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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/700 /2007 - CU[DB]   Date **23/01/2012**

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 NATH INTERNATINAL, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/24/ 2012 CU[DB]** dated 20.01.12 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 NATH INTERNATINAL, NEW DELHI
103, IST FLOOR, 1540/28,
NAIWALA, KAROL BAGH, NEW
DELHI

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 Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 700 of 2007

[Arising out of Order-in-Appeal No. 56/Cus/Appl/DL-IV /2007 dated 23.8.2007 passed by the Commissioner of Central Excise(Appeals), Delhi IV]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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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 should 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 Departmental authorities?	:	Yes

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Commissioner of Central Excise Delhi IV — Appellants

Vs.

M/s. Nath International — Respondent

Appearance:
Shri Amrish Jain, SDR for the Appellants
None for the Respondent

<u>CORAM</u>:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing : 1.9.2011
Date of Pronouncement 20 .1.2012

Final **ORAL ORDER NO. C/A/24/12-Cus.**

Per Archana Wadhwa (for the Bench):

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

We have heard Shri Amrish Jain, SDR appearing for the Revenue. No one appeared for the respondents.

3. As per facts on record, the respondents filed Bill of Entry on 22.3.07 for clearance of HCH brand ball bearing imported from China. The declared unit price was Rs.2.59 and Rs.3.36 per piece respectively, as the bearings were of two different sizes 6201 and 6202. Accordingly, the total assessable value was declared as Rs.14,86,836/-.

4. The Assistant Commissioner loaded the value by US $ 0.09 (Rs.4.085) and USD $ 0.105 (Rs.4.77) per piece on ball bearing No. 6201 and 6202. Accordingly, the consequential demand of duties were confirmed.

5. Being aggrieved with the said order of assessment, the respondents filed appeal before Commissioner (Appeals). The said appellate authority allowed the appeal by observing that the assessing officer has loaded the value based upon the price list of HCH brand ball bearings after giving 30% discount as per the guidelines of Commissioner of Customs (Import) issued vide Mumbai Commissionerate Circular No. S/26-757/97 VA dated 8.9.2005. However, he observed that inasmuch as there was no contemporaneous

import showing import of identical goods at a higher value, the rejection of the transaction value was not justified, in terms of law declared by the Hon'ble Supreme Court in the case of Eicher Tractors Ltd. as reported in [2000 (122) ELT 321 (SC)]. The appellate authority also relied upon the various other decisions of the Tribunal laying down that in the absence of any corroborative evidence of contemporaneous imports, the enhancement of transaction value is not in accordance with the law. It was further observed that the assessing officer has not brought on record any evidence of contemporaneous imports. He accordingly, set aside the impugned order.

6. Revenue in their memo of appeal have raised various grounds. After going through the same, we find that the thrust of arguments is that relied upon decisions of the Hon'ble Supreme Court and of the Tribunal were in different factual background which are not applicable to the facts of the case.

7. We note that in each and every case, the facts available would be different. However, if the ratio of law, as declared in those judgements is applicable, the same is required to be adopted. The dispute in the present appeal as also in the relied upon decisions is as regards under-valuation of the imported goods. In all the relied upon ~~documents~~ decisions, enhancement of the assessable value stands set aside on the ground of absence of any contemporaneous imports by another importer, in respect of the same goods. That is the ~~crust~~ crux of the declaration of law by various authorities.

8. In the present case, we note that Revenue has not referred to or relied upon any contemporaneous imports, indicating higher value of identical goods. Differentiating earlier decisions on the minor factual differentiation for submitting that the ratio of law declared in those cases would not be applicable, is not appropriate. As such, we find no reason to interfere in the impugned order of the Commissioner (Appeals), the same is accordingly upheld and Revenue's appeal is rejected.

(Pronounced in the open court on 20/1/17

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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