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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/181, 259 /2007 - CU[DB]

Date **24/02/2011**

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

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

C.C, ICD, TKD, NEW DELHI — Appellant

Vs

Y.S ENTERPRISES & M/S PRASHAD ENTERPRISES — Respondent

I am directed to transmit herewith a certified copy of **Final order C/92-93/ 2011 CU[DB]** dated 18.02.11 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 **Y.S ENTERPRISES,** SHOP # 22, WZ-19-A, SARATI COMPLEX, JAWALAHERI MARKET, PASCHIM VIHAR, NEW DELHI-110063

   M/S PRASHAD ENTERPRISES
   2948, BHAGAT SINGH STREET NO.3, CHUNNA MANDI, PAHARGANH, N.D.

2. Adv. / Consult MR. PREM RANJAN, ADV.
   C/O. **Y.S ENTERPRISES,** SHOP # 22, WZ-19-A, SARATI COMPLEX, JAWALAHERI MARKET, PASCHIM VIHAR, NEW DELHI-110063

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 -
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. IV

Date of Hearing : 17.2.2011

Custom Appeal No. 181 of 2007-Cus.

[Arising out of the Order-in-Appeal No. CC(A)/168-173/ICD/D-II/2006 dated 28.12.2006 passed by the Commissioner of Customs (Appeals), New Delhi]

For Approval and signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	:	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 Lordships wish to see the fair copy of the order?	:	No
4.	Whether order is to be circulated to the Department Authorities?	:	No

CC, New Delhi — Appellant

Vs.

M/s Y.S. Enterprises — Respondent

Appearance :

Appeared for Appellant : Shri Sonal Bajaj, DR
Appeared for Respondent : Shri Prem Ranjan, Advocate

Custom Appeal No. 259 of 2007

(Arising out of Order-in-Appeal No. 199-205/SSS/GGN/07 dated 29.3.2007 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Gurgaon)

CCE, Delhi-III — Appellant

Vs.

M/s Prashad Enterprises — Respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. C/92 & 93/11 dated 18.2.11

Per Ashok Jindal:

In both the cases, common issue is involved, accordingly the same are disposed of by a common order. These appeals are filed by the Revenue against the order of setting aside the adjudication order wherein the value of imported goods have been enhanced while assessing Bill of Entry by the adjudicating authority.

2. Ld. DR relied on the decision of **Vikas Spinners Vs. CC, Lucknow** reported in 2001 (128) ELT 143 and submitted that as the respondent has admitted the assessment of Bill of Entry and paid the duty without any protest, the appeal before the Commissioner (Appeals) is not maintainable in view of the above cited decision.

3. Heard and considered.

4. We have gone through the impugned order and the submissions made by the ld. DR. We find that in the Bill of Entry value has been enhanced without any evidence on record how the adjudicating authority have arrived at the enhanced value. In the absence of any evidence, the enhancement of valuation is not justified and same has been discussed by the lower appellate authority in its order. After relying on the decision of this Tribunal

in the case of **M/s S&H Gears Pvt. Ltd.** reported in 2004 (165) RLT 425 (T), as the adjudicating authority has failed to produce any evidence of contemporaneous import to enhance the value, we are in agreement with the lower appellate authority rejecting the adjudication order. The case law relied upon by the ld. DR is not relevant to the facts of this case, as the issue involved is of classification which is not in these appeals.

5. From the above discussion, we are upheld the impugned order and reject the appeals of the Revenue.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)

RM