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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 02/03/2009

Appeal No. C/195 /2006 - CU[DB]

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

To :
COMMISSIONER, CUSTOMS & CENTRAL EXCISE,
P.B.NO.10, MANIK BAGH PALACE, INDORE-452 001

Appellant

COMMISSIONER, CUSTOMS & CENTRAL EXCISE, INDORE

Vs
Respondent

M/S. PREM ENTERPRISES

I am directed to transmit herewith a certified copy of **Final order No.** C/92/09-CUS. DATED 21.01.09 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. PREM ENTERPRISES
   153, JANKI NAGAR EXTENSION, INDORE (M.P.,)
2. Adv. / Consult ALOK BARTHWAL, ADV.
   C/O M/S. PREM ENTERPRISES
   153, JANKI NAGAR EXTENSION, INDORE (M.P.,)

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: 21.1.2009

Customs Appeal No.195 of 2006

Arising out of the order in appeal No.IND-I/493/2005 dated 5.12.05 passed by the Commissioner (Appeals I), Customs & Central Excise, Indore.

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?	NA
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 — C.C.& C.Ex., Indore

vs.

Respondents — M/s Prem Enterprises

Appearance:

Shri Sunit Kumar, Authorized Departmental Representative (DR) for the Revenue
Shri Alok Barthwal, Advocate for the respondent

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

Final Order No. C/92/09

Per P.K. Das:

Revenue filed this appeal against the Order in Appeal No. IND-I/493/2005 dated 5.12.05.

2. The relevant facts, in brief, are that the respondent imported 22,600 pieces of Sealed Acid Batteries from China and filed bill of entry No.989 dated 9.9.05. The assessing officer enhanced the value. The respondent paid duty on

the enhanced value and filed appeal before Commissioner (Appeals). The appeal was allowed with consequential relief. Hence, the Revenue filed this appeal against the order of the Commissioner (Appeals).

3. Learned SDR reiterates the grounds of appeal. He submits that respondents accepted the enhanced value and paid duty and therefore, the appeal before Commissioner (Appeals) is not maintainable. He relied upon the Board's Circular No.91/2003 dated 14.10.03. Further , he submits that it appears from the bill of entry that it was disclosed to the respondents that the value was enhanced on the basis of NIDB data. He also submits that the price was enhanced on the basis of contemporaneous import price. Revenue is not bound to prove the invoice value on the mathematical precision. He relied upon the decisions of the Tribunal as under:

i) ***Poonam Plastic Industries vs. C.C. – 1989 (39) ELT 634 (Tribunal)***

ii) ***Vikram International vs. C.C., Kandla – 2000 (124) ELT 731 (Tribunla)***

iii) ***Handtex vs. C.C. , Raigad – 2008 (226) ELT 665 (Tri-Del.).***

He also relied upon the decision of the Hon'ble Supreme Court in the case of Punjab Processors Pvt. Ltd. vs. C.C. – 2003 (157) ELT 625 (SC) wherein it has been held that Customs authorities while assessing the value of import are not bound by the figures mentioned in the invoice.

4. Learned Advocate on behalf of the respondent reiterated the finding of the Commissioner (Appeals). He submits that Commissioner (Appeals) after examining the case file set aside the enhanced value. He submits that the respondents had not accepted the enhanced value. He further submits that the respondents due to urgency paid duty and cleared the goods, which cannot discard their right to appeal. He relied upon the Tribunal decision in the case of K.D. Exportss vs. C.C.., Delhi II – 2005 (186) ELT 526 (Tri-Del.)

5. After hearing both sides and on perusal of records, it is also seen that there is endorsement of the assessing officer in the bill of entry as under:

> ***"Rate per pcs has been enhanced to Rs.24.33. The CHA agrees with this enhanced rate, if agreed, we may allow the clearance"***

6. It appears that the assessing officer proposed to allow the clearance subject to agreement of the enhanced value by the importer. There is no material that the basis of enhancement of value was disclosed to the importer. We are unable to agree with the contention of the learned DR that the respondent accepted the enhanced value. In any event, on perusal of the impugned order, we find that the Commissioner (Appeals) set aside the enhanced value after examining the case file. There is no dispute that the Revenue is not bound by the invoice value and therefore, the case law relied upon by the DR has no relevancy on this issue. We have seen that the Commissioner (Appeals) after examining the files set aside the enhanced value and the relevant portion of this finding is reproduced below:

> ***"5. On a careful consideration of the submissions made by the appellant, I find that the issue to be decided relates to enhancement of the value declared by the appellant/importer in respect of "Sealed Lead Acid Batteries" imported by them from China. I have also perused the related file received from ICD, Pithampur. The appellant has strongly pleaded that they had entered into a contract with the foreign manufacturer and the agreement was on principal to principal basis after negotiation and with a condition for 100% advance payment before delivery of goods and moreover, the batteries were of different volts/ ampere. This being so, enhancing the value of different varieties of the batteries @ Rs.24.33 per piece without assigning any valid reason was unreasonable and not justified. I also find that the subject importation has been done by the appellant on the basis of a sales contract dated 31.5.05 with M/s Shenzhen Leoch Battery Technology Co. Ltd., China, who is stated to be a manufacturer and the prices have been mutually agreed upon and hence it cannot be questioned unless the department established that over and above price some other consideration exists in arriving at this value. Therefore, the declared value cannot be rejected without valid reasons. Further, enhancing the value of all varieties/categories of the batteries and assessing them @ 0.55 USD (C & F) based on NIDB data , in my view, is not justified. Moreover, from the records, it is seen no NIDB print out regarding value of contemporaneous imports is available and***

hence, it is not known as to how the value was enhanced to Rs.24.33 per piece when the imported consignment consisted of three different varieties of batteries."

7. In the appeal filed by Revenue, the above finding of the Commissioner (Appeals) was not refuted. We also note that Commissioner (Appeals) passed the order after considering different price of varieties of batteries and adoption of the enhanced price on other varieties of batteries is not acceptable. In view of that, we do not find any reason to interfere with the order the Commissioner (Appeals). Accordingly, the appeal filed by Revenue is rejected.

(Dictated and pronounced in open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/