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12

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/262 /2006-263 /2006 - CU[DB], C/M/533/2009 Date **23/03/2011**

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

To : 1. SHRI M.L.GUPTA MANAGING DIRECTOR
2. M/S AGARWAL DISTRIBUTORS PVT. LTD.
121-IST FLOOR, AGGARWAL PLAZA,
CSC, SFS POCKET, EAST OF MUKHERJEE NAGAR,
NEW DELHI-110009.

M/S AGARWAL DISTRIBUTORS PVT. LTD. Appellant

Vs

COMMISSIONER OF CUSTOMS **MISC. ORDER NO.C/53/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/129-130/ 2011 CU[DB]** dated 10.03.2011 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
COMMISSIONER OF CUSTOMS
NEW CUSTOM HOUSE,
NEW DELHI

2. Adv. / Consult **MR.L.P. ASTHANA,**
R-163, S.F., G.K. PART-I,
NEW DELHI – 110 048.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.C/262-263/2006 with
Customs Miscellaneous Application No.533 of 2009

(Arising out of Order-in-Original No.33/GS/CC/DRI/NCH/2006 dated 27.1.2006 passed by the CCE (Adjudication), New Delhi)

For approval and signature:

Hon'ble Mr. S.S.Kang, Vice President
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?	
2	Whether it should be released under Rule 27 of the 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?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Agarwal Distributor Pvt.Ltd. — Appellants
Shri M.L.Gupta, Managing Director

Vs.

CCE, New Delhi — Respondent

Present for the Appellant: Shri L.P.Asthana, Advocate
Present for the Respondent: Shri K.K.Jaiswal, DR

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/decision: 10.03.2011

M.O. C/53/11

Final **ORDER NO.** C/129-130/11

PER: S.S.KANG

The appellants filed these appeal against the adjudication order passed by the Commissioner whereby the demand of differential duty of

Rs.1,25,15,520/- was confirmed and penalties were imposed under section 114A of Customs Act, 1962 on the firm as well as on the Managing Director under section 112 of Customs Act, 1962.

2. The facts brief of the case are that the appellants are engaged in the import of photographic products from Hong Kong and Russia. The appellants imported 13 consignments from Hong Kong and 5 consignments from Russia during the period from October, 1996 to June, 1998. The goods were assessed to duty and were cleared thereafter. The investigation was conducted in respect of the valuation of the goods from Hong Kong and Russia and during the investigation it was found that the appellants have undervalued the goods with intent to evade payment of duty. On 26.11.99, the statement of Shri M.L.Gupta, Managing Director was recorded under section 108 wherein he stated that the goods were undervalued. On the basis of the statement and investigation conducted from the exporting country, show cause notice demanding differential duty and imposing penalties was issued. Thereafter the adjudication order was passed after following the principles of natural justice.

3. The contention of the appellants is that the main evidence relied upon by the Revenue is the alleged invoices and export declarations filed by the exporter of Hong Kong and Russia. The confessional statement was recorded subsequently. It is also submitted that in the confessional statement, the appellant admitted undervaluation to the extent of one fifth of actual value whereas in the adjudication order it was held that the value declared was 25% of the actual value. In the circumstances,

the Revenue cannot place reliance on the confessional statement which is inconsistent with the case of the Revenue.

4. In respect of export declaration filed by the exporter of Hong Kong and Russia, the contention is that there is considerable gap in the date of export declaration and the date of import. No such incriminating document was found at the time of search of the premises which shows that the appellant misdeclared the value of goods. It is also submitted that the original export declarations were not obtained and only the copies of such export declarations were obtained which relied upon by the customs authorities. It is also submitted that some enquiries were made by Trade Licensing Investigation Bureau of Hong Kong and were forwarded to High Commission of India. No statement of the enquiry officer has been furnished and there is no evidence on record to show whether any investigation was conducted from the supplier of the goods. The appellants produced price list published by the manufacturers and the value of the goods were declared as per list. The appellants relied upon the decision of Hon'ble Supreme Court in the case of CCE vs. South India Television (P) Ltd. reported in 2007 (214) ELT 03 (SC). The emphasis of the appellants is that before rejecting the invoice price the Customs Authorities has to give cogent reason for rejection and in the absence of import of identical goods or similar goods at a higher price at around the same time invoice price has to be accepted as the transaction value. In view of the above reason, the demand is not sustainable.

6. The contention of the Revenue is that the goods were imported from Hong Kong and Russia. The export declarations filed by the

exporters were received through Government channel. High Commission of India vide its letter dated 5.3.98 forwarded the invoices and export declarations of the exporters & Russia. Similarly High Commission of India at Hong Kong forwarded the export declarations filed with the Customs Authorities by the exporters which shows that higher value than then declared by the appellants. The Revenue also submitted that the investigation was got conducted by the Hong Kong Authorities and the Deputy Head of Trade Licensing Investigation Bureau vide letter dated 21.04.99 informing Consulate General of India that exports were made at higher value. The contention of the Revenue is that as the Revenue arrived at the transaction value after taking into consideration the actual amount received by the exporter of the goods from the appellants and duty is demanded on such transaction value. Hence, the impugned order is rightly passed.

7. We find that in this case the transaction value declared by the appellants in respect of import of goods was rejected. The basis of rejection is the enquiries conducted from Hong Kong and Russia. The Revenue obtained the price declaration and invoices filed by the exporters through official channels which shows that the appellants have undervalued the goods with intent to evade payment of customs duty. The Indian High Commission received copies of invoices and customs declaration filed by the exporters at the time of export of goods to the appellants which shows higher value than the declared at time of import. This information was supplied by the Enforcement Authorities, Russia. Similarly, Hong Kong Authorities were also requested to make enquiry and the Deputy Head of Trade Licensing Investigation Bureau vide letter dated 21.04.99 informing Consulate General of India that in

respect of export made to the appellant as regards payment, the exporter before each shipment received advance each deposits equal to the understated amounts and after each shipment received the balance equal to the false invoice amounts through bank by L/C. The appellants relied upon the decision of Hon'ble Supreme Court in the case of CCE vs. South India Television cited supra held that undervaluation has to be proved if the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the department wants to allege undervaluation, it must make detailed enquiries; collect material and also adequate evidence. When undervaluation of comparable imports. For proving under valuation, if the department relies on declaration made in the exporting country, it has to show how such declaration was procured.

8. In the present case as the Customs Authorities made detailed investigation with the Customs Authorities of Hong Kong and Russia and obtained invoices and export declarations to show that the actual price of the goods imported by the appellants and the declarations were procured through official channels. The investigation at Hong Kong also revealed that the exporter was receiving the understated value in cash. In the circumstances, we do not find any infirmity in the impugned order whereby the goods have been confiscated and penalty of equal amount was imposed on the firm. Shri

9. In respect of penalty imposed on the Managing Director of firm and equal penalty imposed on the firm, we find that the penalty of Rs.5 lakhs (Rupees Five Lakhs) will meet ends of justice on Shri M.L.Gupta,

Managing Director. Therefore, the penalty in respect of Managing Director is reduced to Rs.5 lakhs otherwise the appeals are dismissed.

(Pronounced in the open court)

(S.S.KANG)
VICE PRESIDENT

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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