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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/23, 25 /2008 - CU[DB] Date **04/06/2012**

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 DELHI ACRYLIC MFG. CO. PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/151-152/ 2012 CU[DB]** dated 15.05.2012 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 DELHI ACRYLIC MFG. CO. PVT. LTD.
28, RAJSTHANI UDYOG NAGAR, NEW DELHI

M/S ACRY. MONOMERS(INDIA) PVT. LTD.
2/34, ROOP NAGAR, 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

Date of Hearing: 15.5.2012

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
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?	No

C/Appeal No. 23/2008

(Arising out of order in appeal No.CC(A)/170-171/ICD/D.II/07 dated 4.10.07 passed by the Commissioner of Customs & Central Excise, Delhi)

CC, New Delhi — Appellant

Vs

M/s Delhi Acrylic Mfg Co Pvt Ltd — Respondent

C/Appeal No. 25/2008

(Arising out of order in appeal No.CC(A)/172-77/ICD/D.II/07 dated 3.10.07 passed by the Commissioner of Customs & Central Excise, Delhi)

CC, New Delhi — Appellant

Vs

M/s Acry Monomers (India) Pvt Ltd — Respondent

Appeared for the Appellant: Shri K.K. Jaiswal, DR
Appeared for the Respondent: Shri Prem Ranjan Kumar, Advocate

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

Final ORDER No C/A/151-152/12-Cus

Per Mathew John:

The respondent filed two bills of entry during August 2007 at ICD Tughlakabad, Delhi description as may be seen in the table below. Revenue increased the value declared for the goods by the importers. The extent of such loading is also shown in the table below:-

Sl No.	Bill of Entry No.	Date	Description of goods	Declared value US$	Loaded value US$
1.	480501	10.8.07	Acrylic off cuts PVC off cuts	350 PMT & 425 PMT	500 OMT & 700 PMT
2.	616721	1.8.07	Acrylic off cuts	350 PMT	500 PMT

2. Aggrieved by the order increasing value, the respondent filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) held that Revenue has not been able to produce cogent evidence as to why the transaction value should be rejected and also evidence regarding contemporoeous import of identical goods for supporting the increased value. Aggrieved by the order of Commissioner (Appeals), Revenue has filed this appeal.

3. The Revenue contested that for goods with the description "Off grade/ substandard goods", transaction value cannot be accepted for assessment of goods. They also argue that as per Rule 10 of Customs Valuation Rules, manufacturer's price list was called for and no such document was produced by the importer. Therefore, it was proper that value was increased for assessment purpose. Revenue also

submits data of contemporeous import for the period September 2007 to December, 2007

4. Opposing the prayer of the Revenue, the Respondent relies on the decision of the Tribunal in Final Order No C/187-189/11 dated 13.5.11 wherein similar appeal filed in the case of CC Delhi Vs. M/s Universal Enterprises, in the matter of substandard acrylic sheets imported by the respondents were rejected by the Tribunal. It is the contention that in case of off cuts, there cannot be a standard price for the goods and the prices are negotiated for each consignment and also depending on business opportunities.

4. We have considered arguments of both sides. We are not able to agree with the argument of the Revenue that for substandard items, the transaction value has to be routinely rejected and value assessed based on value of contemporoeous imports. Since value of substandard goods depends on the market forces, there can be substantial variation. The declaration that the goods were substandard goods was not challenged by Revenue. In such a situation, to check as to what extent the goods were substandard is almost impossible and comparison with other goods becomes more difficult. In this case, the Revenue has not produced any evidence regarding payment of any extra consideration to the supplier abroad. Therefore, we are of the view that the appeals filed by the Revenue have no merits.

5. So the appeals filed by Revenue are rejected.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)