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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/541 /2008,571 /2008 - CU[DB] Date **20/07/2011**

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

To :
ANIL KUMAR ARORA
BA-60, SHALIMAR BAGH, DELHI-88

ANIL KUMAR ARORA Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/334-335/ 2011 CU[DB]** dated 06.07.2011 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
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult
MR.PRADEEP JAIN,ADVOCATE
34 GUJRAT VIHAR, VIKAS MARG, DELHI-92

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 (Harvana)
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
14. M/S SHEEL CHAND INDUSTRIES & ORS.
RUDRAPUR,UTTARKHAND.
15. LASA CONSULTANCY SERVICES,
C-15, 16, HARTHALA INDUSTRIAL AREA,
KANTH ROAD, MORADABAD, U.P. – 244 001.
16. MR. VINEET BHAGAT,ADV
CHAMBER 118,M.C.SETALVAD CHAMBER,
SUPREME COURT OF INDIA, NEW DELHI.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI
COURT ROOM NO.III

Customs Appeal Nos.571, 541/2008
(Arising out of the Order-in-Original No.29/2008 dated 31.03.2008 passed by Commissioner of Customs & Central Excise, Delhi.)

For approval and signature of:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE 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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ? : Yes
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

1.M/s.Sheel Chand Industreis
2.Anil Kr. Arora

...APPELLANT(S)

VERSUS

Commissioner of Customs, New Delhi

...RESPONDENT(S)

APPEARANCE
Shri S.K.Mathur, Advocate

FOR APPELLANTS

Shri K.K.Jaiswal, Departmental Representative (SDR)
FOR THE RESPONDENTS

CORAM:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE MEMBER (TECHNICAL)

DATE OF HEARING: 06.07.2011

Final **ORDER NO.** C/334-335/11

PER S. S. KANG

Heard both sides.

2. Appellant filed these Appeals against common adjudication order No.29/2008 dated 31.03.2008.

3. Briefly stated the facts of the case are that M/s.Sheel Chand Industries (hereinafter stated as importer) made import of goods and declared the goods as Mixed Fatty Acid and declared the value as US $ 210 per M.T.. The goods were provisionally released after taking samples. On the basis of test reports which shows that the goods in question are Palm Fatty Acid Distillate, Revenue is of the opinion that the importer had mis-declared the description of the goods and also mis-declared the value of the goods. The Show Cause Notice was issued for demand of differential duty as well as for imposition of penalties. The adjudicating authority confiscated the goods and allowed redemption of the same on payment of redemption fine of Rs.2,00,000/-(Rupees Two Lakhs only) and also enhanced the value from US $ 210 per M.T. to US $ 420 per M.T. and also confirmed the differential duty and imposed penalties. Contention of Appellant is that the test reports which is relied upon by the Revenue of Sri Ram Institute of Research is based upon standards on a private website therefore the same cannot be relied upon to say that goods in question are Palm Fatty Acid Distillate. It is also submitted that as samples were sent to C.R.C.L. and report is not complete therefore the finding of the adjudicating authority that importer mis-declared the description of the goods is not sustainable.

4. In respect of valuation the contention is that Revenue relied upon the imports made by other importers in respect of Palm Fatty Acid Distillate as mentioned in Annexure 3 & 4 of the Show Cause Notice. As per Annexure 3 & 4 of the Show Cause Notice import from Malaysia and Sri Lanka origin

respectively the price varies from US $ 170 per M.T. to US $ 450 per M.T. and as per Rule 5 of Customs Valuation :-

~~5(3) Lowest and such value is to be taken for determination of value of imported goods.~~

Rule 5(3) "In applying this rule, if more than one transaction value of identical goods is found, the lowest of such values shall be used to determine the value of imported goods"

5. The contention is that as the lowest value is US $ 170 per M.T. in case of Palm Fatty Acid Distillate imported from Malaysia and US $ 200 per M.T. in the case of goods imported from Sri Lanka hence in this situation the declared price by the Appellant is much higher than the lowest price as per Annexure 3 & 4 of the Show Cause Notice. Hence the demand is not sustainable.

6. The Revenue relied upon the statements of the partners of the firm that the actual price of goods is US $ 420 per M.T.. Revenue relied upon the international bulletin to show that the price in the international market of Palm Fatty Acid Distillate at more than US $ 400 per M.T.. Revenue also relied upon the test reports which shows that goods in question are Palm Fatty Oil Distillate. It is also submitted by Revenue that in the present case the adjudicating authority invoked provision of Rule 8 of Customs Valuation Rules.

7. We find that Appellant declared the goods as Mixed Fatty Acid and as per ~~receipt~~ test report, the goods were Palm Fatty Acid Distillate.

8. The test report shows that sample consisted of four different types of acids. For ready reference one of the test reports is reproduced below:-

TEST RESULTS
(As on received basis)

S.No.	Test	Observed value	Reported value	Protocol
1.	Palmitic acid (C16:0), % of total fatty acids	52.2	40-65	By GC
2.	Stearic acid (C18:0), % of total fatty acids	3.4	3-8	By GC
3.	Oleic acid (C18:1),% of total fatty acids	40.1	28-48	By GC
4.	Linoleic acid (C18:2),% of total fatty acids	4.1	3-12	By GC

9. The test report shows that the sample ~~is~~ was of mixture of different fatty acids therefore in these circumstances we find no ground to concludes that the importer had mis-declared the goods by declaring the same as Mixed Fatty Acid. In respect of valuation we find that the Revenue has enhanced the value on the basis of imports made as mentioned in annexure 3 & 4 of the Show Cause Notice. In these annexures the Palm Fatty Acid is imported at the lower price than declared by the importer. For ~~sample~~ example in annexure 3 the Palm Fatty Acid is imported at the price of US $ 170 per M.T. and in annexure 4 the goods were imported at US $ 200 per M.T. as stated above. As per the Rule 5 of Customs Valuation Rules in such a situation the lowest value has to be taken for determination of the value of goods. In the present case the lowest value is less than the value declared by the Appellants. There is no evidence on record to show that the importer has paid ~~same thing~~ any consideration over and above the ~~vlue~~ value declared to the supplier of the goods. Therefore in these circumstances we find merit in the contention of appellant/~~application~~. The impugned order is set aside and Appeals are allowed.

(Dictated & pronounced in the open Court.)

(MATHEW JOHN)
MEMBER(TECHNICAL)

(S.S. KANG)
VICE PRESIDENT

sm/-