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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/641, 644-646 /2005 Date 24/07/2008

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

To :
M/S Y S ENTERPRISES
SHOP#22, WZ-19A, 1ST FLOOR.
SARATI COMPLEX, JAWALAHERI MKT.
PASCHIM VIHAR, NEW DELHI -110 063

M/S Y S ENTERPRISES Appellant

Vs

THE COMMISSIONER OF CUSTOMS. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/227-230/08-CUSTIMS DT. 19.06.08** 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
THE COMMISSIONER OF CUSTOMS. DELHI II
NEW CUSTOMS HOUSE, IGI AIRPORT, NEW DELHI
2. Adv. / Consult
MR. V.K. AGRAWAL, ADV.
B-82, LAJPAT NAGAR-II, N.D. - 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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Customs Appeal Nos. 641 and 644-646 of 2005

[Arising out of the Order-in-Appeal No. CC (A)/CSP (131-133)D-II/2005 dated 13/04/2005 passed by The Commissioner of Customs (Appeals), Delhi-II, New Delhi.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

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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 Department Authorities? :

M/s Y.S. Enterprises — Appellant

Versus

CC, Delhi — Respondent

Appearance

Shri V.K. Agarwal, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 19/06/2008.

Final Order No. C/227-230/08 Dated : 19/6/08.

Per. S.S. Kang :-

Heard both sides. Common issue is involved, therefore, the appeals are taken up together. Appellant filed these appeals against the impugned order passed by Commissioner (Appeals). Brief facts of the case are that appellants made the imports of Polyster Knitted fabric by declaring the value U.S. $ 0.90 per kg. The value declared by the appellant is not accepted by the Customs Authority and the same was enhanced to U.S. $ 1.40/1.70 per kg.

2. The contention of appellant is that the value of imported goods were enhanced without any basis. The contention is that Commissioner (Appeals) in the impugned order held that the enquiry was made from the Commissioner of Customs, New Delhi for determination of value of goods and received a report vide letter dated 22/03/05, whereby it was informed

that price of similar or identical goods is U.S. $ 1.40 per kg./U.S. $ 1.70 per kg. The contention is that neither the copies of bills of entry which are basis for the report or copy of report was supplied to the appellant. The contention is that as the impugned order passed on the basis of a report which is not supplied to the appellant, therefore, the impugned order passed by the Commissioner (Appeals) in violation to the principles of natural justice.

3. The contention of revenue is that the similar goods are imported on a higher price, therefore, the value declared by the appellant was not accepted and enhanced as per the import made by other importers.

4. We find that in this case, the value declared by the appellant were rejected on the ground that other importer ~~are~~ have imported the goods on higher value. Commissioner (Appeals) in the impugned order relied upon the report of the Commissioner of Customs, New Delhi. The copy of the report or the bills of entry showing higher value of similar or identical goods which are made basis of enhancement of value were not supplied to the appellant. In these

circumstances, the impugned order is set aside and matter is remanded back to the adjudicating authority to decide afresh after supplying the relevant material to the appellant and after affording opportunity of hearing to the appellant. Appeals are disposed of by way of remand.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK