(26)

REGISTERED / AD

FAX : 011-26108426

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

Dated: 05/05/2015

To

Appellant as per address in table below

Respondent as per address in table below

CORRIGENDUM

With reference to Final Order No.C/A/50657-50662/2015-Cus(DB) dtd; 18.02.2015 in A.No.C/56642,56659-56661,56664/2013 & C/ 2805/ 2012 in the matter of CC,New Delhi Vs M/s Asian Copier & Ors.

In the above said matter, certified copy of orders have already been issued to all concerned , but inadvertently page Nos.17,18&19 were missing.

Now, we are forwarding missing pages of the above said order to all concerned.

Final Order No. **C/A/50657-50662/2015-CU[DB]** dated **18/02/2015**

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
C/Stay/3533/2012	C/2805/2012	**Commissioner of CUSTOMS-New Delhi(icd Tkd)** INLAND CONTAINER DEPORT, TUGLAKABAD...ICD, NEW DELHI, DELHI
C/Stay/57161/2013, C/COD/57162/2013	C/56642/2013	**Commissioner of CUSTOMS-New Delhi(icd Tkd)** INLAND CONTAINER DEPORT, TUGLAKABAD...ICD, NEW DELHI, DELHI

3 C/Stay/57178/2013, C/56659/2013 C/COD/57179/2013

Commissioner of CUSTOMS-New Delhi(icd Tkd)
INLAND CONTAINER DEPORT,
TUGLAKABAD...ICD,
NEW DELHI,
DELHI

4 C/COD/57181/2013, C/56660/2013 C/Stay/57180/2013

Commissioner of CUSTOMS-New Delhi(icd Tkd)
INLAND CONTAINER DEPORT,
TUGLAKABAD...ICD,
NEW DELHI,
DELHI

5 C/COD/57183/2013, C/56661/2013 C/Stay/57182/2013

Commissioner of CUSTOMS-New Delhi(icd Tkd)
INLAND CONTAINER DEPORT,
TUGLAKABAD...ICD,
NEW DELHI,
DELHI

6 C/COD/57189/2013, C/56664/2013 C/Stay/57188/2013

Commissioner of CUSTOMS-New Delhi(icd Tkd)
INLAND CONTAINER DEPORT,
TUGLAKABAD...ICD,
NEW DELHI,
DELHI

Name and Address of
Respondent

7 Asian Copiers
Bg6/54a, Paschim Vihar, New
Delhi-110063,,

,

8 Best Mega International
Gl-6, Ansal Bhawan,,K.g.marg,,
NW DELHI
,NEW DELHI110001

9 Asian Copiers
Bg-6/54a,,
PASCHIM VIHAR
NEW DELHI110063

10 Prius Technologies
B-7, Prabhat Kiran Building,,
NEW DELHI
,NEW DELHI

11 Sunrise Enterprises
88, Rana Pratap Market,,
KAROL BAGH
NEW DELHI110005

12 Unistar Enterprises
88, Pratap Market.,
NEW DELHI
NEW DELHI

Other Appellants and Respondents as per Annexure

Copy To
13Advocate(s) / Consultant(s):

Priyadarshi Manish,Adv
O-18, LOWER GROUND
FLOOR, JANGPURA
EXTENSION, N DELHI-14
I.P. EXTENSION,
PATPARGANJ,
DELHI

14 Additional Party's Name & Address :
15 Bar Association, CESTAT, Delhi
16 Director Publications, Customs, Excise. I.P. Estate, Delhi
17 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
18 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
19 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
20 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
21 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
22 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
23 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
24 C.D.R. **25** Office Copy **26** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
COURT NO. III

Custom Appeal No. 56642,56659-56661, 56664/13 56666/2013-Cus[DB]
Custom Appeal No. 2805/2012

[Arising out of Order-In-Appeal No. CC(A)CUS/ICD/161/2012 Dated 31.05.12 passed by CC, New Delhi]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Manmohan Singh, Technical Member

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

CC, New Delhi — Appellant

Vs.

