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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/403-404 /2005 Date 24/07/2008

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 D.M.INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/234-235/08-CUSTOM DT.30.06.08** 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 D.M.INTERNATIONAL
COMBINED BUSINESS CENTRE.
BASEMENT CABIN-4, GOPALA TOWER,
25 RAJENDRA PLACE, NEW DELHI-110008.

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-110066.
Principal Bench, New Delhi.

C/403-04/05

[Arising out of Order-in-Appeal No.CC(A)CSP(103 to 104)D-II/05 dt.30.3.04 passed by the Commissioner of Customs,New Delhi)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. 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:

CC, ICD, TKD, New Delhi Appellant

Versus

M/s. D.M.International Respondent

Appearance

Sh. B.K.Singh, Authorised Departmental Representative(DR) For appellant
Sh. V.K.Agarwal, Adv. For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Final

Date of decision: 30.6.08
Order No. C/234-235/08

Per S.S.Kang:

Common issue is involved therefore, the appeals are taken up together. The respondent made import of rejected stock lot of Polyster Knitted Fabric in different colours and stock lot of Polyster Knitted Fabric. The value declared by the respondent was enhanced by the revenue at the time of assessment of bill of entry. The present respondents filed appeals and the Commissioner (Appeals) set aside the enhanced value on the ground that there is no evidence for rejection of the value declared by the respondent at the time of import.

2. The revenue filed these appeals mainly on the ground that before the assessing authority, the respondent accepted the enhanced value and paid the duty accordingly without any protest, hence the Commissioner(Appeals) wrongly entertained their appeal. The revenue also submitted that as per NIDB data, the goods are being imported at higher value by other importers. The revenue also relied upon the decision of the Tribunal in the case of Vikas Spinners vs CC, Lucknow reported in 2001(128)ELT.143 to submit that once loaded value is accepted by the importer without any contention or objection, importer is estopped from challenging the same.

3. The respondent relied upon the decision of the Hon'ble Supreme Court in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. vs UOI & Others reported in 1983(13)ELT.1566 to submit that there is no estoppel in law against a party in taxation matters to challenge the assessment order. The respondent also submitted that goods imported by

them are rejected stock lot of polyster knitted flock fabric and the data now relied upon by the revenue is in respect of polyster knitted flock fabric and not in respect of rejected stock lot, therefore, there is no infirmity in the impugned order.

4. We find that Hon'ble Supreme Court in the case of Dunlop India Ltd. (supra) held that there is no estoppel in law against a party in taxation matters or challenging the assessment order. The Hon'ble Supreme Court particularly said that importer in order to clear the goods ~~for~~ from customs may have ~~given the classification~~ accepted the valuation in accordance with the wishes of the authorities. We find that the ratio of the Hon'ble Supreme Court is fully applicable to the facts of the present case, therefore, we find no merit in the contention of the revenue that the importer is estopped from challenging the order of assessment. The data now produced by the revenue is in respect of import of polyster knitted fabric whereas goods in question are rejected stock lot of polyster knitted fabric. As the data now produced is not in respect of same or similar goods hence we find no merit in these appeals, the same are dismissed.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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