FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **21/01/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/50077-50080/2015-CU[DB]** dated **07/01/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/50272,50567,50568,51578/2014	**Commissioner of CUSTOMS-New Delhi(icd Tkd)** INLAND CONTAINER DEPORT, TUGLAKABAD...ICD, NEW DELHI,
		Name and Address of Respondent
2		RANK OFFICE AUTOMATION PVT LTD 14,ANSARI MARKET,DARYAGANJ, NEW DELHI-,110002
3		BEST MEGA INTERNATIONAL GL-6,ANSAL BHAWAN,K.G.MARG,, ,NEW DELHI110001
7 4		DIPESH COPY CENTRE 8 AYAMBIL BHUVAN,OPP.BANK OF BARODA,MALAD(E),, MUMBAI ,MAHARASHTRA400097

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- Other Appellants and Respondents as per Annexure

Copy To
Advocate(s) / Consultant(s):

Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066

Date of Hearing 07.01.2015

For Approval &Signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.C/50567/2014-CU[DB]
[Arising out of Order-in-Appeal No.CC(A)CUS/ICD/715/2013, dated 30.09.2013 passed by the C.C.(Appeals), New Delhi]

&

Appeal No.C/50568/2014-CU[DB]
[Arising out of Order-in-Appeal No.CC(A)CUS/ICD/639/2013, dated 21.10.2013 passed by the C.C.(Appeals), New Delhi]

C.C., New Delhi (ICD, TKD) — Appellants

Vs.

M/s. Best Mega International — Respondents

Appearance
Shri Amresh Jain, DR - for the appellants

Shri V.S. Negi, Advocate - for the respondents

Appeal No.C/50272/2014-CU[DB]
[Arising out of Order-in-Appeal No.CC(A)CUS/ICD/719/2013, dated 25.10.2013 passed by the C.C.(Appeals), New Delhi]

C.C., New Delhi (ICD, TKD) Appellants

Vs.

M/s. Rank Office Automation Pvt. Ltd. Respondents

Appearance

Shri Govind Dixit, DR - for the appellants

None - for the respondents

Appeal No.C/51578/2014-CU[DB]

[Arising out of Order-in-Appeal No.CC(A)CUS/ICD/795/2013, dated 27.11.2013 passed by the C.C.(Appeals), New Delhi]

C.C., New Delhi (ICD, TKD) Appellants

Vs.

M/s. Dipesh Copy Centre Respondents

Appearance

Shri Govind Dixit, DR - for the appellants

Shri Priyadarshi Manish, Advocate - for the respondents

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order Nos. 50077 - 50080, dated 07.01.2015

Per Mr. Ashok Jindal :

Revenue is in appeal against the impugned orders, which set aside the Orders-in-Original passed by the adjudicating authority.

2. The brief facts of the case are that the respondents imported old and used digital multifunction printing and copying machines during the period 05.06.2012 to 20.08.2013 without obtaining proper licence. Initially, the goods were detained as the goods have been imported by the respondents without having valid licence under Foreign Trade Policy

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ITCHS and HBC 6 read with provisions of Customs Act, 1962. It was also alleged that the respondents have suppressed the value of the goods. Therefore, the proceedings were initiated and the matters were adjudicated against the respondents. On appeal before the ld. commissioner (Appeals), the adjudication orders were set aside holding that such machines were freely importable as per para 2.1.7 of the Foreign Trade Policy 2004-09. Therefore, it cannot be alleged that the goods have been imported without any licence and therefore and they have declared the goods.

3. Heard the parties.

4. Considering the fact that for imports of old and used digital multi functional printing and photocopying machines made between 05.06.2012 and 28.02.2013, the issue came before the Hon'ble High Court of Madras in the case of ***Shrishti Digital Solution Vs. Addl. Commr. of Cus., Chennai [2013 (298) ELT 197 (Mad)]*** and the Hon'ble High Court has observed as under:-

> *"**10.3** The restricted category of import as specified in Para 2.17 of the Foreign Trade Policy 2009-2014 with regard to second-hand goods comes with conditions attached and those conditions are to be found either in the Foreign Trade Policy 2009-2014, ITC (HS), Handbook of Procedures V.1 2009-2014, Public Notice or an Authorization issued for import of the specified second-hand item. In these cases, the respondent has not been able to show any specific bar except what is contained in Para 2.33 of Handbook of Procedures V.1 2009-2014. If the importers in these cases are able to satisfy that the goods though restricted under*

Para 2.17 of the Foreign Trade Policy 2009-2014 are eligible to be imported in terms of Para 2.33 of Handbook of Procedures V.1 2009-2014, the respondent cannot merely on the plea of restricted category goods decline to release the goods.