M/s. Asian Copiers and others — Respondents

Appearance:
Shri P.K. Sharma, AR for the Appellant
Shri Priyadarshi Manish, Advocate for the Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Manmohan Singh, Technical Member

Date of Hearing: 27.06.2013
Date of Decision:

Interim **ORDER NO** 183-188/2014

Per Ms. Archana Wadhwa:

The short issue involved in the present appeals of the Revenue against the order passed by Commissioner (Appeals) is as to whether the Digital Multifunction Printing and copying Machines (Old and used), imported prior to 05.06.2012 are hit by Para 2.17 of the Foreign Trade Policy, which placed the same under the restricted category with effect from 05.06.2012. It is seen that prior to the said date, only photocopier were listed under the said Para 2.17 of the Foreign Trade Policy for the purposes of requirement of licence.

2. Commissioner (Appeals) has granted relief to the respondent by observing as under Para 5 of Commissioner (Appeals):-

> "The issue of requirement of license with reference to Para 2.17 of Rules (supra) has been amply addressed to in the case of M/s Shivam International and M/s Sree Maa Enterprises v. C.C. Cochin by CESTAT, Banglore vide final order No. 4052416/2011 dated 27.06.2011, wherein it was held that the subject goods do not fall under the restriction imposed. This case laws, it is observed has since, attained finality. It is admitted that the imported goods are not merely photocopy machines but are having both printing, copying machines while relying upon the HSN explanatory goods to sub-heading 84.43. It is further an admitted fact in the bill of entry itself and also by the referred Chartered Engineer Certificate that the impugned goods are multi functional in description and nature."

3. The Revenue's appeal is on the ground that the decisions relied upon by Commissioner (Appeals) were duly taken into account by the Tribunal in the case of Unitech Enterprises Vs. Commissioner of Customs reported in 2012 (279) ELT-236 laying down that inasmuch as Para 2.17 of Foreign Trade Policy restricts photocopier machine and inasmuch as Digital Multifunction Printing and Copying Machine are another category of Photocopier Machine, the same should also held to be falling under restricted category, requiring a import licence.

4. After hearing both the sides, we find that the issue is no more res integra and stand settled by a recent decision of the Tribunal vide

which the appeal filed by the Revenue was rejected. In the case of CCE, Delhi M/s. Best Mega International, final order No. 55993/2013 dated 21.03.2013, the Tribunal took into account the Chennai Bench decision in the case of Unitech Enterprises, strongly ~~directly~~ relied upon by the revenue and held that inasmuch as the issue stands subsequently decided by the Hon'ble Madras High Court in two decisions, it is the decision of the High Court which are required to be followed. It is seen that the Hon'ble Madras High Court in the case of Anand Impex reported in 2012 (281) ELT-178 (Mad.) as also in the case of Sai Graphic System Vs. Commissioner of Custom, Chennai reported in 2013 (289) ELT-423 (Mad.) has held that there was no restriction on import of old and used Digital Multifunction Printing and Photocopying Machine prior to 06.06.2012. Accordingly the Tribunal in the above referred case of CCE, Delhi M/s. Best Mega International, has taken note of the said to decision of the Hon'ble High Court as also Minutes of the Meeting of Technical Review Committee of Ministry of Environment and Forests held on 16.11.2011 and has held as under:-

> *"The goods imported are old and used Digital Multifunction Printing and Copying Machines covered by sub-heading 84433100. In terms of the Chartered Engineer Certificate, the remnant life of the machines is more than 5 years and the same are not e-waste fit to be discarded. During the period of dispute, para 2.17 of the Foreign Trade Policy mentions the restricted category of second hand capital goods and the same mentioned only photocopier machines as one of the items which could not be Imported in old and used conditions without an import licence. The term Digital Multifunction Printing and Copying Machines was added in para 2.17 of the Foreign Trade Policy only w.e.f. 05.06.2012. The point of dispute is as to whether during period prior to 05.06.2012, which is the period of dispute in this case, old and used Digital Multifunction Printing and Copying Machines could be imported without licence or not.*
>
> *We find that from the Minutes of the Technical Review Committee of Ministry of Environment and Forests held on 16.11.2011 which have*

