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● CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/732 /2007 Date **26/04/2012**

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 RAINBOW IMPEX Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/118/ 2012 SM[BR]** dated 09.04.2012 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S RAINBOW IMPEX
PLOT NO 25, SECTOR-27-C
FARIDABAD, HARYANA

2. Adv. / Consult

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-3
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 Registra
(CUSTOM Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

C/Appeal No.732/2007

(Arising out of order in appeal No.CCA/Cus/130-131/ICD/D.II/07 dated 30.8.07 passed by the Commissioner of Central Excise (Appeals), New Delhi)

Date of Hearing: 9.4.2012

CC, New Delhi — Appellants

Vs

M/s Rainbow Impex — Respondent

Appeared for the Appellant: Shri K.P. Singh, DR
Appeared for the Respondent: None

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

FinalORDER No.C/A/118/12-Cus

Per Archana Wadhwa:

Being aggrieved by the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. We have heard Shri K.P. Singh, learned DR for appellant and none appeared for the respondents.

3. The dispute involved in the present appeal relates to assessable value of the imported polyester kintted fabric by the rspondents. The Commissioner (Appeals) has held in favour of the respondents on the following grounds:

i) that the department loaded the value without giving the reason;

ii) that there is no expert opinion or any import by another importer as evidence for enhancing the value and;

iii) that the department has not adduced even an iota of evidence to reject the transaction value on the ground that it is not the true commercial value of the goods.

4. The contention of Revenue is that in terms of proviso of section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods i.e. the price actually paid or payable with the goods when sold for export to India for delivery at the time and place of importation. Such scheme of rejection of transaction value stands approved by the Hon'ble High Court of Calcutta in the case of Atmaram Agarwal. The Customs authority doubted that the prices paid by the importer was not correct and as such, he proceeded to re-determine the price in terms of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. It stands submitted by the Revenue that Commissioner (Appeals) was not correct in observing that assessing authority has not given any reason to enhance the value. They submit that NIDB data supports the Revenue's case. It stands further contended that as per Board's Circular No. 91/2003-Cus dated 14.10.03, it is not necessary to issue speaking orders in all cases where the importers agree for enhancement.

5. We find that there is no dispute that the customs has power to reject the transaction value and enhance the assessable value in terms of Customs Valuation Rules. However, such rejection of transaction value and enhancement of assessable value has to be on the basis of some evidences on record. Contemporaneous imports have to be considered in reference to quality, quantity and country of origin with

the imports under consideration. It has been held in a number of decisions that NIDB data cannot be made the basis for enhancement of value. Commissioner (Appeals) has relied upon various decisions of the Tribunal for holding any enhancement in assessment value, the transaction value has to be first rejected based on legal permissible ground as indicated in the valuation Rules. He has also referred to Hon'ble Supreme Court decision in the case of Eicher Tractors Ltd Vs CC 2000 (12) ELT 321 (SC) in support of his finding that transaction value cannot be rejected without clear and cogent evidence produced by the department with regard to quality, import of origin and place and time of import.

6. We find that in their memo of appeal, Revenue has not advanced any such evidences to support their case. In as much as, no evidence of rejection of transaction value stands produced by the authority, we find no reason to interfere with the impugned order of Commissioner (Appeals).

7. We also note that there is a clear finding by Commissioner (Appeals) that the assesse vide their letter dated 14.2.06 requested the Assistant Commissioner to pass a speaking order thus negating the Revenue's stand that enhancement was done with consent of the importer.

8. In view of the above, Revenue's appeal is rejected.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member(Judicial)