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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/429 /2005 Date 24/07/2008

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

To :
COMMISSIONER OF CUSTOMS. ICD, TKD.
ICD. TKD, NEW DELHI

COMMISSIONER OF CUSTOMS. ICD. TKD. NEW DELHI Appellant

Vs

M/S Y.S.ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/241/08-CUSTOMS DATED 04.07.08**

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 Y.S.ENTERPRISES
SHOP NO. 22, WS-19A, JAWALAHERI MARKET.
PASHIM VIHAR, NEW DELHI -- 110063.

2. Adv. / Consult MR. V.K. AGRAWAL. ADV.
B-82, LAJPAT NAGAR-II.
NEW DELHI - 110 024.

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

COURT – II

CUSTOMS APPEAL NO. 429 OF 2005

[Arising out of Order-in-Appeal No. CC(A)CSP(83-85)D-II/04 dated 15.03.2004 passed by the Commissioner of Customs (Appeals), Delhi-II, 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?	

C.C., ICD, TKD, New Delhi — Appellant

Versus

M/s. Y.S. Enterprieses — Respondents

Appearance:

Shri Amit Jain, Departmental Representative, for the Revenue;
Shri V.K. Agrawal, Advocate for the respondents

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 4th July, 2008

FINAL ORDER NO. C/241/08 **dated** 4/7/08

Per S.S. Kang:

Heard both sides. This is a departmental appeal against the order of the Commissioner (Appeals) vide which the order of assessment enhancing the value of imported goods was set aside.

2. Brief facts of the case are that M/s. Y.S. Enterprises (hereinafter Stock lot of Non Textured polyester woven fabric. For clearance of the said imported goods they filed four Bills of Entry declaring the transacted value as the assessable value. The department did not accept the declared price and assessed the Bills of Entry with the loaded price as tabulated below:-

S. No.	Bill of Entry No. & Date	Appeal No.	Description of imported goods	Declared value	Enhanced value
1.	397355 dated 20.12.2004	ICD/84/05	Stock Lot of PU leather Cloth	USD 0.25 per kg.	USD 1.685 per kg.

2.	400430 dated 4.2005	ICD/85/05	Stock Lot of PU leather Cloth	USD 1.00 per kg.	USD 1.685 per kg.
3.	397356 dated 20.12.2004	ICD/86/05	Stock Lot of PU leather Cloth	USD 0.25 per mater	USD 0.40 per mater

The party accepted the loaded price, paid duty on the enhanced value, and took clearance of the goods. However, later on feeling aggrieved by the aforesaid loading, the party have preferred these appeal. The Commissioner (Appeals) set aside the order.

3. The contention of the Revenue is that the enhancement was ordered based on evidence relating to value of imports during the period in question. The data included prices of imports from the same country as that of the present consignment in dispute. He submits that the appellant agreed for the enhancement. The Commissioner (Appeals) has recorded that the appellant has accepted the loading of the value; paid the duty without protest and took clearance of the goods. However, without calling for any details/ records from the assessing authority, he has chosen to set aside the order. The submission by the Learned D.R. is that if the appellant had not agreed to the enhancement,

then a detailed order specifying the reasons for enhancement would have been issued.

4. Learned Advocate appearing for the respondent submitted that the enhancement has been done without relying on contemporaneous import price and submits that the same is factually correct. They have only accepted the order of assessment as they had no option, in view of the mounting demurrage and urgent need for the goods. Therefore, their right to appeal is there.

5. We find that in similar circumstances the Tribunal in the case of the C.C., New Delhi vs. M/s. Polyglass Acrylic Mfg.Co. Pvt. Ltd., vide final order No. C/105/08-CUSTOMS dated 3.4.2008 held as under:-

"We have carefully considered the submissions made from both the sides. We have come across quite a few similar appeals. We are, therefore, constrained to make certain general observations for future guidance by the assessing authorities and the Commissioner (appeals) in dealing with similar matters.

6. When a declared value is accepted and assessed, obviously there is no room for dispute from either side. When the value declared by the importer is proposed to be enhanced by the assessing authority, the procedure to be followed should be consistent with the principles of natural justice as well as the provisions of the Customs Act and the Rules made there under. There are specific provisions for resorting to provisional assessment as well as for payment under protest. We are

aware that the clearance of cargo by the Customs requires to be done speedily. This is specially true in respect of the clearance of Air cargo where the consignments come by air, paying heavy freight. Obviously, the consignments are imported by air when they are required urgently. Therefore, the assessing officers have time constraints. However, it is felt that the disputes may arise only in respect of a small percentage of cases. In respect of such cases, the Customs authorities should follow a transparent procedure. The proposal for enhancement and the basis for such enhancement require to made known and opportunity should be given to the importer to give his views before a decision is taken. The Board's instructions contained in circular No 91/2003 dated 16.10.03 clearly envisage that only when the assessee accepts for enhancement of the price in writing, the authorities are permitted not to issue speaking orders. This procedure should be followed in the interests of both the assessees and the Department.

7. With the above observations, we come to the order of Commissioner (Appeals). We understand that during the relevant period, there is no system of a departmental representative being present when the matter is heard before the Commissioner (Appeals). In such a situation, when the Commissioner (Appeals) disagrees with the decision of the authorities below, he is required to go into the basis on which the assessment order or the original order of the adjudicating authority was made. Unlike the assessing officers who are dealing with

the consignments waiting to be cleared, the Commissioner (Appeals) need not be in such a hurry to deal with the appeal relating to consignments already cleared and pass defective and cryptic order. In the present case, we are not able to come to any conclusion whether the Commissioner (Appeals) has taken due care and caution in getting the relevant materials before passing the present order. He could have considered the option of remand with direction to the original authority to issue a speaking order. We hasten to add that the Commissioner (Appeals) has powers to accept or reject or modify the orders of the original authorities/ assessing authorities.

8. In the present proceedings, we are mainly concerned with the manner in 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 Commisioner (Appeals). Under these circumstances, with out 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."

6. In view of the above decision which is fully applicable on the facts of present case, the impugned order is set aside and matter is remanded to the Commissioner (Appeals) for deciding afresh after affording opportunity of hearing to respondents. Appeal is allowed by way of remand.

(Operative part pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 7th July, 2008
RK