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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/25 /2007 - CU[DB], C/CO/35/2007 Date 29/09/2010

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

To :
C.C. AMRITSAR
THE MALL, AMRITSAR.

C.C. AMRITSAR Appellant

Vs

M/S KALSI MACHINERY COMPANY (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/138/ 2010 CU[DB]** dated 29.09.2010 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 KALSI MACHINERY COMPANY (P) LTD.

   123, EAST MOHAN NAGAR, INDUSTRIAL AREA, AMRITSAR.
2. Adv. / Consult MR. K.K. SHARMA, ADV.
   338, BASEMENT, ASHOKA MAIN,
   SECTOR-35, FARIDABAD – 121003.

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 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: **22.9.2010**

Custom Appeal No. 25 of 2007 and CO/35/2007

[Arising out of Order-in-Appeal No. 40/CUS/CHD/06 dated 28.2.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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

CC, Amritsar — Appellant

Vs.

M/s Kalsi Machinery Company (P) Ltd. — Respondent

Appearance:

Appeared for the Appellant - Shri Pramod Kumar Roy, Advocate

Appeared for the Respondent - Shri S.R. Meena, DR

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical).

Final Order No C/1138/10

Per M. Veeraiyan :

Appeal No. 25/2007 is by the department against the order of the Commissioner (Appeals) No. 40/CUS/CHD/06 dated 28.2.2006 by which the order of the original authority dated 3.1.2006 was set aside. CO/35/2007 is connected to this appeal.

2. Heard both sides extensively.

3.1 The relevant facts, in brief, are that the respondent imported various machineries from a German supplier and filed Bill of Entry No. 2616 dated 30.10.2002 declaring the value as 10,000 Euros, CIF supported by supplier's invoice No. 040/08/2002 dated 30.8.2002. There was a dispute about the age of the machinery as to whether they were more than 10 years old are not and consequent violation of provisions of EXIM Policy and the goods were subjected to adjudication and permitted to be cleared on payment of redemption fine and penalty. The value declared by the importer was accepted.

3.2 Subsequently, in pursuance of investigation including overseas investigation, Show Cause Notice was issued alleging that the actual value of the machineries imported by the respondent was 19,000 Euros and not 10,000 Euros as declared by them. The department relied upon invoice of the supplier procured through diplomatic channels which indicated the price as 19,000 Euros.

3.3 The original authority enhanced the price and confirmed differential duty of Rs. 2,19,573/- along with interest; he held that the goods were liable for confiscation and imposed fine of Rs.50,000/-; he also imposed penalty of Rs.2,19,573/- under Section 114A of the Customs Act on the importer.

3.4 On appeal by the importer, Commissioner (Appeals) set aside the order of the original authority on the ground that the invoice relied upon by the department to enhance the price, was not a signed invoice.

4. Ld. SDR after producing the correspondence between First Secretary of India, Belgium, and the official in the German Embassy submits that the actual invoice relating to the import by the respondent has been procured through diplomatic channel and the invoice is duly authenticated by the Customs officials of exporting country viz. Germany. This evidence was disclosed to the Director of the respondent-company, and his statement was taken; he paid the differential duty, though under protest, and agreed to take up the matter with his foreign supplier. The statement by the Director was given on 18.11.2004. The company has not subsequently produced any evidence regarding then taking up the matter with the foreign supplier. He relies on the decision of the Tribunal in the case of **Konia Trading Co. Vs. Commissioner of Customs, Jaipur** reported in 2006 (199) ELT 644 and in the case of **Chandra Impex Pvt. Ltd. Vs. Commissioner of Customs, New Delhi** reported in 2008 (224) ELT 683 and submits that in the facts and circumstances of the case, the documents procured through Indian Embassy of Belgium should be relied upon. He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority. He also submits that the confiscation ordered at the time of release of the goods initially was relating to violation of EXIM Policy and in the present case, it is entirely a new

dispute relating to suppression of value of the goods and, therefore, confiscation once again for a new violation is not barred.

5. Ld. Advocate for the respondent strongly supports the order of the Commissioner (Appeals). He fairly concedes that the cross-objection is merely supporting the order of the Commissioner (Appeals) and does not seek any further relief. He submits that the invoice procured by the DRI which has been relied upon is not a document signed by the exporter. The said invoice refers to advance payment of 8,000 Euro. No such advance payment has been made by them. He submits that as per the records, (which has also been supported by the certificate of a Chartered Accountant's certificate) payment made by them was only 10,000 Euros. The payment of differential duty was made under protest. He also submits that there is a major discrepancy in the report of German authorities as the enclosures refers to invoice No. 04/08/2002. The report of the First Secretary also refers to real invoice No. 04/08/2002 which is for 19,000 Euros. This being a vital discrepancy, the same cannot be treated as a clerical mistake as claimed by the Department. He also relies upon the decision of the Hon'ble Supreme Court in the case of **Collector of Customs, Bombay Vs. East Punjab Traders** reported in 1997 (89) ELT 11 to submit that unsigned invoices cannot be relied upon.

6. We have carefully considered the submissions made from both sides and perused the records.

7. On the question of manner of receiving documents from Customs formations of a foreign country, through diplomatic

channel by the Indian investigators, the procedure cannot be imposed by Indian Custom authorities. The document received through diplomatic channel has been duly countersigned by the officials of the assisting foreign country. Therefore, we have no reasons to doubt, the documents relied upon by the Custom department. As per the invoice forwarded by the First Secretary, Belgium the value of the consignment declared by the exporter appears to be 19,000 Euros. The price declared by the respondent to the Indian Customs which is as per the invoice produced by them is 10,000 Euros. Apparently, both cannot be simultaneously correct, which one is to be believed depends upon other circumstantial evidence. The respondent have claimed that they have paid only 10,000 Euros and there was no advance payment of 8,000 Euro as mentioned in the invoice produced and relied upon by the Custom department. There is no investigation regarding the payment actually made in respect of the transactions. The Director of the respondent-company no doubt in his statement dated 18.11.04 assured that they will take up the matter with the foreign supplier. The department appears to have not recorded any further statement. Further, there is a glaring discrepancy in the documents relied upon by the department. While the invoice annexed to the report of the German authorities refers to ~~04~~040/08/2002 dated 30.8.2002, the report by the German authorities and forwarding letter of the First Secretary, Indian Embassy of Belgium referred to Invoice NO. 04/08/2002 dated 30th August, 2002. This discrepancy was sought to be explained as a clerical mistake. As the only evidence relied upon for enhancing the value is this document and since there is no other corroboration or admission by the respondent regarding under valuation, the discrepancies cannot be ignored. Therefore, we do not find any valid reason to interfere with the decision of the Commissioner (Appeals).

8. Appeal is, therefore, rejected. Cross-objection is also disposed off.

(Dictated & pronounced in open Court)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM