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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/739 /2005 Date 25/07/2008

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

To :
M/S BRAUN TEXTILE PROCESSORS
863, INDUSTRIAL AREA-A, LUDHIANA (PUNJAB)
141003

M/S BRAUN TEXTILE PROCESSORS Appellant
Vs
THE COMMISSIONER OF CUSTOMS, MAHARASHTRA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/253/08 **Customs** dated 2.7.2008 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, MAHARASHTRA
JAWAHARLAL NEHRU CUSTOM HOUSE, NAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707
2. Adv. / Consult
MR.L.P ASTHANA
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
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.

Customs Appeal No.739/05-CST

[Arising out of Order-in-Appeal No.65/05(JNCH) dt.8.6.05 passed by the Commissioner of Customs(Appeals), Maharashtra)

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 Department Authorities:	:

M/s. Braun Textile Processors — Appellant

Versus

CC, Nava Sheva, Maharashtra — Respondent

Appearance

Shri L.P.Asthana, Adv. for appellant
Sh. R.C.Sankhla, Authorised Departmental Representative(DR) For respondent

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

Final

Date of decision: 2.7.08
Order No. C/253/08

Per Rakesh Kumar:

In this case the appellant imported a consignment of 18,416 kgs. of 120 Denier/30 FIL Bright Raw White on Cone, A Grade, KV Brand Viscose Rayon Filament yarn of Russian origin from M/s. Hagman Intertrade Ltd., British Virgin Islands @ US$ 1.84 kg. CIF Nava Sheva vide the supplier's invoice No.0073A dt.2.6.04, for clearance of the goods, Bill of Entry No.2692020 dt.8.9.04 was filed. Dy. Commissioner of Customs issued a show cause notice to the Appellant for increasing the assessable value to US $ 3.38 per kg. CIF on the ground that contemporaneous imports of similar goods i.e. 120 Denier/FIL Bright Raw White on Cone A Grade Viscose Rayon Filament yarn of Chinese origin had been noticed at the price US $ 3.38 per kg CIF. Though the Appellant pleaded that the viscos rayon yarn imported by them is not identical or similar to the Viscose rayon yarn of Chinese origin, whose value is sought to be adopted, as while the goods imported by them have been manufactured by contrifugal process and are meant for cheaper quality of fabrics, the goods whose value is sought to be adopted, have been made by continuous process and further processed for high glue, and are used for making high quality fabrics like saris, the jurisdictional Dy. Commissioner vide order-in-original dt.17.3.05

enhanced the assessable value to US $ 3.38 per kg. CIF. The appellant's appeal to Commissioner(Appeals) was dismissed vide order-in-Appeal dt.8.6.05.

2. Heard both the sides.

2.1 Shri L.P.Asthana, Advocate, Ld. Counsel for the appellant pleaded that the goods imported by the Appellant, which are of Russian origin, are neither identical goods nor similar goods within the meaning of these terms as given in the Customs Valuation Rules, to the goods of Chinese origin, whose value has been ordered to be adopted, that there is absolutely no ground for rejecting the declared assessable value, that there was absolutely no ground for invoking Rule 10A of the Customs Valuation Rules, that the goods imported by the Appellant are of Russian origin and their value cannot be compared with the goods of Chinese origin, that the impugned order is contrary to the decision of the Hon'ble Supreme Court in the case of Eicher Tractors Ltd. vs CC, Mumbai reported in 2000(122)ELT.321(SC) and that so called contemporaneous imports whose value had been adopted, are not of the same grade and quality of the yarn and even the quantities are not comparable.

2.2. Shri R.C.Sankhla, Ld. Departmental Representative pleaded that goods imported by the Appellant are similar to the contemporaneous of goods of Chinese origin goods whose value had been adopted, that the goods imported by the appellant are 120Denier/30FIL Bright Raw White A Grade Viscose Filament Yarn and the contemporaneously importing goods of Chinese origin whose value has been adopted are also 120 Denier/30FIL Bright Raw White, A-Grade Viscose Filament Yarn and that the Chinese are known to be supplying manufactured products at the cheapest rate and therefore, import of similar goods of Russian origin at a price [illegible] ~~more than two times and~~ the price of Chinese supplier is highly suspect and therefore, the Dy. Commissioner has rightly invoked Rule 10A of the Valuation Rules and enhanced the assessable value to US $ 3.38 per kg. CIF.

3. We have given careful consideration to the submissions from both the sides.

3.1 In this case the goods imported are of Russian origin and the description, as given in the supplier's invoice and as mentioned in the bill of entry is as under:

> "120Dn/30FIL Bright Raw White on Cone, A Grade, KV Brand Viscose Rayon Filament Yarn."
>
> In the accompanying "certificate of quality", the yarn is mentioned as 'centrifugal' implying that it is made by centrifugal process.
>
> The description of the goods of Chinese origin whose value has been adopted is -
>
> "continuous spinning Viscose Rayon Filament Yarn 120D/30F A Grade even high glue", which indicates that it has been manufactured by continuous spinning process and is processed for high glue.

In view of this, it had been pleaded by the Appellant before the lower authorities that their goods are not comparable with the yarn of Chinese origin, whose value is sought to be adopted. But we find that this plea of the Appellant has not been considered at all by the lower authority. ~~Thus~~ Not only the country of the origin of the goods imported by the Appellant and the goods whose value is sought to be adopted are different, ~~and~~ their qualities are also different. The goods imported by the Appellant are, therefore, neither identical nor similar within the meaning of these terms, as defined in the Customs Valuation Rules, to the goods whose value has been adopted for valuation of these goods.

4. Other than the contemporaneous import of "120D/30F A Grade even high glue Viscose Rayon Filament Yarn" of Chinese origin at US $ 3.38 per kg. CIF, which as discussed above, is different from the goods imported by the Appellant, there is no other evidence of under invoicing. The impugned order is, therefore, not sustainable and the same is set aside. The appeal is allowed.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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