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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/630, 633 /2007 - CU[DB] Date **24/08/2011**

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

C.C.E. DELHI IV Appellant

Vs

M/S KAMAL TRADERS Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/377-378/ 2011 CU[DB]** dated 19.08.2011 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
M/S KAMAL TRADERS
AK-8, SHALIMAR BAGH, DELHI.

2. Adv. / Consult MR. HARISH KOHLI,
1667, OUTRAM LINES,
GTB NAGAR, DELHI-110 009.

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)

TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:16.08.2011
Date of decision:16.08.2011

Customs Appeals Nos.C/630 and 633 of 2007

[Arising out of Order-in-Appeal No.49/Cus/Appl/DLH-IV/2007 dated 13.07.2007 in Appeal No.C/360 of 2007 and Order-in-Appeal No.50/Cus/Appl/DLH-IV/2007 dated 13.07.2007 in Appeal No.C/633 of 2007 passed by the Commissioner of Central Excise (Appeals), Faridabad].

CC, Delhi-IV — Appellant

Vs.

M/s.Kamal Traders — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1. Whether Press Reporters may be allowed to see 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.

Appearance: Rep. by Shri Amrish Jain, DR for the appellants.
Rep. by Shri Rohit, Proxy Counsel for the respondent.

CORAM: **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final Order No.C/377-78/11/Dated: 16.08.2011

Per Archana Wadhwa:

All the three appeals filed by the Revenue are being disposed of by a common order. For appreciation of issue involved, facts of Appeal No.C/630/07 are being adverted to. Vide his impugned orders passed by the Commissioner of Customs (Appeals), he has accepted the transaction value of imported old and used clothings but has upheld the confiscation of the goods on violation of policy requiring an import licence for import of worn clothings and has reduced the redemption fine ~~of~~ to Rs.30,000/- and personal penalty to Rs.10,000/-, Revenue has filed the present appeals.

2. After hearing both the sides duly represented by Shri Amrish Jain, DR for the appellant/Revenue and Shri Rohit, ~~Proxy~~ Counsel, we find that the respondent imported worn clothings and other worn articles of textile from M/s. Aisha International Trader, Seoul, South Korea and filed bills of entry dated 7.9.2005 declaring the value as US$ 0.40 per kg., based upon the invoice of the foreign supplier. The adjudicating authority, after following the due adjudication procedure enhanced the value of US$ to 0.60 per kg., based on NIDB data.

3. Aggrieved with the said order, the respondent filed an appeal there against before the Commissioner of Customs (Appeals).

4. It was contended by the respondent that in respect of used and worn clothings, there cannot be identical or similar goods. Inasmuch as

the old and used clothings are not standardised, the goods differing in quality, country of origin, type of material used, etc. no reliance can be placed on other contemporaneous bills of entries. They also contended that there is no allegation or any evidence of additional payment made to the foreign supplier. They placed reliance upon the Tribunal's order in the case of Keveeyam Company Vs. Commissioner of Customs reported in 2006 (194) ELT 447 (Tribunal) and the other orders of the Tribunal, wherein under identical facts, the transaction value was accepted as the correct assessable value.

5. The Commissioner of Customs vide his impugned order allowed the appeal by observing as under:-

> " So far as the issue of enhancement of value of the imported goods is concerned, I find that the Adjudicating Authority has rejected the transaction value of the said goods on the ground that similar goods had been cleared at the rate of US$ 0.60 per kg. (CIF) under Bill of Entry No.232468 dated 12.5.2005 at Kolkata Port and under Bills of Entry No.423825 dated 4.5.2005 and 425125 dated 10.05.2005 respectively at ICD, Thughlakabad, New Delhi. However, I find that the adjudicating authority has not given any details of the goods, their quality, quantity, exporter, country of origin, etc. The appellants have rightly contended that there cannot be any identical nature of the goods or similarity in the goods imported under two consignments when the goods are old and used clothings. The quality and nature of such goods

will be different on account of various factors such as the fabric of which the worn clothings were made of, the period for which the clothings were used, etc. There is nothing on record that any sample of the impugned goods was drawn and compared with the sample of the goods imported under the relied upon Bills of Entry. In the absence of any comparison of the goods imported by the appellants and the goods imported at Kolkata/Tughlakabad, it is wrong to say that the goods were identical or similar."

6. However, he upheld the violation of policy provisions requiring the respondent to have a licence for import of the said goods, but reduced the redemption fine and personal penalty.

7. The said order of the Commissioner (Appeals) is impugned before us.

8. After hearing both the sides, we find that we have dealt with the identical issue in the case of M/s Anshikha Overseas in Appeal No. 255-256 of 2008. For better appreciation, we reproduce the relevant portion from the above mentioned order.

"Ld. DR appearing for the Revenue reiterates the same very grounds and placed reliance on the Tribunal's decision in the case of **M/s Kamal Traders Vs. CCE New Delhi** Vide Final Order No. 151/2006-Cus dated 7.4.2006. However, on going through the said order, we find that it stands recorded that the Appellants are not challenging the confiscation of the goods and the value enhanced on the basis of contemporaneous import made by other importers from the same country. There is no discussion about the fact that the old, used and worn clothing imported under differential consignments cannot be held to be contemporaneous inasmuch as the same could depend upon a number of factors like the quality, quantity, type of fabrics used, number of years to which the same have put to use etc. In the absence of above details, it is difficult to hold that the consignments in the present Bill of Entry and the other relied upon bill of entries were identical and hence contemporaneous. Further, the reliance on the NIDB data by the original adjudicating authority cannot be held to be in accordance with declaration of law and the Tribunal's decision in the case of M/s **M/s Gaitri Exports** refers (supra) would be fully applicable to the facts of the case. Further more, we also find that there is no allegation, much less any allegation to the effect that any additional payments were made by the respondent to their foreign supplier. In the absence of the same and in view of our foregoing discussion, we find no infirmity in the order of Commissioner (Appeals), in respect of the valuation aspect. We find that the Commissioner (Appeals) has rightly applied the precedent decisions to the facts of the case and has rightly rejected the Revenue's stand on the assessable value of the goods. Accordingly, we reject the appeal filed by the Revenue.

9. As such by following the ratio of the above decision, we find no merits in the Revenue's appeal and the same is accordingly rejected.

(Archana Wadhawa)
Member (Judicial)

(Mathew John)
Member (Technical)

Ckp.