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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/408 , 449-451/2008 Date 30/07/2008
C/S/920, 1077-1079/08

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

To :
C.C. (ICD) NEW DELHI
ICD. TUGHLAKABAD. NEW DELHI 110020.
C.C. (ICD) NEW DELHI Appellant
Vs
M/S GLASS TRENDZ (INDIA) Respondent

I am directed to transmit herewith a certified copy of Final order No. C/259 to 262/08 Customs dated 14.7.08 passed by the Tribunal under Section 129, (B) of the Customs Act.1962 & Financial Act 1994 relating to Service Tax
& Stay Order No C/245-248/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
M/S GLASS TRENDZ (INDIA)
44A. MALL ROAD,
AGRA (U.P.)
2. Adv. / Consult Sh. V. K. Agarwal, Adv, B-82, Lajpat Nagar-I, N Delhi

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)

PTO

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 Stay Application No. 920, 1077-1079 of 2008 in Appeal No. 408, 449-451 of 2008

[Arising out of the Order-in-Original No. CC(A)/Cus/ICD/D-II/42/2008 dated 31/01/2008 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)

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, New Delhi — Appellant

Versus

M/s Glass Trendz (India) & Ors. — Respondent

Appearance

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

S/Shri V.K. Agarwal and Prem Rajan, Advocates – for the Respondent.

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

DATE OF HEARING : 14/07/2008.

Final Order No.C/259 to 262/08 Dated : 14/7/08
Stay Order No C/245 to 248/08

Per. S.S. Kang :-

Common issue involved in these stay petitions, therefore, all are taken up together. The revenue filed these applications for stay of the operation of impugned order. We find that issue involved in these appeals is covered by the decision of the Tribunal in the case of **Commissioner of Customs, New Delhi vs. M/s D.M. International** final order No. 98 to 100 of 2008 dated 08/04/2008, therefore the appeals are being taken up for disposal.

2. The respondents made import of goods and filed bills of entry declaring the value of goods. The Customs Authorities did not accept the value declared by the respondents and proposed enhancement of value based on contemporaneous import price.

The goods were assessed on the enhanced value and duty was paid. According to the Department, the respondent accepted the enhancement of the value and paid the duty on higher value. The respondent filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) has by more or less identically worded orders, after mentioning that the appellant accepted the loaded price and paid duty without any protest on the enhanced value and took clearance of the goods, has held that the Department has loaded the value without any speaking order for rejecting the transaction value that there was no consent of the importer to the enhanced value.

2. The learned DR submits that the importer agreed to the enhancement of the price based on higher contemporaneous import prices and since there was consent for the same ~~and~~ no speaking order was issued. The learned DR also produced NIDB data relating the relevant period indicating import at higher contemporaneous prices. Therefore, he submits that the findings of the Commissioner are erroneous.

3. The learned advocate appearing for the respondent submits that the order of the Commissioner (Appeals) is correct in law and the Department has not produced any evidence to the contrary before the Commissioner (Appeals).

3. We find that in a similar situation, the Tribunal in the case of Commissioner of Customs, New Delhi vs. D.M. International (Supra) remanded the matter to the Commissioner (Appeals). The Tribunal held as under :-

> We have carefully considered the submissions of both sides. The Commissioner (Appeals) is entitled to entertain appeals against the orders of assessment. He is also empowered to modify/reject or accept the orders of assessment in such appellate proceedings. However, when he is taking a decision different from what has been taken by the assessing authority, in all fairness, he ought to have gone into the reasons and the evidence relied upon for enhancement of the assessable value. We are informed that there is no system of a departmental representative being present in the proceedings before the Commissioner (appeals). In such a situation it would have been appropriate on the part of the Commissioner (Appeals) to have called for the evidence relied by the department. From the orders of the Commissioner (Appeals), we are unable to come to a conclusion that the same have been gone into by the Commissioner (Appeals) or that he gave such opportunity and that the department did not respond.
>
> 2. In view of the above, we deem it proper to set aside the orders of the Commissioner (Appeals) and remand the matter to him for fresh consideration. The

Department is permitted to produce evidence claimed to have been relied up on in the assessment proceedings for enhancing the assessable value and also evidence about acceptance of enhanced value by the importer at the time of assessment. He shall pass the order after hearing the respondent as well.

3. The impugned orders are set aside and the appeals are allowed by way of remand on the above terms.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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