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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/505 -509 /2008 Date 11/08/2008

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 D.M. INTERNATIONAL. Respondent

I am directed to transmit herewith a certified copy of Final order No. C/288-292/08Custom dated 29.7.08 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. CABIN NO. 4. BASEMENT GOPALA TOWER. 25, RAJENDRA PLACE, NEW DELHI.
2. Adv. / Consult V.K. Agarwal ,B82. Lajpat Nagar-II, 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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. 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. 505-509 OF 2008

[Arising out of Order-in-Appeal No. CC(A)CSP(87-91)D-II/05 dated 22.3.05 passed by the Commissioner (Appeals) of Customs, 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?	

CC, ICD,TKD, New Delhi — Appellant

Vs.

M/s. D.M. International — Respondents

Appearance:

Shri B.K. Singh, Authorised 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: 29th July, 2008

FINAL ORDER NO. C/288 – 292 **dated** 29/7/08

Per S.S. Kang:

Common issue involved in these appeals, therefore, all are taken up together. The revenue filed these appeals against the order passed by Commissioner (Appeals), whereby the assessment order is set aside. Brief facts of the case are as under:-

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 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 D.R. 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).

4. We have carefully considered the submissions of both sides. The Commissioner (Appeals) is entitled to entertain appeals against the order 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) to have called for the evidence relied upon 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.

5. 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 upon 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.

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

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 5th August, 2008
RK