IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

C/291/2008

(Arising out of Order-in-Original No. 7599/2008 dated 16.04.2008 passed by the Commissioner of Customs (Seaport-Import), Chennai)

M/s. WEL-TECH Enterprises : Appellant

Vs.

CC (Port-Import), Chennai : Respondent

Appearance

Shri A.K. Jayaraj, Advocate,
for the appellants

Shri B. Balamurugan, AC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **07.08.2017**

FINAL ORDER No. 41571 **/2017**

Per Bench

The issue in the appeal relates to importation of 114 numbers of "Used Digital Multifunction Print and Copying machines" and 41 numbers of "Used Analog Copying machines" on 10.03.2008. The department took the view that these being second hand goods they are restricted for import and required valid license for import of the impugned goods, which was not produced by the appellants. Under valuation of the goods was also alleged and accordingly, vide impugned order dated 16.04.2008, value of

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US$40100 (C&F) declared by the importer was rejected and enhanced to US$ 60040 (C&F) based on the Chartered Engineer's Certificate. The imported items were also confiscated, however allowed to redeem the same on payment of fine of Rs. 9,00,000/- under Section 125 of Customs Act, 1962. A penalty of Rs. 4.50 lakhs was also imposed under Section 112 (a) of the Customs Act. Hence this appeal.

2. Today, when the matter came up for hearing, Ld. Advocate Shri A.K. Jayaraj, submits that the issue concerning importability of Used Digital Multifunction Print and Copying machines have already been decided by the Hon'ble High Court of Madras in the case of CC, Tuticorin Vs. City Office Equipment - 2014 (302) ELT 212 (Mad.), where interalia, it was held that there is no restriction on free import of second hand digital multifunction print and copier machines. He further contends that for this reason confiscation of these machines cannot be sustained. In respect of the remaining Used Analog Copying machines, Ld. Advocate concedes that have been imported after 19.10.2005 and as such the goods were then restricted for import. He also submits that he has no dispute against enhanced value adopted by the Department on the basis of Chartered Engineer's Certificate, namely, US$ 40100 (C&F) for Used Digital Multifunction Print and Copying machines and US$ 19940 for Used Analog Copying machines. However, he contends that considering his submissions redemption fine and penalty imposed is very much on the higher side.

3. Ld. AR, Shri B.Balamurugan, AC, supports the adjudication.

4. Heard both sides.

5 In respect of Used Digital Multifunction Print and Copying machines, we find merit in the reliance of the Ld. Advocate on the judgment of the Hon'ble High Court of Madras in the case of City Office Equipment (supra). We find that the goods have been found liable to confiscation under both Sections 111 (d) & (m) of the Customs Act. There can be no confiscation under Section 111(d) and imposition of redemption fine in respect of the used digital multifunction print and copying machines and if at all a penalty under Section 112 (a) may be imposable on account of misdeclaration of value. We find merit in the Ld. Advocate's arguments that the combined redemption fine and penalty imposed for both the imports is on the higher side. Following the ratio laid down by this Tribunal in a number of earlier appeals of this genre, for example; in Final Order No. 40975 – 40978/2017 dated 22.06.2007, we hold that a redemption fine of Rs. 1,25,000/- under Section 125 of the Act and penalty of Rs.1,00,000/- under Section 112 (a) ibid would meet the ends of justice in this case. So ordered.

6. Appeal is thus allowed partly in above terms.

(Operative part of the Order pronounced in the open Court)

Sulekha Beevi

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB

Customs, Excise & Service Tax Appellate Tribunal
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