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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/133 /2007 - CU[DB] Date **18/04/2011**

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

To :
M/S VARUN OVERSEAS
3767-68, PARMANAD STREET,
DARYAGANJ, NEW DELHI

M/S VARUN OVERSEAS Appellant

Vs

C.C. FARIDABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/148/ 2011 CU[DB]** dated 15.04.2011

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. FARIDABAD
NEW CGO COMPLEX, NH-IV,
FARIDABAD

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,N.DELHI-24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
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 - 110005
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. II

Date of Hearing : 7.4.2011

Custom Appeal No. 133 of 2007

[Arising out of the Order-in-Appeal No. 69/Cus/Appl/DLH-IV/2006 dated 23.11.2006 passed by the Commissioner of Central Excise, Faridabad]

Coram:
Hon'ble Mr. D.N. Panda, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

M/s Varun Overseas — Appellant

Vs.

CC, Faridabad — Respondent

<u>Appearance:</u>

Appeared for Appellant : Ms. Reena Rawat, Advocate
Appeared for Respondent : Shri Sumit Kumar, DR

CORAM: Hon'ble Mr. D.N. Panda, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. C/148/11 dated 15.4.11

Per D.N. Panda :

Ld. Counsel submits that against the import done through Bill of Entry dated 28.7.2006, there was enhancement of value by the Custom authorities before release of the goods. The Appellant finding no time, took delivery of the goods on 2.8.2006. Soon after taking delivery, on the next day i.e. 3.8.2006, she submits that a proper protest was lodged for a hearing. The norms of natural justice have been violated and no order-in-original has been issued. The appellant has suffered due to enhancement of the assessable value. She relies on page No. 22 of the appeal folder to say so that the duty based on the enhanced value was also paid at the time of clearance. This is substantiated by the challan at page 82. Drawing attention to the contemporaneous evidence appearing at page 32-37 of the appeal folder, (list of which can be furnished by the ld. DR to the authority under the jurisdictional Commissionerate), ~~S~~she submits that these evidence do not permit the authority to enhance the assessable value of the import. The goods were ball bearing imported from China of the description available in the invoice appearing at page-16 of the appeal folder (a copy which can be sent by the ld. DR to the jurisdictional Commissionerate for his verification). Her principal grievance is that when the Appellant was not exposed to the charge and the Authority themselves enhanced the assessable value, that is detrimental to the interest of justice. Therefore, she pleads that Appeal should be allowed in favour of the Appellant.

2. Ld. DR, on the other hand, submits that appropriate Adjudication was done when the appellant produced the challan for taking delivery of the goods. The contemporaneous evidence ~~did~~ is not germane to the issue. When this is proposition of Revenue, ld.

Counsel submits that the material on which enhancement was made are equally not acceptable.

3. Heard the matter for some time and perused the record. We found both sides are on rivalry submissions about the basis on which the assessable value has to be determined.

4. The materials appearing in record show that the Appellant preferred a hearing to know the basis of enhancement. But the Appellant was not allowed. Assessment was completed enhancing the assessable value for no reasons known to law.

5. We find from the materials produced as contemporaneous evidence appeared at page 32-37 of the appeal folder, those are one year old to the import date. But the materials on which Revenue based its assessment are also not borne by record. Once such a position exists, this case suggests to be a case for remand to cure defect of violation of natural justice. Therefore, keeping all the issues open to both sides, we remand the matter to the original Authority to grant fair opportunity of hearing to the Appellant. Confronting the materials on which the enhancement was made and recording the evidence and pleadings, the Authority shall pass appropriate order in accordance with law.

6. Before parting with this order, we may state that the Authority should also look into the aspect whether the goods

imported from the exporting country was subject to anti-dumping duty during the material period under any notification.

7. In the result, the matter is remanded to the original authority.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RM