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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/229 /2007 - CU[DB] Date **04/04/2011**

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

To :
M/S PRASAD ENTERPRISES
2948, BHAGA SINGH STREET NO.3, CHUNAMANDI,
PAHARGANJ, NEW DELHI-110055.

M/S PRASAD ENTERPRISES Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/142/ 2011 CU[DB]** Dated 19.01.2011 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 – 110 024.

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)

Per Archana Wadhwa:

As per facts on record, the appellant imported non-textured worn fabrics from China and filed bill of entry declaring the price of the goods as US $ 1.6 per kg. The same was enhanced by the Assessing officer to US $ 0.16 per meter. The appellants paid the differential duty of Rs. 63,214/- and cleared the goods.

2. Subsequently, the said assessment order was challenged by them before Commissioner (appeals) on the ground that no speaking order was passed by the adjudicating authority and the basis for enhancing of the value was not disclosed to them. The said appeal was rejected by the Commissioner (Appeals) on the ground that the appellants have themselves accepted the loading of the value by the customs authorities and as such, they could not have challenged the impugned order. He further observed tht such loading of the value was done by the customs authorities on the basis of contemporous import in as much as chinease origin non-textured polyester fabrics were imported at US $ 0.6 per meter. He accordingly rejected the appeal. Hence the appeal before us.

3. After hearing both the sides, we find the grievance on the part of the appellants to be justified. Reliance by the Commissioner (appeals)on the Board Circular no91/03-Cus dated 14.10.03 clarifying that it is not necessary to issue speaking order in all the cases where

the enhancement of duty is resorted to with the consent of the importers is not appropriate.

4. The Tribunal, in a number of cases has considered the said Board Circular and has held that such consent must be in writing. At this stage, reference is made to one such decision of the Tribunal in the case of CCE New Delhi Vs. Maruti Trading Company Final Order No. C-2-3/11 dated 1.1.2011. For better appreciation, we reproduce para 5 of the said order-

"On perusal of the records including the grounds of appeal, we do not find any evidence that the enhancement has been made relying on any contemporaneous import prices. Further, it appears that the enhancement has been done without taking consent of the importer in writing as envisaged by the Board vide Circular No. 91/03-Cus dated 14.10.03. In the grounds of appeal also, no mention has been made about the existence of any contemporaneous import price or any other evidence justifying enhancement of the value. Further, there is no reason given to reject the declared transaction value by the importers. Under these circumstances, we hold that no valid reasons have been adduced to interfere with the order of the Commissioner (Appeals)."

5. In view of the above, we find that there is no consent by the importer. As such, the adjudicating authority should have passed a speaking and reasoned order enhancing the value. We further note that reference to contemporous import made by the importer was never disclosed to the appellants. We accordingly set aside the impugned order and remand the matter to the original adjudicating authority for passing a speaking order, after taking into consideration the appellants' plea, the precedent decisions on the appropriate law. Needless to say that the appellants would be given an opportunity to put forth their case before deciding the matter. The appeal is thus allowed by way of remand.

(ARCHANA WADHWA)
Judicial Member

(M. VEERAIYAN)
Technical Member

MPS*