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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/581 /2007 - CU[DB] Date **12/08/2011**

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

To :
M/S DARSHAN SINGH & CO.

1066/10, SEWAK PURA, MILLER GANJ, KALSIAN
STREET NO-3, LUDHIANA

M/S DARSHAN SINGH & CO. Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/351/ 2011 CU[DB]** dated 04.08.2011 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. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL
REVENUE BUILDING, THE MALL,
AMRITSAR 143001.

2. Adv. / Consult
MR.JAGMOHAN BANSAL
1640/1,SECTOR-40B,CHANDIGARH

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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.581 of 2007

(Arising out of Order-in-Original no.04/Cus/2007 dt.13.6.2007 passed by the Commissioner of Customs, Amritsar)

Date of Hearing/Decision: 02.08.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, 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

M/s. Darshan Singh & Co. — Appellant

Vs.

CC, Amritsar — Respondent

Present for the Appellant: Shri Jagmohan Bansal, Advocate
Present for the Respondent: Shri Sonal Bajaj, SDR

Coram: Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** C/351/11

PER: ARCHANA WADHAWA

After hearing both sides, we note that the appellants imported goods by declaring the same "E-Coat steel wheel of harvester combine", with the declaration of classification as customs tariff heading 8433.90 claiming benefit of concessional rate of basic custom duty and full exemption from CVD in terms of tariff rates. However, on examination, the goods were found to be steel wheel rim of size of 7.50 x20", which can be used in the Trailers. It was found that the said goods fall under 8716.9010, which attracted higher rate of duty.

2. Accordingly the Revenue took up the matter alleging the mis-declaration in description of the goods and proposed ~~to~~ confirmation of duty. Vide impugned order, the Commissioner has upheld the charge of mis-declaration of the description of the goods as also consequent ~~value of the goods for~~ enhancing of the value from the declared value of Rs.29 lakhs (approximately) to Rs.39 lakhs (approximately.) He referred to one bill of entry importing the identical steel wheel rim. He accordingly confirmed ~~the duty of~~ basic customs duty and also CVD totalling to Rs.13,32,724/- alongwith imposition of penalty of Rs.1 lakh. In addition the imported goods were confiscated with an option to redeem the same on payment of redemption fine of Rs.10 lakhs.

3. Learned Advocate who appeared for the appellant does not dispute the finding of mis-declaration of description of the goods. However, he submitted that the value adopted by the Commissioner on the basis of one contemporaneous bill of entry is not justified inasmuch as there are many other bills of entry showing the lesser assessable value in respect of the same goods. However, he fairly agrees that the attention of the adjudicating authority could not be drawn to the

said bills of entry as they had waived the show cause notice and the fact that the value would be enhanced was never brought to the notice of the appellant.

4. In view of the above, we deem it fit to set~~ting~~ aside the impugned order on the point of value and remand the matter to the Commissioner for re-adjudication on the above issue after taking into consideration the relied upon the bills of entry by the appellant.

5. Learned Advocate further submitted that CVD is attracted on the basis of MRP. The adjudicating authority, though in his order arrived at MRP Rs.1900/- per rim, he ~~but~~ calculated the CVD on the basis of assessable value. He clarified that he has no dispute about adoption of MRP Rs.1900/- per piece but CVD is required to be re-quantified on the basis of MRP.

6. As we have already remanded the matter for re-consideration of the value aspect, we would also expect the Commissioner ~~that he may~~ to consider the above point of re-quantification of CVD on the basis of MRP. Accordingly, redemption fine and penalty would be re-arrived by him depending upon the outcome of the value aspect.

7. The appeal is accordingly disposed of by way of remand.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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