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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/557 /2006 - CU[DB] WITH C/MISC./142/2009 Date 04/05/2009

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

To :
C.C.DELH III,GURGAON
UDYOG VIHAR,UDYOG MINAR,VANIJYA
NIKUNJ,PHASE-V,GURGAON.

C.C.DELH III,GURGAON Appellant

Vs

M/S OM SAIRAM TRADING CO. MISC. ORDER NO.C/35/09-CUS. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/163/ 2009 CU[DB] dated 01.04.09

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 OM SAIRAM TRADING CO.,
9/6517-C, LAL BATTI CHOWK, SUBHASH MOLALLA,
GANDHI NAGAR, DELHI.

2. Adv. / Consult A.K. MISHRA, CONSLT.
B-25, LAJPAT NAGAR-III,
NEW DELHI

3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 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:1.4.2009

Miscellaneous Application No.142 of 2009 and Customs Appeal No.557 of 2006

Arising out of the order in appeal No.188/NS/GGN/06 dated 30.6.06 passed by the Commissioner(Appeals), Central Excise, Delhi III, Gurgaon.

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?	
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
C.C.E., Delhi III vs. M/s Om Sairam Trading Co.

Appearance:

Shri A.K. Madan, Authorized Departmental Representative (DR) for the Revenue and Shri A.K. Misra, Consultant for the respondent

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

Final Oral Order No. C/163/09.

Per P.K. Das:

Revenue filed this appeal against the Final Order No. 188/NS/GGN/06 dated 30.6.06 passed by the Commissioner (Appeals)whereby the enhancement of value was set aside.

2. The relevant facts of the case, in brief, are that the respondents imported a consignment of polyester knitted fabrics and filed bill of entry No.1433 dated 14.12.05 declaring the price as US $ 1.4 per kg. The

assessing officer assessed the bill of entry and enhanced the value to US $ 2.5 per kg. Respondents deposited the duty under protest on the enhanced value. They also filed appeal before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) set aside the enhancement of the value. Hence the Revenue filed this appeal.

3. Learned DR on behalf of the Revenue submits that Commissioner (Appeals) passed the order without examining the issue in proper manner inasmuch as the NIDB data indicates the value of knitted fabrics US $ 2.5 per kg. He also submits that the respondent paid duty on the basis of order of the assessing officer as recorded on the back side of the bill of entry and no protest was made.

4. Learned Representative for the respondents reiterates the finding of the Commissioner (Appeals).

5. After hearing both sides and on perusal of the record, we find that the respondents paid duty under protest as evident from the TR-6 challan produced by the respondents. This fact was also recorded in the impugned order. Commissioner (Appeals) passed the order following the decision of the Hon'ble Supreme Court in the case of Eicher Tracttor Ltd. vs. Commissioner of Customs – 2000 (122) ELT 321 (SC), wherein it is held that transaction value cannot be rejected without clear and cogent evidence produced by the department in respect of import of identical or similar goods with regard to quantity, quality, country of origin and place and time of import. The learned DR relied upon letter dated 30.9.2005 of Assistant Commissioner (SIIB), ICD, TKD, addressed to Assistant Commissioner (Import Processing), ICD, Tughlakabad whereby it is stated that Benchmark price for knitted polyester fabrics is arrived at US $ 2.50 per kg. We find that the price cannot be enhanced merely on the basis of benchmark price without stating any reason for rejecting transaction value. It appears that

NIDB data placed by the learned DR has followed the benchmark price. Accordingly, we do not find any reason to interfere with the order of the Commissioner (Appeals). The appeal filed by Revenue is rejected.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/