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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/382 /2007,393 /2007-395 /2007,507 /2007-511 /2007,632 /2007 - CU[DB] Date **05/05/2011**

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

To :
M/S HARKARAN DASS VEDPAL
D 1, SECTOR 8, NOIDA, U.P.
201301

M/S HARKARAN DASS VEDPAL Appellant

Vs

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/175-184/ 2011 CU[DB]** dated 02.05.2011 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. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.

2. Adv. / Consult
MR.H.S.MEW
52 B, UPKAR APPTS, MAYUR VIHAR PHASE EXTN,
DELHI – 110 091

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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.382 of 2007
Customs Appeal No.393-395 of 2007
Customs Appeal No.507-511 of 2007
Customs Appeal No.632 of 2007

(Arising out of Order-in-Appeal No.51-60-CUS/APPL/LDH/2007 dated 9.4.2007 passed by the CCE (A), Chandigarh)

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
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?	No
2	Whether it should be released under Rule 27 of the 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?	No

M/s.Harkaran Dass Vedpal — Appellant

Vs.

CC, Ludhiana — Respondent

Present for the Appellant: Shri H.S.Mew, Advocate
Present for the Respondent: Shri Amrish Jain, SDR

Coram:Hon'ble Mrs.Archana Wadhawa, Member(Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/Decision: 20.04.2011

Final **ORDER NO.** C/175-184/11

PER: M.VEERAIYAN

These ten appeals by the same appellants arise out of common order of the Commissioner (Appeals) no. 51-60CUS/APPL/LDH/2007 dt.9.4.07.

2. Heard both sides.

3. The relevant facts in brief are that the appellants imported 10 consignments of mixed fatty acid, mixed acid+ oil, acid oil (second grade black oil) and declared prices ranging from $ 160 per MT to $ 250 per MT. The Assistant Commissioner of Customs rejected these transaction values and enhanced the prices to $ 316.04 to 440 per MT. and in all these cases the appellants paid duty under protest on the enhanced value. In some cases, they also sought for from the Assistant Commissioner for issuing speaking order so as to enable them to file appeals. No such orders have been issued by the Assistant Commissioner. They filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) in stead of considering the grounds raised before him went on to decide the appeals on the aspect of unjust enrichment and rejected the appeals.

4. Ld.Advocate submits that the original authority has not relied upon any valid evidence to reject the transaction value and to enhance the assessable value. Further, the original authority has failed to issue speaking orders in spite of specific request to that effect. The Commissioner (Appeals) instead of deciding the appeal on merits decided the appeals against the party altogether on different.

5. Ld.SDR reiterates the findings and reasoning of the Commissioner (Appeals).

6. We have carefully considered the submissions and perused the records. Bills of entry have been filed during November, 06 to February, 07 for clearing the consignments mentioned as above declaring certain transaction values. Neither the assessment order nor

the order of the Commissioner (Appeals) indicate the basis for rejecting the declared value. The evidence relating to contemporaneous import prices are also not indicated. It is not the case where the appellants have consented for enhancement of the prices based on higher contemporaneous import prices. The records indicate that the appellants have paid duty under protest and in some cases sought for issue of speaking orders. In this regard, letter dt.3.2.07 issued by the appellant to the AC of customs in connection with import under bills of entry No. 359 dt.1.2.07 reads as follows:

> *"We have filed subject Bill of Entry for assessment of duty and had declared genuine purchase price for the same in the B/E for assessment.*
>
> *You have rejected the declared value and have assessed after enhancing the assigning declared value exorbitantly without any reason for rejecting the declared value. We are aggrieved for the assessment passed by you but we are forced by the circumstances to clear the material by paying duty as assessed by you because if we file LIVE APPEAL, it may take very long time and during this period shipping line detention and ground rent will be too high and also our business will become standstill for not fulfilling our commitment with our buyers and also blockage of huge fund which will paralise our total routine business. Therefore, we are paying the assessed duty "UNDER PROTEST" please note.*
>
> *Simultaneously, we request to issue the speaking order u/s 17(5) of the Customs Act so that proper appeal is filed against the enhanced value.*
>
> *You are therefore requested to issue speaking order and the same may be sent by Regd. Post to our correspondence address/Admn. Office as printed above."*

7. We do not find any justification for the assessing authority to have not issued speaking orders after disclosing the evidence based on

which the enhancement was made. The Commissioner (Appeals) has passed an order on grounds which are not relevant to the appeals before him. His finding reads as under:

"In this context, it is observed that the appellants have filed Bills of Entry to the Assistant Commissioner, Customs, CFS, Ludhiana for import of Mixed Acid Oil and Mixed Fatty Acid Oil. On perusal of the Bills of Entry, it is seen that the declared value was rejected and the transaction value was enhanced by the assessing authority without citing any reason or furnishing any evidence of any contemporaneous import of higher prices of similar goods having same qualities and comparable parameters, on the basis these Bills of Entry were assessed. The appellant has accepted the enhanced value but paid the duty under protest.

The appellant has sought enhancement of declared value may be set aside and assessment may be done at the transaction value as declared in the invoices. In other words, these appeals are for refund of the excess duty paid. However, they have not submitted any evidence that they have not charged this additional duty paid on enhanced value from their customers, thus, as per Section 28 D of the Act, it is presumed that the incidence of duty ahs been passed on to the buyers by the appellant. Therefore, the principle of unjust enrichment will come into play and applying the same, these appeals against the impugned orders are liable to be rejected on this ground."

9. In view of the above, the orders of the Commissioner (Appeals) and the orders of the assessment enhancing the prices are set aside and the matter remanded to the original authority for issue of speaking orders after disclosing the evidence for proposed enhancement and after hearing the appellants. This should be completed expeditiously and preferably within three months from the date of receipt of this order.

10. The appeals are allowed by way of remand as above.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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