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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/198 /2008 - CU[DB]    Date **03/04/2012**

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 PRASAD ENTERPRISES,**    Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/94/ 2012 CU[DB]** dated 06.03.2012 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 PRASAD ENTERPRISES,**
2948, BHAGAT SINGH STREET NO.3,
CHUNAMANDI, PAHARGANJ,
NEW DELHI-110 055.

2. Adv. / Consult MR. V.K. AGRAWAL,
B-82, LAJPAT NAGAR-II,
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.I**

**[redacted] C/Appeal No.198/2008**

(Arising out of order in appeal No.CC(A)/Cus/238-45/ICD/D.II/07 dated 20.12.07 passed by the Commissioner of Customs & Central Excise, New Delhi)

Date of Hearing: 6.3.2012

For Approval and signature:

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

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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?

2. Whether it would 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 Department Authorities?

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CC, New Delhi — Appellants

Vs

M/s Prasad Enterprises — Respondent

Appeared for the Appellant: Shri B.L. Soni, DR
Appeared for the Respondent: Shri Prem Rajesh Kumar, Advocate

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

Final ORDER No. C/A/94/12-Cus.

Per S.S. Kang:

The Revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) accepted the value declared by the respondents and set aside the enhanced value for the goods imported. The Commissioner (Appeals) has held as under:-

> *"In terms of the Hon'ble Supreme Court's decision in the case of M/s Eicher Tractors Limited 2000 (122) ELT 31, it is well settled law that transaction value can not be rejected without clear and cogent evidence produced by the department with regard to the quantity, quality, country of origin and place and time of import. It is also well settled law that it is for the department to produce the evidence to show that the transaction value is not acceptable in view of the comparable price. In these cases, the department has not adduced even an iota of evidence to reject the transaction value on the ground that it is not the true commercial value of the goods. It is also not the case of the department that there was any special relationship between the importer and the supplier and that the former has paid anything extra over and above the transacted value. In fact, contrary to the Boards' Circular No. 16/2003 dated 17.3.2003, the assessing officer has not passed any speaking order for rejecting the transaction value. The circumstances that permit such rejection and the alternative basis for fixing assessable value are specified in the Valuation Rules themselves. No such legally permissible steps were taken in the present case. There is catena of decisions including the one given by the Hon'ble Supreme court in the case of M/s Eicher Tractors Limited which say that in the absence of exceptions particularized in Rule 4(2) of the Customs Valuation Rules and and clear and cogent evidence of contemporaneous import, it is mandatory for the Customs to accept the invoice value. In these cases, no evidence is brought on record to show that the transaction value is not the true commercial value."*

2. The Revenue in the present appeal relied upon the imports made during the period 10.4.2007 to 10.5.07 at the higher value.

The contention of revenue is that as the same goods are assessed at the higher value, therefore, the impugned order is not sustainable.

3. We find that in the present case, the import was made in October, 2007 from China and the value is not accepted by them and the same was enhanced. Now the Revenue is relying on the imports made during the period 10.4.07 to 10.5.07. ~~whereas the present import~~, There is no evidence to show that the goods are of the same quantity, quality. In view of this, we do not want to interfere with the order passed by the Commissioner (Appeals). The appeal is dismissed.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(S.S. KANG)
Vice President