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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/409 /2007,411 /2007 - CU[DB], C/CO/178/2011 Date **11/11/2011**

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10,
INDORE 452001 (M.P.)

C.C.E. INDORE Appellant

Vs

M/S SAMYAK INTERNATIONAL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/480-481/ 2011 CU[DB]** dated 04.11.2011 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 SAMYAK INTERNATIONAL LTD.
50, BAIKUNTHDHAM COLONEY,
INDORE, M.P.

2. Adv. / Consult SHRI SUNIL KHANDELWAL,
C/O. **M/S SAMYAK INTERNATIONAL LTD.**
50, BAIKUNTHDHAM COLONEY,
INDORE, M.P.

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 AADI CHEM TRADE PVT. LTD.
PLOT NO. 404, SECTOR 3, PITHAMAPUR,
DISTT. DHAR, M.P.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Date of Hearing:19.10.2011
Date of Decision:19.10.2011

Customs Appeal No.409 with C.O. No.178 of 2011
& Customs Appeal No.411 of 2007 with C.O. No.177 of 2011

(Arising out of common Order-in-Appeal No.IND-I/45 to 47/2007 dated 28.02.2007 passed by the Commissioner of Central Excise (Appeals-I), Indore)

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 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.

CCE, Indore — Appellants

Vs

(1)M/s. Samyak International Ltd.
(2)Aadi Chem Trade Pvt. Ltd. — Respondent

Appeared for the Appellant: Rep. by Shri Sunil Khandelwal, Chartered Accountant
Appeared for the Respondent: Rep. by Shri R.K. Gupta, SDR for the respondent.

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

Final ORDER..No:..C/..480..-481/11...Dated:19.10.2011.

Per Rakesh Kumar:

Being aggrieved with the Order passed by the Commissioner (Appeals), Revenue has filed the present appeals. We have heard Shri R.K. Gupta, SDR appearing for the Revenue and Shri Sunil Khandelwal, Chartered Accountant appearing for the Respondent.

2. As per the facts on record, the respondent entered into a contract with M/s.Contractor General Trading Company for supplyof 1600 M.T. of fuel oil (84 containers). As per the said contract dated 31.07.2006, the first 20 containers were to be supplied @ 275 US$ per M.T. and the remaining 64 containers were to be supplied @ 220 US$ per M.T. The said contract was a common contract between the supplier of the fuel with both the respondents, who are reported to be group companies.

3. In terms of the above contract, the respondent filed bills of entries for the first 20 containers declaring the value as 275US$. The dispute in the present appeals relates to the bills of entries filed for the balance 64

containers at the declared value of 220 US$ per M.T. The price so declared by the respondent was enahanced by the assessing officer on the bills of entries itself. However, on appeal against the said assessed bills of entries, the Commissioner (Appeals) allowed the appeals filed by the respondent. Hence, the present appeals.

4. After appreciating the submissions made by both the sides, we find that the appellate authority has observed that there is virtually no evidence advanced by the Revenue for doubting the invoices raised by the supplier, in terms of the contract entered into by the supplier with the respondent. There is also no evidence of showing any contemporaneous import at the higher value. He has accordingly relied upon the Tribunal's decision in the case of **M/s. Mohan Sales (India) Vs. Commissioner of Customs, ICD** laying down that the first transaction value has to be rejected on legal permissible grounds, as indicated in the Valuation Rules. As such, he has observed that the Revenue has not advanced any reasons for rejection of the assessable value declared by the respondent. He has further observed that the Revenue's basis for enhancement of assessable value is the NIDB data ~~for~~ covering period from 1.12.2006 to 28.12.2007 collected from the ICD, Pithampur. However, the only relevant bill of entry in the said data is dated 12.12.2006 showing the assessable value as 260US$ approximately whereas

the bill of lading in the present cases is 26.11.2006 and the invoices raised are for the period August and September, 2006 and the contract is dated 31.07.2006. As such, he has observed that the bill of entry showing the higher assessable value cannot be used for enhancing the value of the imports under dispute.

5. Revenue in their memo of appeal have not advanced any justifiable grounds to rebut the above findings of the Commissioner (Appeals). Their contention that M/s. Samyak International Ltd. was shown as the first party in the contract and M/s. Aadi Chem Trade Pvt. Ltd. was shown as the second party and the contract is silent about the quantity of fuel oil to be purchased by them. They have further contended that though Surya International is the first party in the contract, the first consignment was sold to M/s. Aid Chem Trade. Pvt. Ltd.

6. We note that the above grounds advanced by the Revenue are neither legal nor proper inasmuch as it stands clarified by the ld. Advocate appearing for the respondent that both are group companies and whether the first consignment was sold to M/s. Smyak or to M/s. Adi Chem will not make the difference. We also find that the Revenue has nowhere advanced any evidence to show that the contract entered into by the respondent with the supplier of the fuel was not genuine. We have seen the relevant invoices

wherein a reference stands made to the Contract no.CGEN/075/06 dated 31/07/2006 between the respondent and the supplier. All the invoices referred to the said contract. In the course of international trade, it is a common factor that the concession/discounts are given for the subsequent sales, if the quantum to be purchased is on the higher side. In any case, in the absence of any evidence to challenge the correctness of the contract, or any evidence showing any higher flow back of the money to the supplier , we do not find any justifiable reasons to interfere in the impugned order of the Commissioner (Appeals). Accordingly, the appeals filed by the Revenue are rejected. The cross objections filed by the respondent, which are in the nature of written submissions, are also rejected.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

Ckp.