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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/743-744 /2007 - CU[DB] Date **03/11/2011**

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

To :
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.

**C.C. (ICD) NEW DELHI** Appellant

Vs

**M/S SHRI GAYATRI EXPORTS** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/470-471/ 2011 CU[DB]** dated 25.10.2011 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 SHRI GAYATRI EXPORTS**
C-/6112, VASANT KUNJ,
NEW DELHI.

2. Adv. / Consult MR. Y. KUMAR, ADV.
C/O. **M/S SHRI GAYATRI EXPORTS**
C-/6112, VASANT KUNJ, NEW DELHI.

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

14. M/S CHOWDHARY TRADING CO.
A-8, 14, REHMAN MARKET,
SADAR BAZAR, NEW DELHI.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH
COURT NO.3

Customs Appeal No.743 of 2007
Customs Appeal No.744 of 2007

(Arising out of Order-in-Appeal No.CC(A)/Cus/63/ICD/D-II/07 dt.21.6.07 and CC(A)/Cus/133/ICD/07 dt.30.8.07 passed by the CC(A), New Delhi)

Date of Hearing/Decision: 20.10.2011

For approval and signature:
**Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr.Rakesh Kumar, 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 |

Commissioner of Customs, New Delhi — Appellant

Vs.
M/s.Shri Gayatri Exports — Respondent
M/s.Chowdhary Trading Co.

Present for the Appellant: Shri S.R.Meena, SDR
Present for the Respondent: None for M/s.Gayatri Exports
Shri Y.R.Sethi, Advocate (no Vakalatnama)

**Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr.Rakesh Kumar, Member (Technical)**

Final **ORDER NO.** C/470-471/11

**PER: ARCHANA WADHWA**

Both the appeals are being disposed of by a common order as the issue is more or less identical.

2. Being aggrieved with the order passed by the Commissioner (Appeals), the Revenue has filed the present appeals. We have heard Shri S.R.Meena, learned appearing for the Revenue and nobody appeared for respondents M/s.Gayatri Exports. Shri V.R.Sethi, learned appearing for the respondents M/s.Choudhary Trading Co.

3. The dispute in the present appeals relates to value of imported goods declared by the respondents in the bill of entry. The value was enhanced by the assessing officer on the bill of entry itself. On appeal, the Commissioner (Appeals) held that there is no reason for rejection of transaction value or enhancement of value. Further by following Hon'ble Supreme Court decision in the case of Eicher Tractors Limited-2000 (122) ELT 321, he observed that the transaction value cannot be rejected without clear and cogent evidence produced by the department with regard to quantity, quality, country of origin and place and time of import. As such, he held that there was no evidence brought on record on the part of the revenue ~~respondents~~, he allowed the appeal. Hence the present appeals filed by the Revenue.

4. On going through the grounds of appeal filed by the Revenue, we find that there is no reference to ~~of~~ contemporaneous higher prices of identical goods. Reference is placed only ~~of~~ NIDB data which cannot be made basis for enhancing the value in the absence of positive evidence showing transaction value to be incorrect. Further Revenue's stand that the importer failed to submit manufacturer's

invoice or manufacturer's price list, by itself cannot be held to be a ground for enhancing the value unless the evidence to the contrary ~~to be~~ is shown. As such, we find no justifiable reason to interfere with the impugned order of the Commissioner (Appeals). Accordingly, the Revenue's appeals are rejected.

(Pronounced in the open court)

**(ARCHANA WADHWA)**
**MEMBER (JUDICIAL)**

**(RAKESH KUMAR)**
**MEMBER (TECHNICAL)**

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