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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/165 /2006 - CU[DB] Date 19/11/2009

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

To :
M/S K D EXPORTS
2861, BHAGAT SINGH STREET NO.5, 3RD FLOOR
CHUNMANDI, PAHARGANJ, DELHI
110055

M/S K D EXPORTS Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE, DELHI III, GUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/416/ 2009 CU[DB] dated 17.11.09 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
   CCE DELHI-III, UDYOG VIHAR, VANIJYA NIKUNJ,
   UDYOG MINAR, PHASE-V, GURGAON, (HARYANA).
2. Adv. / Consult MR.PREM RANJAN KUMAR, ADV.
   LGF-6/33, VIKRAM VIHAR, LAJPAT NAGAR-IV,
   NEW DELHI – 24.
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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB
Customs Appeal No.165 of 2006

(Arising out of Order-in-Original No.35/CE/2005 dated 30.11.2005 passed by the Commissioner of Central Excise, Gurgaon)

Date of Hearing/Decision: 29.10.2009

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)
Hon'ble Mr.D.N.Panda, Judicial Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
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

M/s.K.D.Exports — Appellant

Vs.

CCE, Gurgaon — Respondent

Present for the Appellant : Shri Prem Ranjan Kumar, Advocate
Present for the Respondent: Shri Mahesh Rastogi, SDR

Coram:Hon'ble Mr.Veeraiyan, Member (Technical)
Hon'ble Mr.D.N.Panda, Judicial Member

(Final) **ORDER NO.** 6/416/09

PER: M.VEERAIYAN

This appeal No.C/165 of 2006 filed by the department is against the Order-in-Original No. 35/CE/2005 dated 30.11.2005 passed by the Commissioner of Central Excise, Gurgaon.

2. Heard both sides.

3. The relevant facts in brief are that the appellant imported a consignment of acrylic off-cuts of different sizes and thickness and as acrylic sheets pieces of different sizes and thickness. The appellant also sought for examination of the goods on first check basis and accordingly 100% examination of the consignment of the goods was conducted. As per examination report, the quantity was found to be 81.326 MT as against declared weight of 76.2520 MT. In addition, the consignment was found to contain acrylic sheets of sizes of 4'x6' (secondary) and 4'x8' weighing totally 65.794 MT and acrylic off-cuts weighing 15.532 MT. The appellants had declared a unit price @ US$ 400 per MT. Pending enquiries, the goods were provisionally released on payment of duty adopting value of US$ 400 per MT for off-cuts and adopting value for acrylic sheets at US 780 per MT with bank guarantee on duty equivalent to difference on duty between US$ 980 and US$ 780 per MT. The original authority held that there was mis-declaration by the appellants in respect of quantity, description and value and accordingly finalized the value by enhancing the value @ US$ 450 per MT in respect of acrylic off-cuts and @ US$ 930 in respect of acrylic sheets. He also ordered for confiscation of the goods valued at Rs.32,76,033/- but allowed the same to be released on payment of redemption fine of Rs.5 lakhs. He also imposed penalty of Rs.1 lakh on the importer.

4. The learned Advocate for the appellant submits that they have ordered for acrylic sheets pieces and acrylic off-cuts and declared the same accordingly. They also sought for examination on first check basis. The value @ US$ 400 per MT was the price paid by them.

There is no mis-declaration of varieties and value. The variation in weights is not significant though they are not disputing differential duty on that ground. Under these circumstances, he challenges the confiscation and imposition of penalty. He also submits that at any rate the value @ US$ 930 per MT adopted for acrylic sheets is not based on the contemporaneous import price. The value of contemporaneous import is @ US$ 780 per MT which was enhanced by the department to @ US$ 930 per MT in respect of other importers. To adopt enhanced value of contemporaneous import as transaction value and to enhance the value of the imported goods was erroneous.

5. Learned SDR reiterates the findings of the Commissioner.

6. We have considered the submission from both sides. It is not in dispute that the goods found were acrylic sheets in huge quantity compared to what they have declared as acrylic sheets pieces, acrylic off-cuts. Acrylic sheets are admittedly imported by other parties at a price of @ US$ 780 per MT and acrylic off-cuts @ US$ 450 per MT. Therefore enhancement of value of off-cuts to @ US$ 450 per MT based on the value of contemporaneous import is fully justified. However, enhancement of value of acrylic sheets @ US$ 930 per MT based on enhanced value of contemporaneous import is not justified. We hold that the value @ US$ 780 per MT adopted at the time of provisional release in respect of acrylic sheets, which is based on contemporaneous import price of acrylic sheets is justified. We further find that there is clear mis-declaration of the goods imported by them and difference in weights is perhaps attributable to incorrect description. Under these circumstances, confiscation of goods,

ordered by the Commissioner is required to be upheld. However, taking into account the revision in price of acrylic sheets, we hold that there is a scope for reducing the amount of redemption fine and penalty.

7. In view of the above, the appeal is disposed of as follows:

(1) The value of off-cuts shall be @ US$ 450 per MT and value of acrylic sheets shall be @ US$ 780 per MT and differential duty shall be accordingly re-worked out.

(2) The redemption fine is reduced from Rs.5 lakhs (Rupees Five Lakhs Only) to Rs.2 lakhs (Rupees Two Lakhs Only) and penalty imposed is reduced from Rs.1 lakh (Rupees One Lakh Only) to Rs.50,000/- (Rupees Fifty Thousands Only).

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(D.N.PANDA)
JUDICIAL MEMBER

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