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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/541 /2007-543 /2007 - CU[DB] Date **19/01/2012**

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

To :
C.C.E. DELHI IV

NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

C.C.E. DELHI IV Appellant

Vs

M/S SHIVAM IMPEX NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/A/16-18 2012 CU[DB]** dated 11.01.12 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 SHIVAM IMPEX NEW DELHI
18/1, IST FLOOR, RAILWAY
ROAD, VILL, SAMAYPUR, NEW
DELHI

2. Adv. / Consult : Mr. LP Asthana, Adv
R-163, F.F.G.K.- I
New Delhi – 48

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)

14. M/S SHIVAM IMPEX NEW DELHI
18/1, IST FLOOR, RAILWAY ROAD,
VILL, SAMAYPUR, NEW DELHI

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 11.1.2012

Customs Appeal No.541, 542, 543 of 2007

Arising out of the order in appeal No.47 & 48/Cus/Appl/DL-IV/07 dated 15.6.2007 passed by the Commissioner of Central Excise (Appeals), Delhi I.

C.C., Delhi IV, Faridabad .. Appellant

Vs.

Shivam Impex .... Respondents

Appearance:

Shri B.L. Soni, A.R. for the Revenue
Shri L.P. Asthana with Shri Prem Ranjan, Advocates for the respondents

Coram: Hon'ble Mr. D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final Oral Order No. C/A/16-18/12-Cus.

Per Mr. D.N. Panda:

Shri B.L. Soni, Representative appearing for Revenue says that when the data compiled by Department revealed that the assessable value disclosed by Respondent in the bill of entry resulted in undervaluation, there was levy of duty on the goods imported. Learned Commissioner (Appeals) did not appreciate value of complied data but allowed the appeal holding no undervaluation of import.

2. On the other hand, it was submitted on behalf of the respondent that when all material were before the authority, there was no undervaluation done. Therefore, the first appellate authority had a basis to grant relief.

3. Heard both sides for a long time and perused the records. We are unable to find from the assessment order as to how and in what manner the value declared by the respondent was is in variance with the contemporaneous value declared in the bill of entry No.102396 dated 28.9.2006, 104871 dated 10.4.2007 and 104874 dated 10.4.2007. The facts recorded in sub-para 3 of the assessment order clearly demonstrates that the adjudicating authority has not at all made any effort to compare with the nature of the goods, quality, thereof, terms of sale abroad. In absence of proper comparable basis, the contemporaneous evidence claimed by the Revenue cannot be a proper representative for comparison. To consider a fact equal, there shall be equality between the two in all respect in so far as basis of comparison is concerned. In the absence of disparity brought out by a speaking order, all the three appeals do not survive and are dismissed.

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

scd/