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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/ 1 TO 31, 241 /2006-242 /2006 - CU[DB] Date 04/02/2009

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

To :
M/S. KHATEMA FIBRES LTD.
404-405, VIKA DEEP BUILDING, DISTRICT CENTRE
LAXMI NAGAR, DELHI – 110 092.

M/S. KHATEMA FIBRES LTD. Appellant

Vs

COMMISSIONER, CUSTOMS & CENTRAL EXCISE Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/36-68/09 DATED 30.01.2009 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, CUSTOMS & CENTRAL EXCISE
   MEERUT-II
2. Adv. / Consult MANISH GARG, ADV.,
   C-92, C.L. JOSEPH BLOCK,
   TIS HAZARI COURTS, DELHI – 54.
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:30.1.2009

Customs Appeal Nos.1 to 31, 241 and 242 of 2006

Arising out of the Order in appeal No.22-47-Cus/MRT-II/2005 dated 13.9.05 and order in appeal No.13-14-Cus/MRT-II/2005 dated 30.12.05 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut II.

For Approval and Signature:

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

1	Whether Press Reporter 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 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

Appellant / Respondent

M/s Khatema Fibres Ltd. vs. C.C.& C.Ex., Meerut II

Appearance:

Shri R. Venkatraman, Sr. Advocate, Shri Munish Garg and Shri Ranjan Kumar, Co- Representative for the appellant and Shri L,B. Yadav, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. C/36 to 68/09

Per M. Veeraiyan:

These appeals numbering 33 are by the same appellant and the common issue involved is of valuation of waste paper imported by the appellant during the period from January, 2005 to May, 2005. In addition, in Appeal No.C/241 and 242 of 2006 the issue of condonation of delay of 8 days in one appeal and 24 days in another appeal which have not been granted by the Commissioner (Appeals) is also involved.

2. Heard both sides.

3. The appellant imported waste paper of different categories such as " waste paper-brown recovered in kraft waste paper bales", "Waste paper -KCB foils", "Waste paper-freezer wrap", "waste paper and post consumer (foil steel wrap)" and declared the assessable value ranging from 55 US $ to 125 US $ per metric tonne. The original authority in all these cases enhanced the prices to US $ 130 PMT. He relied upon the past assessments relating to the appellant in respect of imports made during the earlier period of six months in 2004 where the value declared was enhanced from US $ 60 to 130.

4. Learned Advocate for the appellant submits that the reliance placed on the earlier enhanced value for the present consignments is not correct. They have not accepted the enhancement on earlier occasions and have been contesting the enhancement of the value by the Department in respect of earlier imports. In this connection, he relies on the letters dated 12th December 2001, 18th December 2003, 23rd December 2003 , 30th December 2003 , 29th October 2004 etc. objecting to arbitrary loading of prices on the imported consignments and seeking for issue of speaking orders. He also submits that said Commissioner (Appeals) in respect of subsequent imports made in December 2005 and January, 2006 vide his order in appeal No.123-Cus-MRT-II/06 dated 13.4.06 as remanded the matter to the original authority to enable proper enquiries to be made and to arrive at the value after affording an opportunity of hearing to the appellant before rejecting the value declared by the importer.

5. Learned SDR reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. While we agree that the prices declared by the importer can be rejected and the same enhanced based on contemporaneous import prices, the same have to be done in accordance with the provisions of Rule 10A to the Customs Valuation Rules, 1988. The reasons for rejecting the declared value should be disclosed to the importer and the evidences such as, contemporaneous import prices relied upon to enhance the prices should also be revealed before any order for enhancement can be made.

In this case, such procedure has not been adopted. We also find that in respect of subsequent imports of the same commodity by the same appellant, Commissioner (Appeals) has remanded the matter to the original authority for de novo consideration.

7.1 In the light of the above, and in the interest of justice, we set aside the orders of the Commissioner (Appeals) and the original authority in so far as it relates to the enhancement of the value declared by the appellant and remit the matter for fresh consideration.

7.2 Further, in respect of Appeal Nos.C/241 and 242 of 2006, for the reasons mentioned by the appellant we treat the delay in filing appeal before the Commissioner (Appeals) as condoned and set aside the orders of the Commissioner (Appeals) and original authority enhancing the value. These matters will also be remitted to the original authority to consider afresh.

8. The appellant is directed to furnish the written submissions along with evidence, if any, within 45 days from the receipt of this order and the original authority thereafter, shall decide expeditiously but within 2 months from the date of expiry of time-limit given for written submissions after granting reasonable opportunity of hearing to the appellant.

9. We express no views on the merits of the case.

10. The appeals are allowed by way of remand.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/