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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/41 /2008 - CU[DB] Date **27/04/2012**

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 NATH INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/122/ 2012 CU[DB]** dated 19.04.2012 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 NATH INTERNATIONAL
03, IST FLOOR, 1540/28,
NAI WALA, KAROL BAGH,
NEW DELHI.

2. Adv. / Consult MR. PREM RANJAN KUMAR,
LGF 6/33, VIKRAM VIHAR,
LAJPAT NAGAR-IV,
NEW DELHI – 110 024.

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 Registrar
(Customs Appeal Branch)

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

C/Appeal No.41/2008

(Arising out of order in appeal No.CCA/Cus/180/ICD/D.II/07 dated 15.10.07 passed by the Commissioner of Central Excise (Appeals), New Delhi)

Date of Hearing: 19.4.2012

CC, New Delhi — Appellants

Vs

M/s Nath International — Respondent

Appeared for the Appellant: Shri Amresh Jain, DR
Appeared for the Respondent: None

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

Final ORDER No. C/A/122/12- 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 Amresh Jain, 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 mix ball bearing of China origin by the respondents. As the assessing authority did not agree with the assessable value declared by the importer, he enhanced the same. On appeal, 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 to make uniformity in assessment of ball bearing imported from China at all the ports, the Commissioner of Customs (Import), Mumbai issued guidelines vide F No. S/26-757/97-VA dated 12.12.2006 which is reproduced below:-

"A minimum cut off price at US $ 1.60 per kg is therefore, felt reasonable and fair. Wherever price list/NIDB data is not available or, even if available, is less than the cut off price, it is proposed to adopt the minimum cut off price for assessment of all imports of ball bearings from China at 1.60 US$ per kg".

5. Thus the Commissioner (Appeals) failed to appreciate the contents of the letter and has mis-interpreted the directions contained in the letter as the minimum cut off price of US$ 1.60 per kg was to be adopted in only those cases where price list/NIDB data was not available or, even if available was less than the cut off price.

6. 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.

7. 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.

8. 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). Mere reference to Commissioner Mumbai guidelines to enhance the value of ball bearings, without first assessing the quality of the goods is not justified. It stands accepted that the ball bearings were mix and not of uniform sizes. As such, Revenue's appeal has no merits

9. 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)