the impugned order is rightly passed.

6. We find that in this case the assessing authority enhanced the value while assessing the goods on the

Bills of Entry. The appellants were filed appeals and the Commissioner (Appeals) held that the enhancement is without any basis. Now, the ld. DR produced material regarding import on the similar goods at higher value at the relevant time. We find that in the similar situation, the Tribunal in the case of M/s Polyglass Acrylic Mfg. (supra) remanded the matter to the adjudicating authority to decide afresh. The Tribunal held as under :-

> "In the present proceedings, we are mainly concerned with the manner in the which the present order has been passed. It appears that the materials produced before us by the learned DR regarding the higher contemporaneous import price have not been considered by the Commissioner (Appeals). Under these circumstances, without expressing any opinion on the merits of the case, we deem it proper to set aside the order of the Commissioner (Appeals) and also the order of assessment and remit to the original authority to issue a speaking order specifically referring to the material said to have been relied upon for enhancing the value and after giving a reasonable opportunity of hearing to the respondent. The respondent is permitted to make written submissions within a period of

> one month from the date of receipt of this order and the original authority shall decide the case expeditiously thereafter but within two months from the date of expiry of time granted for filing of submissions by the respondents."

7. In view of the above order, the impugned order is set aside and the matter is remanded to the adjudicating authority to decide afresh after affording an opportunity of hearing to the respondent. Cross-objections were also disposed of in same terms.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM