TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/330 /2005 Date 24/07/2008

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

To :
COMMISSIONER, CUSSTOMS, MANIK BAG,
P.B.NO.10, MANIK BAGH PALACE. INDORE-452001.

COMMISSIONER, CUSSTOMS. MANIK BAG Appellant

Vs

M/S. HINGORA INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/232/08-CUSTOMS DATED 11.06.08** 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 M/S. HINGORA INDUSTRIES LTD.
   104, EMPIRE STATE BUILDING. RIND ROAD.
   SURAT (GUJRAT)
2. Adv. / Consult MR. RAMESH NAIR. ADV.,
   227-B, BANSI TRADE CENTRE. 581/5,
   M.G. ROAD, INDORE.
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 No. 330 of 2005

[Arising out of the Order-in-Appeal No. IND-I/12/2005 dated 28/01/2005 passed by The Commissioner (Appeals-I), Customs & Central Excise, Indore.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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 Department Authorities?	:

CCE, Indore — Appellant

Versus

M/s Hingora Industries Ltd. — Respondent

Appearance

Shri A.K. Madan, Authorized Representative (SDR) – for the appellant.

Shri Ramesh Nair, Advocate – for the Respondent.

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

DATE OF HEARING : 11/06/2008.

Final Order No. C/232/08 Dated : 11/6/08

Per. S.S. Kang :-

Heard both sides. Revenue filed this appeal against the impugned order passed by Commissioner (Appeals). The only contention of revenue is that at the time of clearance of goods, the respondent accepted the loading of the value of the goods once the loading of the value of the goods is accepted by the respondent and duty has been paid without any protest they cannot challenge the assessment order hence setting aside the assessment order by Commissioner (Appeals) is not sustainable.

2. The contention of respondent is that to avoid ~~damrage~~ demurrage charges, the respondent accepted the enhanced value and thereafter filed appeal. Respondent relied upon the decision in

the case of **Laxmi Colour Lab vs. Collector of Customs** reported in **1992 (62) E.L.T. 613 (Tribunal).**

3. We find that in this case, value of the goods was enhanced by the Customs Authorities and goods were assessed at the enhanced value. Thereafter respondent filed appeal and the same was allowed. The only contention of revenue is that value of goods was enhanced which was accepted by the respondent. We find that in the Tribunal's case Laxmi Colour Lab (Supra) after relied upon the decision of the Hon'ble Supreme Court in the case of **Dunlop India Ltd. & Madras Rubber Factory Ltd. vs. Union of India and Others** reported in **1983 E.L.T. 1566 (S.C.),** held as under :-

> "There is no estoppel in law against a party in taxation matter. If a party, in order to clear the goods for customs, has given the classification in accordance with the wishes of the authorities or even under some misapprehension, and if the law allows it a right to ask for refund on proper appraisement and which is actually applied for the party cannot be estopped from making such application and ask for such refund."

4. In view of the above decision, we find no merit in the appeal, the same is dismissed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK