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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/243 /2008 - CU[DB]   Date **15/03/2012**

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

To :
M/S HARKARAN DASS VEDPAL
D-1, SECTOR-8,NOIDA-2013012

M/S HARKARAN DASS VEDPAL Appellant

Vs

C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/64/ 2012 CU[DB]** dated 05.03.12 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
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult
MR.H.S.MEW
52 B, UPKAR APPTS, MAYUR VIHAR
PHASE EXTN, DELHI-91

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,

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

COURT-I

Date of hearing/decision: 5.3.2012

Customs Appeal No.243 of 2008

Arising out of the order in appeal No.4/Cus/Appl/Ldh/2008 dated 11.1.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of 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

Harkaran Dass Vedpal .. Appellant

Vs.

C.C., Ludhiana .... Respondent

Appearance:

None for the appellant
Shri K.P. Singh, A.R. for the respondent

Coram: Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. Mathew John, Technical Member

Final Oral Order No. C/A/ 64/12-Cus-

Per Mr. S.S. Kang:

Heard the learned A.R. and perused the written submission filed by appellant. The applicant filed this appeal against the impugned order passed by Commissioner (Appeals) whereby Commissioner (Appeals) held that rejection of transaction value of imported goods is not sustainable. The Commissioner (Appeals) further rejected the appeal on the ground of unjust enrichment. We find that the appellant imported palm acid oil and cleared the transaction value of US $231.70 PMT. The assessing authority did not agree with the value declared by the appellant and enhanced to US $ 323 PMT. The appellant paid duty on the enhanced value. The appellant filed appeal before Commissioner (Appeals) on the ground that rejection of transaction value is not sustainable. Vide impugned order, the Commissioner (Appeals) after relying upon the decision of Hon'ble Supreme Court in the case of Eicher Tractor Ltd. vs. C.C., Mumbai reported in 2000 (122) ELT 321 (SC) held that rejection by the assessing authority is not sustainable merits acceptance under Section 14 (1) of the Customs Act, 1962 read with Rule 4(1) of the Customs Valuation (DPIG) Rules, 1988.

2. Commissioner (Appeals) further rejected the appeal on the ground of unjust enrichment. In the impugned order, the Commissioner (Appeals) held that the appellant had not produced any evidence on record to show that the burden of duty has not been passed on to the buyer. Appellant filed the present appeal against the impugned order whereby the appeal was rejected on the ground of unjust enrichment. We find that on merits, the Commissioner (Appeals) accepted the appeal. In case the appeal is accepted, consequential relief no doubt is subject to the principle of unjust enrichment. As per the provision of Section 28 D of the Customs Act,

presumption is that incidence of duty has been passed on to the buyer by the appellant. This presumption is rebuttable. In the present case, we find that there is no opportunity granted to the appellant to rebut the presumption that the burden of duty has been passed on to the buyer.

2. In view of the above, we modify the impugned order to the extent that consequential relief is subject to the principle of unjust enrichment and the matter is remanded to the adjudicating authority in respect of consequential relief in pursuance of the order passed by the Commissioner (Appeals) and adjudicating authority will decide after affording opportunity of hearing to appellant. The appeal is disposed of as indicated above.

(S.S. Kang)
Vice President

(Mathew John)
Technical Member

scd/

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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/87 /2008 - CU[DB] Date 13/03/2012

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 D.M.INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/A/59/ **2012 CU[DB]** dated 21.02.12 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 D.M.INTERNATIONAL
COMBINED BUSINESS CENTER,
CABIN NO.4, BASEMENT GOPALA
TOWER, 25, RAJENDERA PLACE,
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
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12. Office Copy
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Customs appeal No. 87 of 2008

[Arising out of Order-in-Appeal No. CC(A)/185-96/ICD/D-II/2007 dated 26.10.2007 passed by the Commissioner of Customs (Appeals), New Delhi].

Date of Hearing/decision: 21st February, 2012

For approval and signature:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, 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?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

CC (ICD), Tughlakabad,
New Delhi — Appellant

Versus

M/s. D.M. International — Respondent

Present for the Appellant : Shri B.L. Soni, D.R.
Present for the respondents : None

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

FINAL ORDER NO. C/A/59/12-Cus

Per D.N. Panda:

None present for the respondent. Learned Representative for Revenue has no cogent evidence to satisfy that disturbance of transaction value was warranted. He says that adjudication was made on NIDB data.

2. Heard Revenue.

3. Suspicion how grave may be, is not substitute of proof. In absence of any proof to the contrary, enhancement of value is not warranted. Accordingly Revenue's appeal is dismissed.

(Pronounced in the open Court)

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RK