been obtained by the Respondent from the Ministry under Right of Information Act, it is clear that Government itself treated Digital Multifunction Printing and Photocopying Machines as different from Photocopying Machines and for this reason only, felt the need to mention the old and used Digital Multifunction Printing and Photocopying Machines in para 2.17 of the Foreign Trade Policy, as items restricted for import and accordingly w.e.f. 05.06.2012 para 2.17 of the Foreign Trade Policy was amended by adding old and used Digital Multifunction Printing and Photocopying Machine, in this para as the item restricted for import. It is, therefore, clear that during the period prior to 05.06.2012, the old and used Digital Multifunction Printing and Photocopying Machines could be import without any licence. We find that same view has been taken by Co-ordinate Bench of the Tribunal in case of Shivam International (Supra) and also by the Hon'ble Madras High Court in cases of Anand Impex (Supra) and sai Graphic System V/s Commissioner of Custom, Chennai reported in 2013 (289) ELT-423 (Mad.). In view of this position and also keeping in view the fact that the Chartered Engineer Certificate has certified that the goods imports are not e-waste, we hold that goods, in question, were not restricted for import and as such no import licence was required for their import. Therefore there is no infirmity in the impugned order setting aside the confiscation of the goods under section 111(d) of the Customs Act."

5. Inasmuch as the issue stands decided by a detailed order of the Tribunal, which has followed the High Court decisions, we find no reason to take a different view. Accordingly all the appeals filed by the revenue are rejected.

(Pronounce in the open Court on................................)

4/7/13

(Archana Wadhwa)
Member (Judicial)

Separate order written.

(Manmohan Singh)
Member (Technical)

Jyoti*

M/s Asian Copier and others

Per: Manmohan Singh

Respondents are not in cross objection

6. I have gone through the draft order prepared by ld. Member (Judicial) wherein appeals of Revenue have been rejected holding that old and used photocopiers imported were not restricted goods not requiring any license for importation relying on the decision of Tribunal in the case of CCE Delhi Vs. Best Mega International reported in 2013 (293) E.L.T. 243 (Tri. Del.). The head note of the reported decision reads as under:

> *"Goods imported without import licence - Import of old and used 'Digital Multifunction Printing and Copying Machines' covered by sub-heading 8443 31 00, different from restricted item 'photocopy machines' and allowed import without license during relevant period - Impugned goods added in restricted category after period of import under Para 2.17 of Foreign Trade Policy with effect from 5-6—2012 on recommendation of Technical Review Committee of Ministry of Environment, treating them as different from photocopying machines - Chartered Engineer's Certificate certifying impugned goods not e-waste requiring licence for import."*

7. The reported decision does not show date of import when law applicable on the date of import is decisive to reach to conclusion whether the old and used photocopier is restricted goods. Therefore I do not agree with the conclusion drawn by the ld. judicial member in this batch of appeals of Revenue when the date of import in each case was not dealt specifically nor the law applicable to each case of import at the relevant point of time was discussed in each case. As date of each case of import was not dealt in the draft order, I propose to

record my separate order in the following paragraphs depicting the date of importation, declared value, Redemption fine and penalty imposed in adjudication in each of the appeals as under:

Sl. No	Bill of Entry No. and date	Importer Assessee	Appeal No.	Declared Value	Assessed value based on Chartered Engineer Certificate	RF (Rs. in lakhs)	Penalty (Rs. in lakhs)
1.	5030196 dt.27.10.11	M/s Asian Copiers	C/2805/13	Rs.16,23,639.40	Rs.18,60,220	Rs. 4.00 lakhs	Rs.2.00 lakhs
2.	6429721 dt.31.02.12	M/s Best Mega International	C/56642/13	Rs.22,50,559	Rs.24,27,153/-	Rs.5,33,900	Rs.2,66,900/-
3.	6416486 dt.30.3.12	Pearl Enterprises	C/56666/13	Rs.30,37,410/-	Rs.33,44,178	Rs.7,02,400	Rs.3,34,500/-
4.	5584917 dt.27.12.11	M/s Prius Technologies	C/56661/13	Rs.30,64,935/-	Rs.33,48,328/-	Rs.7,03,000	Rs.3,35,000/-
5.	6416490 dt.30.3.12	Sunrise Enterprises	C/56660/13	Rs.30,03,201/-	Rs.30,64,935/-	Rs.6,83,700	Rs.3,25,600/-
6.	5584637 dt.27.12.11	Best Mega International/ Unistar Enterprises	C/56659/13	Rs.34,41,270/-	Rs.42,55,721	Rs.8,93,700	Rs.4,25,600/-
7.	5584635 dt.27.12.11	Asian Copier	C/56664/13	Rs.29,56,413/-	Rs.31,87,157/-	Rs.7,01,000	Rs.3,19,823/-

