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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/261 - 262/2007 - CU[DB] Date **24/03/2011**

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

To :
M/S HIMAC POLY FILMS PVT. LTD.
WZ-47-A, WASAIDARAPUR NEW DELHI.

M/S HIMAC POLY FILMS PVT. LTD. Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/131-132/ 2011 CU[DB]** dated 17.03.2011 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
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.PREM RANJAN KUMAR
LGF 6/33, VIKRAM VIHAR,
LAJPAT NAGAR-IV, NEW DELHI.- 24.

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.
DIVISON BENCH

Customs Appeals No.261-262 of 2007

(Arising out of Order-in-Appeal No.16/Cus/Appl/DLH-IV/2007 and No.17/Cus/Appl/DLH-IV/2007 dated 14.3.2007 by the CCE (A), Faridabad)

For approval and signature:
Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Mathew John, 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.Himac Poly Films (P) Ltd. Appellants

Vs.

CCE, Delhi-IV, Faridabad Respondent

Present for the Appellant: Shri Prem Ranjan, Advocate
Present for the Respondent: Shri K.K.jaiswal, SDR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Date of Hearing/Decision: 24.02.2011

Final **ORDER NO.** C/131-132/11

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order confirming the loading of value on transaction value of the goods imported goods.

2. The brief facts of the case are that the appellant's imported polyethylene Polymer LD Grade DF 810 from Singapore and filed bill of entry. The department did not agree with the declared price and loaded the value on the imported goods and enhanced the value, therefore additional duty of customs was demanded from the appellants without any speaking order. The same was confirmed by the lower appellate authority. Aggrieved by the said confirmation of assessment by the lower appellate authority, the appellants are before us.

3. Learned Advocate for the appellants submitted that the adjudicating authority has loaded the value on transaction value of the goods without assigning any reason and without rejecting the transaction value. The lower appellate authority has also observed in the impugned order that loading of value was done by the customs authorities on the basis of PLATT's prices i.e. weekly Asian Polymers price table relevant at the time of import which is in violation of Customs Valuation Rules. He further submitted that the Commissioner (Appeals) has not given any finding how they arrived at the decision by rejecting the transaction value as there is no contemporaneous import of such items during the said period. The decisions of both the authorities below are arbitrary, hence the impugned order be set aside.

3. Learned SDR reiterated the findings in the impugned order and submitted that as the lower appellate authority has found the transaction value is lower than the PLATT's prices rate, therefore they rejected the transaction value and loaded the additional value relying on the PLATT's prices rate. Hence, the impugned order

needs to be upheld. To support his contention, he relies on the decision of the Apex Court in the case of Varsh Plastics Pvt.Ltd. vs. Union of India reported in 2009 (235) ELT 193 (SC).

4. Heard and considered.

5. On careful examination of submissions made by both sides, we find that in this case while assessing the bill of entry, the loading of value was done without taking the consent of the appellants which is in violation of the Board's Circular No.91/2003-Cus, dated 14.10.2003 and assessments of bill of entry are without speaking order. We also find that the lower appellate authority has made the observation that the loading of value has been done on the basis of PLATT's prices rate which is in violation of principle of natural justice. In fact, if the adjudicating authorities do not agree with the transaction value then the adjudicating authority has to resort the method of valuation provided as per Customs Valuation Rules. First they have to see whether the contemporaneous import of identical goods have been made and that the price is available. If that price is not availed, on the basis of PLATT's prices rate, the customs authorities cannot load the value. The case law relied upon by the learned DR is different on facts. In that case there was a misdeclaration in the description of goods. Thus there was a good ~~This was goods~~ reason to reject the transaction value. After rejecting the transaction value PLATT prices were adopted. In this case, no reason is given for rejection of transaction value. In fact this case also supports the case of the appellants since in that case the Apex Court has held that availability of evidence of contemporaneous import of the same goods available obviously provides the best guide for determination

of value of the import of goods but in the absence of evidence of contemporaneous import, reference to foreign journal for finding out correct international price of imported goods may not be relevant because ultimately the Assessing Authority has to determine the value of the imported goods, at which such goods are sold or offered for sale in the course of international trade at the time of importation.

6. We have seen that the Apex Court has also held that if there is evidence of contemporaneous import, to justify the loading of value reference to PLATT's prices rate is having a bearing. Merely taking the value of PLATT's prices rate is depend on the facts of each case i.e. quality, description and payment condition, etc. to arrive at the correct valuation, both the lower authorities have not applied the correct Customs Valuation Rules, hence the loading of value in this matters are unjustified. Hence, the impugned orders are set aside, the appeals are allowed with consequential relief.

(pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(MATHEW JOHN)
MEMEBR (TECHNICAL)

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