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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

Date 31/03/2009

Appeal No. C/929 /2005 - CU[DB]

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

To :
THE COMMISSIONER OF CUSTOMS,
CFS (PSWC), A-12, PHASE-V, FOCAL POINT,
DHANDARI KALAN, LUDHIANA, PUNJAB.

THE COMMISSIONER OF CUSTOMS, AMRITSAR — Appellant

Vs

M/S AURO SPINNING MILLS — Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/112/09-CUS.DB** dated 24.03.09 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 AURO SPINNING MILLS
   BADDI, DISTT. SOLAN (H.P.)
2. Adv. / Consult RUPENDER SINGH, ADV,
   DSK LEGAL, 46, ARADHANA,
   CHANAKYAPURI, NEW DELHI – 110 066.

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 - 3
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
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Customs Appeal No. 929 of 2005

[Arising out of Order-in-Appeal No.63/Cus/Appeal/Ldh/05 dated 25.7.2005 passed by Commissioner (Appeals), Customs & Central Excise, Ludhiana]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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?	:	NO
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

Commissioner of ~~Central Excise~~ Customs Amritsar — Appellant

Vs.

M/s. Auro Spinning Mills — Respondent

Appearance: Mr. L.B. Yadav, DR for the Appellant
Mr. Rupendra Singh, Advocate for the Respondent

<u>CORAM</u>: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/Decision : 24.3.2009

Final **ORAL ORDER NO. C/112/09**

Per M. Veeraiyan (for the Bench):

This is a departmental appeal against the order of the Commissioner (Appeals) No.63/Cus/Appeal/Ldh/05 dated 25.7.2005.

2. Heard both sides.

3. The respondent imported Lyera Spandex Yarn 78 DTEX XT 162 C Merge 10348 from Singapore and filed Bill of Entry No.1765 dated 8.12.04 enclosing an invoice which indicated the price as US $ 13.25 per Kg. The original authority rejected the declared assessable value and enhanced the price to US $ 15.25 per Kg. based on contemporaneous value of goods covered by Bill of Entry No. 709799 dated 30.9.2004.

4. On appeal by the importer, Commissioner (Appeals) did not agree with the order of the original authority and allowed the appeal.

5. We find from the submissions and from the records, the respondent-importer has claimed before the Commissioner (Appeals) that they were importing on a larger scale and therefore, they were in a position to negotiate for a lower price. They also submitted that they were regularly importing from the same source and even subsequent imports made in March, 2005 through Neva Shava port has been assessed at the declared value of US $ 13.25. The section 14 of the Customs Act envisages, normally acceptance of the transaction value. When the transaction value is to be disregarded, the reasons for disregarding the transaction value have to be clearly spelt out. After giving reasons for rejecting the transaction value, the value has to be

determined under the Valuation Rules by going sequentially through the Rule 4 to Rule 8. The original authority has not disclosed the reasons for disregarding the transaction value except saying that there were imports at a higher contemporaneous price. The level of imports by the importer-respondents and the level of contemporaneous import sought to be compared has not been taken into account. Admittedly the respondent has made subsequent imports at the same price and the same has been accepted. Further no allegation that the declared price by the respondent is a manipulated one has been made. Under these circumstances, the order of the Commissioner (Appeals) in not sustaining the order of the original authority cannot be held unreasonable. We do not find any merit in the appeal filed by the department.

6. The appeal is, therefore, rejected.

(Dictated and Pronounced in the open Court)

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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