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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/255-256 /2008 - CU[DB]   Date **01/06/2011**

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

C.C.E. DELHI IV Appellant
Vs
M/S ANSHIKHA OVERSEAS Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/210-211/ 2011 CU|DB|** dated 27.05.2011 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 1. M/S ANSHIKHA OVERSEAS
   2. M/S ANSHIKA TRADERS
   NO.56, SHIVAJI ROAD,
   BEHIND AZAD MARKET,DELHI.
2. Adv. / Consult
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.

COURT NO. III

Date of Hearing : 24.5.2011

Custom Appeal No. 255-256 of 2008

[Arising out of the Order-in-Appeal No. 67-68/Cus/Appl/DLH-IV/2007 dated 17.1.2008 passed by the Commissioner of Central Excise (Appeals), Faridabad]

Coram:

Hon'ble Ms. Archana Wadhwa, 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?	No
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?	Yes

CCE, Delhi-IV — Appellant

Vs.

M/s Anshikha Overseas — Respondent

Appearance:

Appeared for Appellant : Shri K.K. Jaiswal, SDR
Appeared for Respondent : None

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. C/210-211/11 dated 27.5.11

Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals) vide which he has set aside the impugned order of the original Adjudicating Authority enhancing the assessable value of the imported consignment of worn clothing, Revenue has filed the present appeal. We have heard Shri K.K. Jaiswal, ld. SDR appearing for Revenue. No one appeared for the Respondent.

2. As per the facts on record, the respondents imported a consignment of worn clothing and filed Bill of Entry dated 2.7.2007 declaring the assessable value of the same as US $ 0.20 per Kg. (CIF). Inasmuch as the import of worn clothing and used articles of textile materials are restricted and is allowed clearance only against valid import licence and as the importers did not have any specific licence for import of the goods in question, the same were believed to have been imported in contravention of the provisions of Foreign Trade Policy and as such liable to confiscation. Revenue also doubted the declared value of the said clothing inasmuch as the other contemporaneous bill of entries showed the value of worn clothing ~~and~~ at US $ 0.60 per Kg. Further, the NIDB data retrieved from EDI system for the relevant period also reflected upon the higher value of the worn clothing. Accordingly, proceedings were initiated against the respondent culminating into an order passed by the original Adjudicating authority enhancing the value as also confiscating the goods with an option to the Appellant to redeem the same on payment of fine of Rs. 1.20 lakhs. In addition penalty of Rs. 1.00 lakh was imposed upon them.

3. The said order was challenged by the Respondent before Commissioner (Appeals). As regards valuation they ~~committed~~ contended that the value enhanced by the Joint Commissioner on the basis of NIDB data was not in accordance with judicial pronouncement inasmuch as the Tribunal in the case of **M/s Gaitri Exports Vs. CC** vide Final Order NO. 747/2004-NB-A dated 5.7.2004 has set aside the identical order of enhancement of valuation; that the transaction value of the goods can be rejected only if anyone of the exceptions stipulated in sub-rule (2) of Rule 4 of Customs Valuation Rule are applicable; that the Commissioner (Appeals) in an identical import of worn clothing by M/s Venus Traders have allowed their appeal; that there is no allegation o~~f~~r proof of any additional payment made to the foreign supplier; that in any case, keeping in view the nature of the goods i.e. worn clothing, there can be no two identical or similar imports inasmuch as the old and used clothing in each consignment would be different in quality, use of clothes, types of clothing etc. For the above proposition, they relied upon various decisions of the Hon'ble Supreme Court as also of the Tribunal. The Commissioner (Appeals) vide his impugned order accepted the above stand of the Appellant by observing as under :-

> "Further, the Hon'ble Supreme Court in the case of Eicher Tractors Ltd. Vs. CC, Mumbai – 2000 (122) ELT 321 (SC) has laid down the law that "reading Rule 3 (i) and Rule 4(1) together, it is clear that a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value." The Hon'ble

Supreme Court has further held that unless the price actually paid for the particular transaction falls within the exceptions, particularised in Rule 4(2) of the Customs Valuation Rules, the Customs Authorities are bound to assess the duty on the transaction value. The Hon'ble Supreme Court in its recent judgment in the case of Commissioner of Customs, New Delhi Vs. Prodelin India (P) Ltd.- 2006 (202) ELT 13 (SC) has held that it is settled law that the Department is bound to accept the transaction value entered between the two parties. The Hon'ble CESTAT in a large number of cases has also held that the transaction value can be rejected only when the case falls under any one of the exceptions mentioned in Rule 4(2) of Customs Valuation Rules. In the present appeal, the Revenue has not brought on record any material or evidence to show that any of the exceptions particularizes in Rule 4(2) of the Customs Valuation Rules is applicable. Therefore, there is no reason not to accept the transaction value as declared by the appellants in the present case. There is also nothing on record that there was any special relationship between the Appellants and the foreign supplier or the appellants had paid anything extra over and above the transaction value. In the Order-in-Appeal Nos. CC(A)05/ICD/D-II/2007 dated 16.1.2007, 49/Cus./Appl/DLH-IV/07 and 50/Cus/Appl/DLH-IV/07 both dated 13.7.2007 (copy placed on record by the appellants), I had dealt with the same valuation issue of worn clothings/other worn articles and in those cases I had allowed the appeals by rejecting the enhanced assessable value. Therefore, in the present case also, I do not see any reason to differ with my above orders-in-Appeal on the valuation aspect."

4. However, as regards the confiscability of the goods on account of non-production of licence, he held that admittedly the imported goods were restricted items could not have been imported ~~that~~ without the import licence. He ~~granted~~ accordingly, upheld the confiscability of the goods but reduced the redemption fine to Rs.30,000/- and personal penalty of Rs. 15,000/-

The said order of the Commissioner (Appeals) is impugned before us.

5. Ld. DR appearing for the Revenue reiterates the same very grounds and placed reliance on the Tribunal's decision in the case of **M/s Kamal Traders Vs. CCE New Delhi** Vide Final Order No. 151/2006-Cus dated 7.4.2006. However, on going through the said order, we find that it stands recorded that the Appellants are not challenging the confiscation of the goods and the value enhanced on the basis of contemporaneous import made by other importers from the same country. There is no discussion about the fact that the old, used and worn clothing imported under different consignments cannot be held to be contemporaneous inasmuch as the same could depend upon a number of factors like the quality, quantity, type of fabrics used, number of years to which the same have put to use etc. In the absence of above details, it is difficult to hold that the consignments in the present Bill of Entry and the other relied upon bill of entries were identical and hence contemporaneous. Further, the reliance on the NIDB data by the original adjudicating authority cannot be held to be in accordance with declaration of law and the Tribunal's decision in the case of M/s **M/s Gaitri Exports** refers (supra) would be fully applicable to the facts of the case. Further more, we also find that there is no allegation, much less any allegation to the effect that any additional payments were made by the respondent to their foreign supplier.

In the absence of the same and in view of our foregoing discussion, we find no infirmity in the order of Commissioner (Appeals), in respect of the valuation aspect. We find that the Commissioner (Appeals) has rightly applied the precedent decisions to the facts of the case and has rightly rejected the Revenue's stand on the assessable value of the goods. Accordingly, we reject the appeal filed by the Revenue.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM