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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/217 /2006-219 /2006 - CU[DB] Date 21/01/2009

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

To :
M/S MAPSA TAPES PVT LTD.
144, HSIDC INDUSTRIAL ESTATE, KUNDLI, DISTT.
SONEPAT, HARYANA

M/S MAPSA TAPES PVT LTD. Appellant

Vs

COMMISSIONER OF CUSTOMS (APPEALS) Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/24-26/09-CUS. DATED 14.01.2009 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
   COMMISSIONER OF CUSTOMS (APPEALS)
   NH-5, CGO COMPLEX, FARIDABAD HARYANA
2. Adv. / Consult MR.RAWAL, ADV.,
   249, LAWYERS CHAMBERS,
   HIGH COURT OF DELHI, NEW 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 - 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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CUSTOMS APPEAL NO. 217 to 219 OF 2006

[Arising out of Order-in-Appeal No. 17 to 19/CUS/Appl/DLH/IV/2005 dated 20.12.2005 passed by the Commissioner of Customs (Appeals), Faridabad]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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 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?	Yes

M/s. Mapsa Tapes Pvt. Ltd., Appellant

Vs.

Commissioner of Customs &
Central Excise, Delhi-IV, Faridabad Respondent

Appearance:

Shri R. Rawal, Senior Advocate for the respondent,
Shri R.K. Verma, Departmental Representative for the Revenue

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of Hearing/decision: 14th January, 2009

FINAL ORDER NO. C/24-26/09 **dated** __________

Per P.K. DAS:

These appeals are arising out of common order and, therefore, all are being taken up together for disposal.

2. The appellants imported Woven Silk Fabrics (B grade) undyed and unprinted of various GSM. The appellants filed three Bills of Entry for clearance of the goods. The Assistant Commissioner enhanced the value. The appellants paid duty on the enhanced value. They filed appeals before the Commissioner (Appeals) against the assessed Bill of Entry. The Commissioner (Appeals) rejected the appeals filed by the appellant. Hence, the appellants filed the present appeals.

3. Learned Senior Advocate on behalf of the appellants submits that there is no evidence that the appellants accepted the enhanced value. He, further, submits that deposit of duty by the appellants on enhanced value cannot discard their right to appeal. He relied upon the following decisions:-

(i) Shiva Alloys Pvt. Ltd. vs. CC, ICD, TKD, New Delhi – 2006 (196) ELT 212 (Tri.-Del.);

(ii) C.C., ICD, New Delhi vs. K.D. Exports – 2008 (227) ELT 494 (Tri.-Del.)

(iii) UOI vs. Madhumilan Syntex Ltd. – 2006 (195) ELT 141 (SC)

(iv) C.C., ICD, TKD, New Delhi vs. D.M. International – Final Order No. C/196/08 dated 8.7.2008.

4. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that the appellants have not paid the duty under protest and, therefore, the Commissioner (Appeals) has rightly rejected the appeal of the appellants. He, further, submits that CHA signed on the Bills of Entry on behalf of the appellant, at the time of clearance which indicates the acceptance of the enhanced value.

5. After hearing both the sides and on perusal of the records we do not find any material that the appellants accepted the enhanced value. On the Bill of Entry, it has been mentioned that the value increased was as per NIDB data. On a query of the Bench, learned Sr. Advocate submits that no material was disclosed for enhancement of the value at the time of assessment of Bills of Entry.

6. We find that the Tribunal in identical situation in the case of D.M. International (supra), set aside the order of the Commissioner (Appeals). Relevant portion of the said order is reproduced below:-

"5. We find that in similar circumstances the Tribunal in the case of C.C., New Delhi vs. M/s. Polyglass Acrylic Mfg. Co. Pvt. Ltd., vide final order No. C/105/08-CUSTOMS dated 3.4.2008 held as under:-

"We have carefully considered the submissions made from both the sides. We have come across quite a few similar appeals. We are, therefore, constrained to make certain general observations for future guidance by the assessing authorities and the Commissioner (appeals) in dealing with similar matters.

6. When a declared value is accepted and assessed, obviously there is no room for dispute from either side. When the value declared by the importer is proposed to be enhanced by the assessing authority, the procedure to be followed should be consistent with the principles of natural justice as well as the provisions of Customs Act and the Rules made there under. There are specific provisions for resorting to provisional assessment as well as for payment under protest. We are aware that the clearance of cargo by the Customs requires to be done speedily. This is specially true in respect of the clearance of Air cargo where the consignments come by air, paying heavy freight. Obviously, the consignments are imported by air when they are required urgently. Therefore, the assessing officers have time constrains. However, it is felt that the disputes may arise only in respect of a small percentage of cases. In respect of such cases, the Customs authorities should follow a transparent procedure. The proposal for enhancement and the basis for such enhancement require to made known and opportunity should be given to the importer to give his views before a decision is taken. The Board's instructions contained in circular No. 91/2003 dated 16.10.03 clearly envisage that only when the assessee accepts for enhancement of the price in writing, the authorities are permitted not to issue speaking orders. This procedure should be followed in the interest of both the assesses and the Department.

7. With the above observations, we come to the order of Commissioner (Appeals). We understand that during the relevant period, there is no system of a departmental representative being present when the matter is heard before the Commissioner (Appeals) disagrees with the

decision of the authorities below, he is required to go into the basis on which the assessment order or the original order of the adjudicating authority was made. Unlike the assessing officers who are dealing with the consignments waiting to be cleared, the Commissioner (Appeals) need not be in such a hurry to deal with the appeal relating to consignments already cleared and pass defective and cryptic order. In the present case, we are not able to come to any conclusion whether the Commissioner (Appeals) has taken due care and caution in getting the relevant materials before passing the present order. He could have considered the option of remand with direction to the original authority to issue a speaking order. We have to add that the Commissioner (Appeals) has powers to accept or reject or modify the orders of the original authorities/ assessing authorities.

8. In the present proceedings, we are mainly concerned with the manner in which the present order has been passed. It appears that the materials produced before us by the learned DR regarding the higher contemporaneous import price have not been considered by the Commissioner (Appeals). Under these circumstances, with out expressing any opinion on the merits of the case, we deem it proper to set aside the order of the Commissioner (Appeals) and also the order of assessment and remit to the original authority to issue a speaking order specifically referring to the material said to have been relied upon for enhancing the value and after giving a reasonable opportunity of hearing to the respondent. The respondent is permitted to make written submissions within a period of one month from the date of receipt of this order and the original authority shall decide the case expeditiously thereafter but within two months from the date of expiry of time granted for filing of submissions by the respondents."

7. On perusal of the impugned order we do not find that the appellant had in writing accepted the enhanced value. It is noted that

Commissioner (Appeals) also not disclosed the evidence for enhancement of value. So, the impugned order cannot be sustained. In view of that, we set aside the impugned order. The matter is remanded back to the adjudicating authority to decide afresh after affording personal hearing to the appellants. All the questions remain open to be decided by the adjudicating authority.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

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