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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/71 /2006 - CU[DB] Date 01/10/2010

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

To :

COMMISSIONER, CUSTOMS & CENTRAL EXCISE,
MANIK BAGH PALACE INDORE (MP)
P.B.NO.10, MANIK BAGH PALACE – 452001.

COMMISSIONER, CUSTOMS & CENTRAL EXCISE,
MANIK BAGH — Appellant

Vs

M/S. KUBER IMPEX LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/141/ 2010 CU[DB]** dated 27.09.2010 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. KUBER IMPEX LTD.
   207, SILVER ARC PLAZA, 20/1,
   NEW PALASIA, INDORE (MP)

2. Adv. / Consult MR. PIYUSH KUMAR,
   B-25, LAJPAT NAGAR-III,
   NEW DELHI – 110 024.

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 (Harvana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
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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:23.9.2010

Customs Appeal No.71 of 2006

Arising out of the order in appeal No.IND-1/340/2005 dated 20.10.2005 passed by Commissioner (Appeals), Customs, & Central Excise , Indore.

For Approval and Signature:

Hon'ble Shri M.V. Ravindran, Judicial Member
Hon'ble Shri M. Veeraiyan, Technical Member

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?	No
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

C.C.E., Indore ... Appellant

Vs.

M/s Kuber Impex Ltd. ... Respondent

Appearance:

Shri K.K. Jaiswal, Authorized Departmental Representative (DR) for the Revenue and Shri Chinmay Agrawal, Advocate for the respondents

Coram: Hon'ble Shri M.V. Ravindran, Judicial Member
Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. C/141/10 dtd. 27.9.10

Per M.V.Rabindran:

This appeal is filed by the Revenue against the order in appeal No. IND-1/340/2005 dated 20.10.2005 passed by Commissioner (Appeals).

2. The relevant facts that arise for our consideration are that the respondents filed bill of entry No.1007 dated 13.9.2005 for clearance of imported goods of 25,440 pcs. of "sealed lead acid batteries PM 4.56" [hereinafter referred to as batteries]. The value declared by the respondent was 0.25 USD per piece. On being found that the said value declared by the importer seems to be abnormally lower the authorities conducted an investation. The adjudicating authority issued a query memo. which was answered by the importer. After considering the submissions made by the importer, the adjudicating authority enhanced the price of batteries imported by the respondents. Aggrieved by such order, the importer preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide impugned order has set aside the order in original. Hence this appeal.

2. Learned DR would submit that the sale contract dated 15.7.04 relied upon by the Commissioner (Appeals) was in respect of import of 4 lakhs batteries which were not imported by the respondents. It is his submission that by bill of entry No.1007 dated 13.9.2005, the respondents imported only one container and hence the value cannot be accepted from the said contract dated 15.7.04. It is his submission that the level of contemporaneous imports made during the said period is at same commercial level indicating the unit value as Rs.23.83 per piece while the assessee has declared the value as Rs.10.97 per piece. It is his submission that Rule 3 (ii) of Customs Valuation Rules, the value of the imported goods is to be determined by proceeding sequentially through Rule 5 to 8 of these Rules.

3. Learned Advocate appearing on behalf of the respondents would draw our attention to the finding of the Commissioner (Appeals). He would submit that the sale agreement dated 15.7.2004 was for the period for specific purchase of batteries from the foreign buyer. He would submit that they had imported 1 lakh batteries.

4. We have considered the detailed submissions from both sides and perused the records. On perusal of the records, we find that by sale agreement dated 15.7.04, the importer entered into a contract with the supplier for supply of batteries for a period from 16.7.04 to 15.7.05 for a specific consideration on an import of two containers per month. It is seen from the data submitted, that the respondents have been importing the said batteries from that period and were clearing without any objection on the value declared in the contract. We find that the Commissioner (Appeals) has recorded the following finding:

> *" ...... Further, from the sales agreement and contract submitted by the appellant, it is seen that the price has been arrived at on a condition that the buyer shall undertake to buy not less than two containers of batteries and that the agreement is valid for one year from 16.7.04 to 15.7.05 and further the appellant has to buy not less than 10000 pieces of batteries per month during the duration of this agreement. As already mentioned above, the appellant had imported more than 4 lakhs pieces of such batteries during the period August 2004 to December 2004 and hence it is seen that he has been purchasing batteries in huge quantities. Further, I also notice that the appellants have purchased more than 76000 pieces of similar batteries from the same supplier and these batteries are lying in the ICD for de-stuffing and clearance (in addition to present import of 25,440 pieces) and that payment for these supplies have made already through bank in June 2005 itself based on the proforma invoices issued by the supplier. In this background and on account of the fact that the appellants have also stated that the supplier is a manufacturer of the said batteries (even though no proof for the same has been furnished), the declared value cannot be rejected without valid reasons. Further, even if the supplier is not the manufacturer, considering the fact that huge quantities of batteries have been purchased from him by the appellant based on the sales contract dated 15.7.04 would go to show that the prices have been mutually agreed upon and hence it cannot be questioned unless the department establishes that over and above the invoice price some other consideration is there in arriving at this value. This, however, has not been done. Moreover, even as per Rule 5 of the Valuation Rules, the value of the goods under assessment have to be arrived at based on the value of contemporaneous import at the same commercial level. In this case, the level of comparison taken by the Department is only 24000 pieces whereas the appellants have imported more than 1 lakh pieces from the same supplier recently and hence the comparison would appear to be incorrect and hence it has to be held that the enhancement of the value done in terms of Rule 5 of the Valuation Rules is incorrect and cannot be sustained. I, therefore, hold that the batteries will have to be assessed to duty based on the declared value of 0.25 USD (C & F) per piece."*

5. We find from the above factual findings of the Commissioner (Appeals) that the argument and case for enhancement of the value, cannot be sustained inasmuch as the product is imported on the basis of a contract in existence. There is no contrary evidence brought on record by the appellant.

On this factual finding, we find that the impugned order is legal and correct and does not require any interference. Accordingly, the appeal filed by Revenue is rejected.

(M.V. Ravindran)
Judicial Member

(M. Veeraiyan)
Technical Member

scd/