14

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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/404 - 407/2007 - CU[DB] Date **16/05/2011**

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

To :
C.C. ICD, TUGHLAKABAD,
NEW DELHI 110020.

C.C. (ICD) NEW DELHI Appellant

Vs

M/S UNIVERSAL ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/187-189/ 2011 CU[DB]** dated 13.05.2011 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
M/S UNIVERSAL ENTERPRISES
C-21, LAJPAT NAGAR-1, DELHI
110024

2. Adv. / Consult MR. PREM RANJAN KUMAR,
LGF-6/33-33 A, 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 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)

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

COURT NO. III
Customs Appeal No. 404 of 2007 (DB)
Customs Appeal No. 405 of 2007 (DB)
Customs Appeal No. 407 of 2007 (DB)

[Arising out of the Order-in-Appeal No. CC(A)/CUS/42-44/ICD/D-II/07 dated 17/05/2007 passed by The Commissioner (Appeals), Customs, New Delhi.]

[Arising out of the Order-in-Appeal No. CC(A)/CUS/31-41/ICD/D-II/07 dated 17/05/2007 passed by The Commissioner (Appeals), Customs, New Delhi.]

[Arising out of the Order-in-Appeal No. CC(A)/ CUS/30/ICD/D-II/07 dated 17/05/2007 passed by The Commissioner (Appeals), Customs, New Delhi.]

For Approval and signature :
Hon'ble Shri M.V.Ravindran, Member (Judicial)
Hon'ble Shri 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 would 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?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

Commissioner of Customs, Delhi — Appellant

Versus

M/s Universal Enterprises — Respondent

M/s Haryana Acrylic Mfg Co.P.Ltd.
M/s Mono Acrylic Mfg. Co. P.Ltd.

Appearance
Shri Prem Ranjan, Advocate – for the respondent.
Shri Sonal Bajaj – for the appellant.

CORAM : **Hon'ble Shri M.V.Ravindran, Member (Judicial)**
Hon'ble Shri M.Veeraiyan, Member (Technical)

DATE OF HEARING : 10/05/2011.

Final Order No. C/187-189/11 Dated : 13.5.11

Per. M.V.Ravindran :-

All these appeals are filed by the revenue against the impugned orders, i.e., Orders-In-Appeal Nos. CC(A)/CUS/ 42-44/ICD/D-II/07, dated 17/05/2007, No. CC(A)/CUS/31-41/ICD/D-II/07 dated 17/05/2007 and No. CC(A)/ CUS/30/ ICD/D-II/07 dated 17/05/2007.

2. The issue involved in these appeals being same and identical all these appeals are disposed off by a common order.

3. Heard both the sides and perused records.

4. Issue involved in these cases are valuation of the goods, i.e., acrylic sheets (substandard goods, defective/off grade/old and used goods) imported by the respondents. The importers filed bills of entry and declared value of US $ 500 per metric

ton. The adjudicating authority did not accept the value and rejected the same and ordered loading of value and assessed the bills of entry at US $ 950 per metric ton. After coming to this conclusion, adjudicating authority confirmed the demand of duty. Aggrieved by such orders, respondents filed an appeal before Commissioner(Appeals). Commissioner (Appeals), allowed the appeals and held that there is no reason for rejecting the transaction value declared by the respondents. He allowed the appeals and set aside the Orders-In-Original hence these appeals.

5. Ld. Departmental Representative submitted that observations of Commissioner(Appeals) that transaction value has been rejected arbitrarily is incorrect. It is his considered submission that imported goods are not ordinarily produced or manufactured and they are remnants or by the products of the manufacturing process of prime goods only, which are ordinarily sold in the international trade. It is his submission that the imported goods are not produced for sale and the market price is never sole consideration during the sale or offer of the sale for determining the value of imported goods. It is his submission that the observations of Ld.

Commissioner(Appeals) that value of the goods was enhanced without any basis is not correct; the value has been worked out based on NIDB data. It is his submission that the transaction value of defective goods/off grade/ seconds/old and used goods/substandard goods cannot be accepted as true value of goods for the purpose of determination Customs Duty.

6. Ld. Counsel appearing for respondents reiterated Commissioner (Appeals) order.

7. After giving due consideration to the submissions made by both the sides, we find that the issue involved in these cases are valuation of imported goods, i.e., acrylic sheets/ defective/off grade/second/old and used goods/ substandard goods. It is seen from the records and findings of the Ld. Commissioner(Appeals) as well as adjudicating authority that the goods were not mis-declared and were as per inspection report. The findings of Commissioner (Appeals) on this issue while setting aside the Orders-In-Original very relevant which are re-produced :-

"It is also not the case of the department that there was any special relationship between the importer and the supplier and that the former has paid anything extra over and above the transacted value.

There is no charge of mis-declaration of goods. In fact the Adjudicating Authority has mentioned that the impugned goods were examined and found to be Acrylic Sheets substandard/stock lot/off grade In case of any charge of mis-declaration the burden is on the department as held by Hon'ble Supreme Court in the case of Union of India vs. Garware Nylons 1996(87)ELT/12(SC).

It is not correct as held by the Adjudicating Authority that during the sale of defective goods the price is not the sole consideration. The Adjudicating Authority is also not correct in referring to the alleged Board's Circular without citing its number and date issued with regard to the valuation of second hand goods in rejecting the transaction value because in the present case goods are not second hand as is clear from the inspection report. The Adjudicating Authority has also not given or reason to allow 40% discount of the value fixed in the said Board's Circular.

The invoice value cannot ordinarily be discarded except on the strength of the clear and specific evidence that the invoice is not genuine and that it does not show the real price as has been transacted between the importers and the foreign supplier as has been held by *the Hon'ble Tribunal in the case of Commissioner of Customs vs. Chem Crown (I) Ltd. 1998(100)ELT/126 (Tri) which was relied upon in 1999(107)ELT/99(Tri) and 2005(187)ELT/94."*

8. It can be seen from the above re-produced findings of the Commissioner(Appeals) that the revenue has not been able to produce any evidence, that the invoice price is not genuine and it does not show real price transacted between the importers and the foreign supplier. In the grounds of appeal before the Tribunal also, revenue has not led any evidence for the rejection of the transaction value of the imported goods. It is also seen that revenue has not alleged that additional consideration other than transaction value flowed from the importer to the foreign supplier. In absence of any evidence indicating that the transaction value between the importer and the foreign supplier is not genuine and the goods having found to be as per the declaration in the invoice, we find that the impugned orders are correct and does not require any interference.

9. Accordingly, we are of the considered view that the appeals of the revenue are devoid of merits and are liable to

be rejected. The impugned orders are upheld and appeals are rejected.

(operative portion of order pronounced on completion of Hearing in open Court).

(M.V.Ravindran)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

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