CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. C/51761-51762, 54595-54599/2014

[Arising out of Orders-in-Appeal Nos. 29/Cus/DLH-IV/2013 dated 28.01.2014, 30-CUS-DLH-IV-2013 dated 28.01.2014, 78-CUS-DLH-IV-2014 dated 29.05.2014, 76-CUS-DLH-IV-2014 dated23.05.2014, 79-CUS-DLH-IV-2014 dated 29.05.2014, 74-CUS-DLH-IV-2014 dated 23.05.2014 and 75-CUS-DLH-IV-2014 dated 23.05.2014, passed by the Commissioner of Central Excise (Appeals), Delhi IV, Faridabad]

Date of hearing/decision: 22.06.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

M/s Gagan Impex : **Appellant(s)**

VS

C.C.E. Delhi-IV : **Respondent(s)**

Appearance:
Present for the Appellant(s): Ms. Preeti Manderna (Advocate)
Present for the Respondent(s): Shri Bhasha Ram (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

FINAL ORDER NO. 62500-62506/2018

Per : **Ashok Jindal**

The appellants are in appeal against the impugned orders challenging the redemption and find penalty imposed on them.

2. The facts of the case are that the appellants are imported refurbished 17 inches data graphic display tubes for color with

phosphor screen, (17 inch), dot pitch less 04. mm under CTH 85404020 attracting duty @0% (BCD) Plus 10% (CVD) plus 2%+1% (Edu. Cess) Plus 4% (SAD). The goods were declared as refurbished Data Graphic Display tubes, the goods were examined in presence of Charted Engineer and as per the report of the chartered engineer the goods are refurbished/re-conditioned goods having a minimum residual life of the new data graphics tubes and estimated residual life of subject goods is about 5 years. The appellants submitted NOC issues by the Director of ministry of Environment and Forests for import of 1,50,000 nos. of refurbished data graphics display tubes, subject to the condition that the defective parts would be re-exported to the origin but failed to produce the specific import authorization from DGFT in terms of Sl. No. I(a)(i) of para 2.17 of foreign Trade policy (2009-2014). No NIDB data of the contemporaneous import for the above said goods were available but the value was slightly enhanced the price of 15 inches USD dollar 5 to USD dollar 5.06, and for 17 inches from Rs. USD dollars 5.5 to USD dollars 5.55 as per the opinion of chartered engineer in terms Rule 4 to rule 9 Custom Valuation Rules, 2007. The appellant accepted the value so determined and waived the requirement of show cause notice and personal hearing. The adjudicating authority passed the impugned orders in respect of the above bills of entry holding that in terms of Sl. No. 1(a)(i) of para 2.17 of foreign foreign Trade Policy 2009-2014, the import of second hand personal computers/labtops including their refurbished/reconditioned spares parts under restricted category, hence require special import authorization from DGFT, therefore, confiscated the goods being restricted, under Section 111 (d) of the Customs Act, 1962 and allowed to be released on payment of redemption fine and penalty under section 112(a)(I) of the Customs Act, 1962. Against those orders, the appellant is before me.

3. As the issue involved in all the appeals is common therefore, all the appeals are disposed off by way of this common order.

4. The Ld. Counsel for the appellants submits that in their own case for the earlier import, this Tribunal has held that in terms of circular no. 27/2011- Cus dated 04.07.2011 issued by CBEC at Sl. no. B 1110 of the schedule 3 relating to waste electrical and electronic assemblies can be imported with permission from ministry of Environment and Forest and said permission has been obtained by the appellant vide their certificate dated 17.06.2003, therefore, it cannot be held that the goods are restricted in question, therefore the redemption fine and penalty imposed on appellant were set aside vide final order no. A/54040-54054/2006 SMB dated 6.10.2016. In these circumstances, the impugned orders are to be set aside.

5. On the other hand, Ld. AR supported the impugned orders.

6. After hearing both the sides, I find that in appellant's own case where the identical goods were imported by the appellant, and this Tribunal has observed as under:-

"As is seen from above, the refurbished/reconditioned spares of capital goods are freely importable subject to the condition specified in para 2.33 of handbook of procedures volume 1. As per the said condition, the second hand refurbished/reconditioned spare of capital goods other than those personal computer/personal laptops are freely importable on production of Chartered Engineer certificate that such spares have at least 80% of the residual life of the original spare. Admittedly, such a certificate is available on record and there is no dispute about the same.

The appellants have also drawn my attention to the circular number 27/2011-Cus dated 04.07.2011 issued by the Central Board of Excise and Customs. On going through the same, it is seen that the goods mentioned against the items at Sl. No. B1110 of the Schedule 3 relating to waste electrical or electronic assembly can be imported with permission from Ministry of Environment and Forest. Admittedly, such permission stands granted by the Ministry of Environment and Forest, vide their certificate dated 17.06.2013. As such the lower authorities could not adopt reasoning for holding the imports to be restricted."

7. As this Tribunal has held that the goods in question cannot be held as restricted goods, in that circumstances, I hold that redemption fine and penalties are not impossible on the appellant, therefore, impugned orders qua holding that goods are liable for confiscation are set aside, consequently redemption fine and penalty imposed on the appellant are not sustainable.

8. In view of the above, I hold that as appellant has not contested the valuation assessed by the impugned goods therefore,

valuation assists the adjudicating authority are upheld and redemption fine and penalty imposed on the appellant are set aside. With these terms appeals are disposed off.

(Order dictated and pronounced in the court)

Ashok Jindal
Member (Judicial)

Kailash