CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 23122 of 2014

(Arising out of Order-in-Original No. COC-CUSTM-000-COM-015-14-15 dated 27.06.2014 passed by the Commissioner of Customs, Cochin)

M/s. Sweta Logitech
Professor New Barganda,
Giridhih,
Jharkand – 01.

Appellant(s)

VERSUS

Commissioner of Customs,
Customs house,
Cochin – 9.

Respondent(s)

APPEARANCE:

None for the Appellant

Mr. K.A. Jathin, Dy. Commissioner(AR) for the Respondent

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

Final Order No. 20487 /2024

DATE OF HEARING: 11.06.2024
DATE OF DECISION: 11.06.2024

PER : D.M. MISRA

This is an appeal filed against Order-in-Original No.COC-CUSTM-000-COM-015-14-15 dated 06.06.2014 passed by the Commissioner of Customs, Cochin.

2. Briefly stated the facts of the case are that the appellant had filed two Bills of Entry for clearance of goods declaring as old and used Digital Multi Function Printers / Devices bearing No.5434974 dated 08.05.2014 and No.5513185 dated

16.05.2014. The consignments were examined on first check basis at CFS Petta along with Chartered Engineers from M/s. Bureau Veritas (India) Pvt. Ltd. to ascertain the nature and value of the goods. Based on examination of the goods, the Chartered Engineer assessed and enhanced the value to Rs.95,38,626/-. Since the goods were imported in contravention of para 2.17 of the Foreign Trade Policy 2009-14 'import of second hand goods (other than capital goods) and the goods are classified under restricted category, the same were directed to be confiscated under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992 with an option to redeem the same on payment of fine of Rs.17.00 lakhs. Also penalty of Rs.7.00 lakhs was imposed on the appellant. Hence the present appeal.

3. None appeared for the appellant. Heard the learned AR for the respondent.

4. Learned AR for the Revenue has submitted that on the issue of quantum of fine and penalty is settled by various decision of this Tribunal wherein considering the enhanced value of the goods, imposition of fine and penalty has been directed to be 10% and 5% respectively.

5. The short issue involved in the present appeal is that whether the imposition of fine and penalty, more than 10% / 5% in the given circumstances of the case when there is a violation of condition of DGFT in importing the second hand Digital Multi-

function Printers is justified. We find that the issue is covered by the decision of this Tribunal in the case of ***Shri Sai Graphics Vs. CC, Bangalore*** [2023(6) TMI 422 – CESTAT, BANGALORE], wherein the Tribunal observed as under:-

> *6. 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. I find that the Tribunal in a series of judgments referred to by the learned counsel 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 case, the Tribunal at para 6 has observed as follows:-*
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>> *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.*
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> *The said judgment was later upheld by the Karnataka High court. Also recently in Omex International's case (supra), 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 order is modified and fine and penalty in each of the cases are reduced to 10% and 5% of the enhanced value. Appeals are disposed of as above.*

6. In view of the above, the impugned order is modified and the fine and penalty are reduced to 10% and 5% respectively. Appeal is disposed of accordingly.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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