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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/352 /2007 - CU[DB] Date **27/06/2011**

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

To :
CCE, PANCHKULA COMMISSIONERATE,
SCO-407-408, SECTOR-8, PANCHKULA,
HARYANA.

C.C.E. DELHI III Appellant

Vs

M/S POLYGLASS ACRYLIC MFG. CO. (P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/271/ 2011 CU[DB]** dated 24.06.2011 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 POLYGLASS ACRYLIC MFG. CO. (P) LTD.
89-90, INDUSTRIAL AREA,
PHASE I, PANCHKULA.

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.
Principal Bench, New Delhi

COURT NO. III
Customs Appeal No. 352 of 2007 (DB)

[Arising out of the Order-in-Appeal No.247/SSS/GGN/2007 dated 25/04/2007 passed by The Commissioner (Appeals), Customs, Delhi-III.]

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?	:	No
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

Polyglass Acrylic Mfg. Co. P.Ltd. — Respondent

Appearance

Shri K.K.Jaiswal, SDR – for the appellant.
None – for the respondent.

Final order No. C/271/11

Date of hearing/decision : 21/06/2011

Per. M.V.Ravindran

This appeal has been filed by the revenue against the Order-in-Appeal No.247/SSS/GGN/2007 dated 25/04/2007 vide which the Ld. Commissioner(Appeals) has set aside the assessment done by the assessing officer on bill of entry No.1497 dated 04/12/06 in respect of "Self Adhesive Plastic Sheeting in Rolls".

2. Brief facts of the case are that respondent filed a bill of entry for import of "Self Adhesive Plastic Sheeting in Rolls" and declared value was $ 350 per Metric Tonne. The assessing officer assessed the bill of entry by enhancing the value to $ 700 per Metric Tonne. No order was passed for discarding the declared value or loading the value by the assessing officer. Aggrieved by such an assessment after loading the value, respondent filed the appeal before the Ld. Commissioner(Appeals) on the ground that assessing authority has not given any evidence showing the basis for loading the value and acceptance of enhancement value by the assessee as proposed of the department, does not preclude him from challenging enhancement in appeals.

3. Ld. DR would submit that the Ld. Commissioner(Appeals) has erred in passing the impugned order by which the assessment order has been set aside. It is his submission that transaction value in this case was rejected as per Rule 3 read with Rule 10A of Customs Valuation Rules, 1998. It is his submission that assessee being an importer was supposed to make a request seeking the grounds for doubting the discard of the value by assessing officer and they have not done so. It is his submission that the valuation in this case was not done under Rule 4 of the Customs Valuation Act, 1998 and transaction value was determined as per Rule 6 of the Customs Valuation Rules, 1998. This was done by taking the value of the goods imported at the same period and in similar quantities. Ld. DR would rely on the decision of the Bench in the appellant's own case as reported in 2008(227)ELT488(Tri.De.) and in the case of DM International 2008(227)ELT335(Tri.Del.).

4. None appeared on behalf of respondent. Since the issue is in a narrow compass, we take up the appeal for disposal in the absence of any representation.

5. We have considered the submissions made at length and perused the records.

6. On perusal of the record, we find that the issue involved in this case is regarding the enhancement of the value of the goods imported by the respondent. There is no dispute that the goods which were imported were correctly declared, the value was loaded by the assessing officer. It is also seen from the records that the assessing officer has not indicated any reason on the bill of entry for enhancement of the value nor there is any speaking order. In the appeal before the Ld. Commissioner(Appeals) against such an assessment, appellant had specifically taken plea that the adjudicating authority has not adduced ~~produced~~ any evidence of basis for loading value or any details of contemporaneous import was at higher value.

