

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/550 /2005

Date 18/08/2008

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

To :
THE COMMISSIONER OF CUSTOMS, NEW DELHI

ICD, TKD, NEW DELHI

THE COMMISSIONER OF CUSTOMS, NEW DELHI

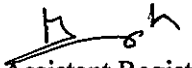
M/S D M INTERNATIONAL

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. C/306/08 dated 3.7.08
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, BASEMENT CABIN-4, GOPALA TOWER, 25 RAJENDRA PLACE, NEW DELHI
110008

2. Adv. / Consult V.K. Agarwal, B-82, 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 Publications (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. Ghuraman'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

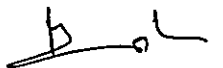
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

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. 550 OF 2005

[Arising out of Order-in-Appeal No. CC(A)CSP(120 to 128)D-II/05 dated 12.04.2005 passed by the Commissioner of Customs (Appeals), , Delhi-II, New Custom House, 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., New Delhi

Appellant

Vs.

M/s. D.M. International

Respondents

Appearance:

Shri B.K. Singh, 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: 3rd July, 2008

FINAL ORDER NO. C/306/08 **dated** 3/7/08

Per S.S. Kang:

Heard both sides. Revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) set aside the adjudication order enhancing the value of imported goods.

2. Contention of the Revenue is that the respondents accepted the enhancement of value and paid duty without protest, therefore, the Commissioner (Appeals) has wrongly entertained their appeal. Contention of the Revenue is also that importer made a declaration that imported goods are stock lot of polyster fabric. Revenue submitted that the goods are of stock lot polyester knitted flock fabric of various colours. Contention is also that as per examination report the goods found to be of polyster fabric of assorted colours. Therefore, the goods are stock lot. In respect of Revenue's ground that as the respondents have accepted the enhanced value their appeal is not maintainable, the respondents relied upon the judgment of the Hon'ble Supreme Court in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. UOI & Ors., reported in 1983 (13) 1566 (S.C.).

3. We find that the Hon'ble Supreme Court in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. (supra) has held that since there is no estoppel in law against a party in taxation matters and in order to clear the goods for the Customs, the appellant Agents may have given the classification in accordance with the wishes of the authorities or they may even be under some misapprehension. We find that as the Supreme Court held that there is no estoppels in law against importer, therefore, we find no merit in the contention of the revenue that present respondent accepted the enhanced value for the purpose of assessment.

4. In the present case the goods in question ^{are} is stock lot and from the examination report it is clear that the goods are found to be of assorted colour of polyester fabric, hence, loading of value on the basis of value of goods which are not ^{is} stock lot is not sustainable. In these circumstances we find no infirmity in the impugned order. Appeal is dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 7th July, 2008
RK