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

C/00352/2008

[Arising out of Order-in-Original No.30/2005 (Commr.), dated 06.05.2005 passed by the Commissioner of Customs, Trichirapalli]

M/s. B.E. OFFICE AUTOMATION PRODUCTS (P) LTD. APPELLANT

Versus

COMMISSIONER OF CUSTOMS, TRICHIRAPALLI RESPONDENT

Appearance:

For the Appellant Shri N. Viswanathan, Adv.
For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar

Date of hearing/decision **17-07-2017**

FINAL ORDER NO. 41241/2017

Per Bench:

The issue in dispute in this appeal relates to import of "old and used photocopiers" vide Bill of Entry dated 27.04.2004 pursuant to inspection by local Chartered Engineer, the declared the value of USD 26,060 CIF was proposed to be rejected and enhanced to USD 61 705. It further appeared to department for the specific import, licence was required for such a second-hand office equipment, therefore, import appears to be unauthorized and in contravention of section 3 (3) of FT(DR) Act, 1992. In view thereof, department also proposed confiscation of the imported goods under section 111 (d) and 111 (m) of the Customs Act, 1962 as also imposition of penalty under section 112 (a) *ibid*. After due process of adjudication, Commissioner vide

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impugned order dated 06.05.2005, *inter alia*, confirmed these proposals. He further ordered confiscation of the goods under section 111(m) *ibid*. However, he allowed the importer to redeem the same on payment of fine of Rs.2,10,000/-. Penalty of Rs.40,000/- under section 112 (a) *ibid* was also imposed on the importer.

2. Today, when the matter came up for hearing, on behalf of the appellants Shri N. Viswanathan, learned advocate submits that prior to 19.10.2005, there was restriction for import of such goods. He prays attention to Tribunal's Final Order No.41176/2016, dated 26.09.2016 in the case of *M/s.Pentagon Engineering Enterprises Vs Commissioner of Customs (Port-Import), Chennai*, wherein it was held that for the goods not restricted, the confiscation was found to be unwarranted and redemption fine and penalty was set aside.

3. On the other hand, learned Authorised Representative Shri B. Balamurugan supports the adjudication order of both sides without doubt that the import of photocopiers would become restricted only after 19.10.2005 by Notification No.31, dated 19.10.2005. Goods imported herein have been done by a Bill of Entry filed on 27.04.2004. This being the case, they cannot be confiscated for want of a specific import licence and accordingly, the provisions of section 111 (d) and 111 (m) ibid will not be applicable in this matter. However, there is also enhancement of assessable value by almost 100% from USD 26,060 to USD 61,705 and hence, the goods will become liable for confiscation under section 111 (m) of the Act. However, taking into account ~~of~~ all factors, particularly, the aspect of the goods not being restricted at the time of their import, we are of the considered opinion that the interest of justice would be served in this case, by reducing

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the redemption fine imposed under section 111 (m) to Rs.50,000/- [Rupees Fifty Thousands only] and penalty imposed under section 112 (a) *ibid* to Rs.10,000/- [Rupees Ten Thousand only]. So ordered.

Appeal partly allowed as above, with consequential relief if any as per law.

(Operative part of the order pronounced in open court on **17.07.2017**)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi

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

ksr
19-07-2017

प्रमाणित प्रति/Certified True Copy
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अपील अधिकरण (सेस्टैट)
चेन्नै/Chennai

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