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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/188 /2007 - CU[DB] Date **08/06/2011**

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

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

C.C. NEW DELHI Appellant

Vs

M/S GANESH TRADING CO. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/247/ 2011 CU|DB|** dated 02.06.11 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
M/S GANESH TRADING CO.
PIAU MANIHARI, G.T. KARNAL
ROAD, KUNDLI (SONEPAT),
HARYANA

131028

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
COURT NO.III

Appeal No.C/188/07

Arising out of OIA No.CC(A)/165/ICD/D-II/2006 dated 28.12.06

Passed by: Commissioner of Customs (Appeals), New Delhi

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, 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?	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?	Yes

Appellant/s	...	CC New Delhi
Represented by	...	Shri Amrish Jain, SDR
		Vs.
Respondent/s	...	M/s. Ganesh Trading Co.
Represented by	...	None

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. MATHEW JOHN, MEMBER (TECHNICAL)

Date of Hearing:02.06.11
Date of Decision:02.06.11

Final ORDER No. C/2471/11

Per: Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals) vide which he has set aside the enhancement of value done on the assessed bill of entry, Revenue has filed the present appeal. We have heard Shri Amrish Jain, learned SDR appearing for the Revenue. Nobody appeared on behalf of the respondent.

2. The Commissioner (Appeals) vide his impugned order has held that the assessing authority has not ~~indicating~~ indicated any reasons for rejection of the transaction value or for enhancement of the value. As such by relying upon various precedent decisions, he has held that enhancement was not justified. He has also observed that merely because the importer cleared the goods at the enhanced value due to urgency, that cannot be made a reason for precluding them from final appeal. For the above proposition he has relied upon the Tribunal's decisions in the case of **M/s. S & H Gears Pvt. Ltd.** reported in **2004 (64) RLT 425 (Tribunal), Hutchison Max Telecom Pvt. Ltd.** reported in **2004 (165) ELT 175 (Tribunal)** and in the case of **Bayshore Glass Trading Pvt. Ltd.** reported in **2002 (148) ELT (Tribunal).**

3. The Revenue in their memo of appeal is only aggrieved with the fact that the importer had paid the duty without protest and had cleared the goods voluntarily and as such they have accepted the value enhancement.

4. We find no merits in the above contention of the Revenue. The assessed bill of entry having been appealed against by the importer is

itself indicative of the fact that the enhanced value does not stand accepted by them. The importers cannot be precluded from challenging the assessed bill of entry on the sole ground that they have cleared the goods on the enhanced value, as rightly held by Commissioner (Appeals). We find no infirmity in the impugned order of the appellate authority. Accordingly the appeal filed by the Revenue is rejected.

(Pronounced in Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

*Jk**