7. The Ld. Commissioner(Appeals) has recorded the reasons for setting aside the assessment of Bill of Entry :

> "*5. I have carefully gone through the facts of the case on record and the submission made by the Appellant. The issue involved is that the Appellant has imported the goods and filed the bill of entry on the transacted value. The Department loaded the value without giving the reason and the Appellant paid duty on the enhanced value and got the clearance of the goods. However, it is well established that acceptance of enhanced value due to urgency to clear the goods does not preclude them from filing appeal. The fact was held by the CESTAT in the case of M/s S&H Gears Pvt. Ltd., 2004(64)RLT425(T), Hutchison Max Telecom Pvt. Ltd., 2004(165)ELT175(T) in the case of Bayshore Glass Trading Pvt. Ltd. [2002(148)ELT(T)]*
>
> *6. The Appellant is aggrieved because the invoice value has been rejected without any basis and reason. Neither allegation of any sort has been made nor any evidence of contemporaneous import has been adduced to assail the transaction value. The assessing authority has indicated no reason or the rejection of the transaction value or enhancement of value. There is no expert*

opinion or any import by any other importer as evidence for enhancing the value. The CESTAT, New Delhi in the case of M/s Prasad Enterprises vide Order No.1329-1336/04-NBA, dt. 2.11.2004 has held that the "the transaction value constitutes the assessable value under the Customs Act. If the goods have to be assessed at a different value, the transaction value has to be rejected first based on the legally permissible grounds as indicted in the Valuation Rules. The assessee should also be put on notice that their transaction value is being rejected for the stated reasons and goods are proposed to be assessed at a higher value".

7. The Supreme Court in its decision in the case of M/s Eicher Tractors Ltd., [2000(122)ELT321], have settled the law that transaction value cannot be rejected without clear and cogent evidence produced by the Department with regard to the quantity, quality, country of origin and place and time of import. It is also well settled that it is for the Department to produce the evidence to show that the transaction value is not acceptable in view of the comparable price. In these cases, the Department has not adduced even an iota of evidence to reject the transaction value on the ground that it is not the true commercial value of the goods. 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. In fact, contrary to the board's Circular No.16/2003 dt. 17.3.2003, the assessing officer has not passed any speaking order for rejecting the transaction value which could have enlightened the appellate authority of the reasons for rejecting the transaction value. The circumstances that permit such rejection and the alternative basis for fixing assessable value are specified in the Valuation Rules themselves. No such legally permissible steps were taken in the present case. There is catena of decisions including the one given by the Supreme Court in the case of M/s Eicher Tractors Ltd. (supra), which say that in the absence of exemption particularized in Rule 4(2) of the Customs Valuation Rules and clear and cogent evidence of contemporaneous import, it is mandatory for the Customs to accept the invoice value. In these cases, no evidence is brought on record to show that the transaction value is not the true commercial value."

8. As against the above reproduced findings of the Commissioner (Appeals) in the impugned order, we find that in the grounds of appeal before us also, the revenue has not lead any evidence as regards the contemporaneous value of the similar goods imported at or on the same time period or in similar quantities. In the absence of any indication of

contemporaneous imports, loading of the value by the adjudicating authority was correctly set aside by the Ld. Commissioner(Appeals).

9. As regards the case laws relied upon by the Ld. DR in the respondent's own case and the DM International (cited herein above), we find that in both the cases, there was an evidence to indicate, that the assessee had accepted and consented for the enhancement of the value to the higher side. On a specific query, from the Bench, it was informed by the Ld. DR that there is nothing on record to indicate that the assessee in this case had accepted /consented for the enhancement of the value.

10. In view of the fact that there being nothing but bald submissions in the grounds of appeal as regards the contemporaneous value of the similar goods imported at or around at the same period and similar quantities, in the absence of any evidence indicating the same, we concur with the order passed by the Ld. Commissioner(Appeals).

11. In view of the foregoing, we find that the impugned order is correct and legal and does not suffer from any infirmity. The appeal filed by the revenue is rejected.

(Operative portion of this order was pronounced on conclusion of the hearing)

(M.V.Ravindran)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

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