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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/758 /2007 - CU[DB] Date **29/03/2012**

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 MARBLE ART Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/90/ 2012 CU[DB]** dated 14.03.2012 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 MARBLE ART
D-26, SECTOR 11, NOIDA

2. Adv. / Consult MR. PRIYADARSHI MANISH,
27, VIDYUT NIKUNJ, PLOT NO.112,
I.P. EXTN., PATPARGANJ,
DELHI – 110 092.

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. 758 of 2007

Date of Hearing/decision : 14.03.2012

[Arising out of Order-in-Appeal No. CC(A)/Cus/102 to 109/ICD/D-II/2007 dated 31.7.2007 passed by the Commissioner of Customs, ICD, New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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 Customs
New Delhi — Appellants

Vs.

M/s. Marble Art, — Respondent

Appearance:

Shri B.L. Soni, DR for the Appellants
None for the Respondent

CORAM:

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

Final **ORAL ORDER NO.** C/A/90/12-Cus

Per Archana Wadhwa (for the Bench):

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

2. We have heard Shri B. L. Soni, learned DR. Nobody appeared for the respondents.

3. On going through the order of Commissioner (Appeals), we find that he has set aside the order of the original adjudicating authority enhancing the value of the imported rough marble blocks from different countries. The said enhancement was done by the Assistant Commissioner on bill of entry itself. The appellate authority had observed that no reasons stands given by the Assistant Commissioner for enhancing the value. ~~However~~ and, no reasons stand given by him for rejection of the transaction value As such, by following the Tribunal's decision in the case of M/s. Prasad Enterprises order No. 1329-36/04-NB dated 2.111.04 also by following the Supreme Court decision in the case of ~~Isher~~ Eicher Tractors 2004 (41) RLT 321, he has held that transaction value has to be accepted in the absence of any other evidence to show that the said transaction value was not correct and there existed special relationship between the supplier of the goods and the importer. As

such, he has held that the department had discarded the transaction value without any basis which is contrary to provisions of law.

3. Revenue in their memorandum of appeal have submitted that enhancement was done on the basis of NIDB data of contemporaneous imports of identical goods. However, we find no merits in the above plea of the Revenue. First of all, to adopt the value of the contemporaneous imports, the transaction value is required to be rejected as incorrect / false on the basis of same evidence. Secondly, the contemporaneous imports value is required to be picked up after establishing that the goods match in the quality, quantity and country of origin and time period. There is nothing on record to reflect upon such facts and as such we find no merit in the Revenue's appeal and same is accordingly rejected.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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