# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 27779 of 2013**

(Arising out of Order-in-Original No. 17/2013 dt. 31/05/2013
passed by Commissioner of Customs, Cochin)

**M/s. Parag Enterprises,**
8, Amartala Street,
4th Floor, Room No.408, Appellant(s)
Kolkata,
West Bengal – 700 029.

*VERSUS*

**Commissioner of Customs,**
Cochin Commissionerate, Respondent(s)
Cochin.

**AND**

**Customs Appeal No. 27966 of 2013**

(Arising out of Order-in-Original No. COC-CUSTM-OOO-COM-018-12-13 dt. 01/07/2013 passed by Commissioner of Customs, Cochin)

**M/s. Parag Enterprises,**
8, Amartala Street,
4th Floor, Room No.408, Appellant(s)
Kolkata,
West Bengal – 700 029.

*VERSUS*

**Commissioner of Customs,**
Cochin Commissionerate, Respondent(s)
Cochin.

**APPEARANCE:**

None the appellant.
Mr. K. Vishwanath, Superintendent(AR) for the Revenue.

**CORAM:**
**HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)**
**HON'BLE MRS. R. BHAGYA DEVI, MEMBER(TECHNICAL)**

**Final Order No. 21525 - 21526 / 2023**

Date of Hearing: 07/12/2023
Date of Decision: 07/12/2023

**Per : DR. D.M.MISRA**

These two appeals are filed against respective Orders-in-Original passed by the Commissioner of Customs, Cochin. Since common issue is involve, the appeals are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant had filed 4 Bills of Entry dt. 10/05/2013, 20/05/2013, 21/05/2013 and 23/05/2013 related to appeal No.C/27779/2013 and 5 Bills of Entry dt. 30/05/2013, 03/06/2013, 04/06/2013, 07/06/2013 and 07/06/2013 related to appeal No.C/27966/2013 for import and clearance of secondhand multi-function devices (photocopiers) declaring the value of goods under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Since the photocopier machines / Digital multifunction Print and copying machines are restricted for import and permitted only on authorization / licence issued by the DGFT, the appellant was directed to place valid authorization from DGFT. As the appellant could not produce valid authorization, the transaction value was rejected and it was enhanced on the basis of Chartered Engineer's

certificate and the value was arrived based on the Chartered Engineer certificate under Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. On adjudication, the imported used secondhand photocopiers were directed to be confiscated with an option to redeem the same on payment of fine of Rs.16 lakhs and Rs.14 lakhs in respective appeals and penalty of Rs.8 lakhs and Rs. 7 lakhs under Section 112(a) of Customs Act, 1962 in respective appeals. Hence the present appeals.

3.1. None present for the appellant. However, on going through the grounds of appeals and with the assistance of learned AR for the Revenue, it is found that the appellants are not contesting the enhancement of value but they are challenging the imposition of quantum of fine and penalty. In the impugned order, the learned Commissioner has confirmed the redemption fine as Rs.16 lakhs and & Rs.14 lakhs of the enhanced value and penalty of Rs.8 lakhs and Rs.7 lakhs on the value of the goods. The appellants in their grounds of appeal contended that the said order is contrary to the series of judgments passed by this Tribunal as fine and penalty are more than 10% and 5% of the value and hence deserves to be set aside.

4. Heard both sides and perused the records.

5. The short issue involved in the present appeals relate to quantum of fine and penalty imposable on the appellant who imported MFDs in violation of the licensing conditions of DGFT. We find that the Tribunal in a series of judgments consistently held that when the value has been enhanced on the basis of certificate by the Chartered Engineer without market enquiry, the imposition of fine and penalty @ 10% and 5% taking note of the enhanced value would meet the ends of justice. In ***Navpad Enterprises vs. CC, Cochin*** [2009(248) ELT 888 (Tri. Bang.)] case, the Tribunal at para 6 has observed as follows:-

> *6. On a very careful consideration of the issue, we find that the value declared by the appellant has already been enhanced by the Revenue on the basis of the Chartered Engineers certificate. It is seen that there is no evidence brought out by the revenue to show that the appellants had paid more than what he had declared to the customs. Therefore, in such circumstances, the Tribunal took a view to impose fine and penalty at 10% and 5% in many of the cases cited by the appellant. As this Bench cannot deviate from the ratio of its own decision, we find that in all these cases the fine and penalty should be fixed only at 10% and 5% of the value of the imported goods determined by the Chartered Engineer, respectively. Therefore, by following the ratio of the several decisions of this Bench we dispose of these appeals on the above terms.*

The said judgment was later upheld by the Karnataka High court. Also, recently in the case of ***Omex International vs. CCE, New Delhi*** [2015(328) ELT 579 (Tri. Del.)], it was held that the redemption fine and penalty in such cases be 10% and 5% of the value. Following the aforesaid precedent, the impugned orders are modified and fine and penalty in each of the cases are reduced to 10% and 5% of the enhanced value i.e. fine of Rs.13,25,000/- and penalty of Rs.6,62,000/- in appeal C/27779/2013 & fine of Rs.12,62,000/- and penalty of Rs.6,30,000/- in appeal C/27966/2013. Appeals are disposed of as above.

(Operative part of this order was pronounced in open court on 07/12/2023)

**(D.M. MISRA)**
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**
**MEMBER(TECHNICAL)**

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