10.4*It is trite law that Foreign Trade Policy 2009-2014 and Handbook of Procedures V.1 2009-2014 have to be read together to give a purposive interpretation. In the present case, there is no conflict between the Foreign Trade Policy 2009-2014 and Handbook of Procedures V.1 2009-2014. This is evident from the fact that only in the case of spares certain conditions have been imposed for import, though falling under the restricted category under the Foreign Trade Policy 2009-2014. However, insofar as the Digital Multifunction Print and Copying Machines are concerned, no such condition has been imposed in the Handbook of Procedures V.1 2009-2014. A conjoint reading of Para 2.33 of Handbook of Procedures V.1 2009-2014 and Para 2.17 of Foreign Trade Policy 2009-2014, which says that imports should be in accordance with the procedure prescribed, would only mean that the Handbook of Procedures V.1 2009-2014, which prescribes the manner of import of second-hand capital goods has to be followed and if the procedure contemplated therein is followed, then the benefit of free import should be granted to the present crop of goods, as they are freely importable.*

10.6*The decision in Priyam Enterprises case, supra, was upheld by a Division Bench of this Court in the Commissioner of Customs and Others v. City Office Equipment and Others, (W.A. Nos. 890 of 2012 and batch cases, dated 14-3-2013). The Division Bench, after referring to provisions contained in the Foreign Trade Policy 2009-2014 and Handbook of Procedures V.1 2009-2014, held as under :*

> *"22. Thus the procedure on import of second-hand capital goods is governed by Clause 2.33 of the Handbook of Procedures (Vol. 1). As may be seen from the heading, the reference is about second-hand capital goods in*

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general alone and is not a separate para to deal exclusively with second-hand capital goods falling under restricted category. Thus, dealing with the procedure on the import of second-hand capital goods, it specifically refers to some of those restricted items of second-hand capital goods, namely, personal computers/laptops, which could be imported only subject to the conditions specified in the para. Thus, while Clause 2.33 allows free import of second-hand capital goods, including refurbished/reconditioned spares as per sub-clause (a) of Clause 2.33, one can say from the clear terms of the provision that there is no distinction made between second-hand capital goods and second-hand refurbished/reconditioned capital goods for purposes of free import. Except for those specifically mentioned restricted category of second-hand capital goods which are not allowed free import, all other second-hand capital goods including other enumerated restricted category of second-hand capital goods are permitted free import. Thus, with no distinction maintained between other restricted category of second-hand capital goods and second-hand capital free goods, we do not find any good ground to read in Clause 2.33, a restriction on the free import of second-hand digital multifunction print and copier machines. Thus reading sub-clause (a) to Clause 2.33, if there is a restriction to be read on free import, it is only with reference to personal computers/laptops from among the restricted category of second-hand capital goods group, which means, other restricted category under second-hand capital goods group, specified in Para 2.17, namely, photocopier machine/digital multifunctional printing and copying machines, air-conditioners, diesel generating sets, like other goods falling under free category, are permitted to be imported freely. Under sub-clause (b) of Clause 2.33, there is a specific reference to the import of second-hand computers, including personal

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computers/laptops and refurbished/reconditioned spares thereof, which suffer restricted import. Sub-clause (c) of Clause 2.33 is with reference to import of refurbished/reconditioned spares of capital goods, such as what is covered under sub-para (b), namely, personal computers/laptops. Thus, the refurbished/reconditioned spares of capital goods could be allowed for import only on production of Chartered Engineer's certificate that such spares have at least 80% of residual life of original spares. Thus, with classification of goods carrying conditions on import specifying the manner of import, the import policy regime on second-hand capital goods dealt with under Para 2.17 is laid down in clear terms in Clause 2.33 of the Handbook of Procedures (Vol.1) that there could be no confusion in the matter of understanding which type of second-hand capital goods goes for free import and what goes for import with conditions. As already noted. Handbook of Procedures (Vol.1) also specifically deals about refurbished/reconditioned spares of capital goods (Clause 2.33(c)). Thus, even though photocopier and digital multifunction print and copying machines fall under restricted category in second-hand capital goods group, yet, going by the only condition specified in Clause 2.33 of the Handbook of Procedures (Vol. 1), we do not find any justifiable ground to accept the contention of the revenue that there exists a conflict between Para 2.17 of the Foreign Trade Policy and Clause 2.33 of the Handbook of Procedures (Vol. 1). Thus, when Para 2.17 of Foreign Trade Policy specifically refers the circumstances or the conditions under which the import policy regime is laid, in the absence of any other restriction specified anywhere either in the policy or in the Handbook of Procedures (Vol. 1) with reference to any of those specified restricted category of second-hand capital goods - photocopier machines and digital multifunction printing and copying machines as falling in line with personal computers and

> *laptops, the mere instance of photocopier and digital multifunction printing and copying machines being restricted category of second-hand capital goods, cannot bring them under any assumed restriction on par with personal computers/laptops for the purpose of imports into this country. Contrary to the assertion of the Revenue, the import policy regime, as spoken to in Para 2.17, touches on compliance of conditions alternative and not on cumulative basis. In the circumstances, we reject the plea of the revenue."*

Thereafter, the court has held that for the import of the above machines during the period in dispute, there is no requirement of licence. In these circumstances, relying on the decisions of the hon'ble Madras High Court in the case of *Shrishti Digital Solution (supra)*, we hold that the respondents have correctly imported the goods without obtaining the licence. Therefore, we do not find any infirmity with the impugned orders. Accordingly, the appeals are dismissed by upholding the impugned orders.

12.1.15

(Ashok Jindal)
Member (Judicial)

(R.K. Singh)
Member (Technical)

SSK