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

Appeal Nos. C/265/2007, C/272/2007 and C/281/2007

(Arising out of Orders-in-Original No. 6055/2007 dated 21.3.2007; No.6056/2007 dated 21.3.2007 and No.6054/2007 dated 21.3.2007 passed by the Commissioner of Customs (Import), Chennai)

M/s.Balaji & Co.
M/s. Micro Office Systems
M/s. Balaji Trade Link — Appellants

Vs.

Commissioner of Customs, (Import), Chennai — Respondent

Appearance

Shri A.K. Jayaraj, Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing / Decision: **23.06.2017**

Final Order Nos. 41268-41270/2017

Per Bench

In all the above three appeals, the facts as well as the issue being similar, they were heard together and are disposed by this common order. Appeal No. C/265/2007 is discussed for reference.

2. Brief facts are that the appellants had imported consignment of old and used mainframe assemblies and parts/components of photocopiers from M/s. Second Source Intl. Inc. USA declaring the value of USD 8010. It needs to be mentioned that all the imports were prior to 19.10.2005 on which date the restriction for import of second-hand photocopiers came to be introduced as per para 2.17 of Foreign Trade Policy. On preliminary investigation conducted by the officers of SIIB, it was found that the goods were used photocopiers of Canon brand of different models in SKD conditions and that there was gross mis-declaration of the value of the goods. Accordingly, the goods were valued by a Chartered Engineer on 13.2.2003 and report was given valuing the goods as USD 12,140. The appellants had approached the jurisdictional High Court as the goods were not released to them. The Hon'ble High Court vide judgment dated 19.3.2003 directed the department to provisionally release the goods on payment of duty calculating the value of the goods @ USD 12,140 and also imposing conditions of furnishing bank guarantee and cash deposit. The appellants filed appeal against the single Judge order before the Division Bench of the Hon'ble High Court and vide judgment dated 28.4.2003, the Hon'ble Division Bench upheld the order passed by the Hon'ble Single Judge and directed the respondents to release the goods within

one week from the date of the order of the Division Bench. In the said judgment, it was observed that there was a second opinion sought by the department from a Chartered Engineer where the valuation made is different. It is the case of the appellant that the goods were released to them within two days of the said order passed by the Division Bench of the Hon'ble High Court. Later, a show cause notice dated 1.9.2004 was issued to the appellants proposing to enhance the value basing upon the valuation made by the second Chartered Engineer where the value was assessed as USD 48,412.50 and proposing for confiscation of the goods and for imposing penalty. After due process of law, the adjudicating authority enhanced the value to USD 48,412.50 basing upon the second Chartered Engineer's certificate and confiscated the goods imposing redemption fine of Rs. 2,00,000/- and a penalty of Rs.1,00,000/-. Similar show causes notices were issued in Appeal No. C/272/2007 and C/281/2007. After adjudication the value in appeal No. C/272/2007 is enhanced to USD 45,595/- and redemption fine of Rs.2,50,000/- with personal penalty of Rs.1,25,000/- is imposed. In Appeal No. C/281/2007, the value is enhanced to USD 46,379 and the redemption fine imposed is Rs.2,00,000/- with penalty of Rs.90,000/-. Hence these appeals.

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3. The learned counsel Shri A.K. Jayaraj appearing for the appellants submitted that the department had obtained the information / valuation of a Chartered Engineer who is a person qualified as well as listed under Appendix 28. The said Chartered Engineer had assessed the value to be USD 12,140 in appeal C/265/2007. Similarly, less value than that reported by second Chartered Engineer was assessed in the other two appeals. Thereafter, the department had obtained report of a second Chartered Engineer without stating any reasons and without giving any information to the appellants. He submitted that though in such certificates issued by second Chartered Engineer, it is stated that the goods were inspected at Concord CFS, Chennai, the goods had already been provisionally released to the importers which would go to show that such second certificate has been issued without inspection of the goods. It is also argued by him that there is inordinate delay in inspecting as well as issuing such certificate because the goods had been imported in February 2003 and the report of the second Chartered Engineer is issued with much delay which is in August 2004 (18.8.2004). That for this reason itself, the valuation made by the second Chartered Engineer cannot be accepted. He also pleaded that the redemption fine and penalties may be set aside.

4. Against this, the learned AR reiterated the findings in the impugned order. He submitted that there was gross mis-declaration of the value of the imported goods and therefore the department had obtained the valuation from a second Chartered Engineer also. The second report was obtained after proper inspection of the goods. The contention of the appellant that the goods had already been released to them and the Chartered Engineer had not inspected the goods is false. He pointed out to the difference in the date of inspection and date of issuance of report in the report dated 18.8.2004 and submitted that the date has been wrongly mentioned as 30.4.2004 and it ought to have been 30.4.2003. Mentioning of the year as 2004 was only an inadvertent error. That the Commissioner (Appeals) has rightly enhanced the value basing upon the second Chartered Engineer regarding the description of the goods as well as the value of each item.

5. We have heard the submissions made by both sides.

6. At the outset, it is to be stated that the appellant has approached the Hon'ble High Court against the enhancement made on the basis of the first Chartered Engineer's report. The Hon'ble High Court had directed for provisional release of the goods on payment of duty by calculating on the basis of the valuation made by the first Chartered Engineer. Therefore, the appellant, in our opinion, cannot now turn around and say that

the valuation made by the first Chartered Engineer is not to be accepted. Thus, dispute can be narrowed to the aspect whether the enhancement confirmed by the Commissioner on the basis of the second Chartered Engineer would sustain or not. We do find discrepancy in the date of inspection in the report filed by the Chartered Engineer. In Appeal No. C/265/2007, the date of inspection of goods by second Chartered Engineer is shown as 30.4.2004. The report is dated 18.8.2004. If we put aside the discrepancy with date of inspection and date of issue of report, even then the import being vide Bill of Entry dated 11.2.2003, we have to say that there is inordinate delay in conducting inspection and also filing of the report. Even if the date of inspection is taken as 30.4.2003, as contended by the learned AR, we have to say the report is filed by the second Chartered Engineer after inspection of goods with much delay which is 18.8.2004. This we have to say is already after obtaining the report of first Chartered Engineer. When the department has not given cogent reasons for rejecting the enhancement/valuation made by the first Chartered Engineer and when there is so much delay in inspection as well as report of the second Chartered Engineer, we have to hesitate to accept the enhancement made on the basis of such report of the second Chartered Engineer.

7. From the above discussion, we conclude that the enhancement on the basis of the second Chartered Engineer's certificate is not legal or proper. However, we find that the appellant is liable to pay duty on the enhanced value on the basis of the report of the first Chartered Engineer. Further, since the goods were not restricted items during the relevant time of import, we find that the redemption fine and penalties are unwarranted and requires to be set aside, which we hereby do.

8. In the result, all the three appeals are partly allowed modifying the impugned order to the extent of holding that the value has to be enhanced on the basis of the report of the first Chartered Engineer and duty to be paid accordingly. We set aside the redemption fine and penalties imposed on the appellants.

(Operative portion of the order was pronounced in open court)

(V. PADMANABHAN) Member (Technical)	**(SULEKHA BEEVI C.S.)** Member (Judicial)

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