8. The draft order prepared by ld. Judicial Member has not taken the ground of appeal of Revenue for consideration. The summary of the grounds are as under:

1. Import of second hand i.e. old nd used digital multifunction print and copying Machines is restricted under Para 2.17 of Foreign Trade Policy 2009-2014.
2. In the case reported in 2012-TIOL-976-CESTAT-MAD, the CESTAT Chennai has held as under:-The dispute relates to confiscation, imposition of fine and penalty on import of used photocopiers which require licence in terms of Para 2.17 of the FTP.
3. Before this Tribunal, the appellant relied on the ratio of Shivam International (2011-TIOL-851-CESTAT-BANG) wherein the Tribunal had held that import of used Digital Multifunction print and Copier Machines was not barred by Para 2.17 of Foreign Trade Policy. However, the Tribunal held that the above decision was rendered by incorrect application of the decisions of the Supreme Court in Xerox India case-(2010-TIOL-97-SC-

CUS). The Tribunal differed with the ratio of Shivam International Judgement on the following grounds:-

(i) Bangalore bench in the case of Shivam International had wrongly placed reliance on the Supreme Court's decision in the case of Xerox India. In the cited case, the Supreme Court has decided the issue of classification of multifunctional machines for the purposes of charging customs duty. This related to a case of import made during March, September to November, 1999. This decision was relevant to the period during which the impugned goods in that case were imported. **Subsequently, the Tariff nomenclatures has changed and in the present case the impugned goods were being classified under Heading 84433100 for the Customs duty purposes. The ratio of the said decision was no longer relevant to decide the classification of the impugned goods when the new Heading 84433100 completely described the product and there was no question of choosing one entry over the other.**

(ii) Supreme Court in the case of Atul Commodities (2009-TIOL-24SC-CUS) held that the import of photocopying machines stand restricted on or after 19.10.2005. Neither in the amending Notification no. 31/2005 dated 19.10.2005 nor in the said judgement of the Supreme Court, there was any reference to the import restriction being limited to photocopying machines falling under any particular Tariff item. The language of the amending notification clearly says that import of capital goods shall be allowed freely, however, second hand personal computers/laptops and photocopier machines etc. will only be allowed against the licence issued in this behalf. **It was, therefore, very clear that secondhand photocopier machines of all kinds have been placed under the restricted category. The restriction is not with reference to any particular Tariff item.**

(iii) There was no warrant to read the expression appearing in the DGFT Notification as conforming to any one particular expression used in the Tariff as these expressions were not identical and secondly, no Tariff item was mentioned in the DGFT Notification. The expression "photocopier machines" used in the context of amendment made to the EXIM policy by Notification No. 31/2005, which has been issued in the public interest to mean all kinds of photocopiers irrespective of its classification.

(iV) These multifunction machines are known as photocopier machines found almost on every street in a city. These multifunction machines are on the Government of India's DGS&D rate contract list of photocopier machines.

9. The grounds of appeal of revenue raises the issue whether multi-functional printing and copying machines are classifiable under 8443.2100 as claimed by Revenue or such goods classifiable under 8443.3990 as claimed by the Respondent assesses and import thereof required licence. Law relating to classification, object of section 11 of Customs Act, 1962 and different notifications issued under different statute and clarification issued by CBE&C/DGFT have not been considered in the draft order but hold that the good in question were freely importable without licence, not being restricted goods.

10. The case of Best mega International - 2013 (293) ELT 243 in (Tri-Delhi) related to import of Canon Digital multifunction printing and copying machine claiming classification thereof by assessee under T.H. 8443.3990 while Revenue claimed classification of the same under TH: 8443.3100. Para 4 of the order classifies the position as under:

> "Shri Priyadarshi Monish, Ld. Counsel for the respondent pleaded that the goods imported are Digital Multifunction Printing and Copying Machines classifiable under sub-heading 8443.31 00 of the Tariff and the same are different from the electrostatic photocopying machines covered by sub-heading 8443.39 30, that it is the old and used electrostatic photocopying machines which were restricted."

11. As is apparent from above paragraph, goods imported were old and used digital multifunctional printing and copying machine and

Tribunal was posed with the question of classification. But real issue involved as is apparent from the facts of that case is whether during the period prior to 5-06-2012 old and used machine could be imported without license. But Tribunal arrived at decision on mere classification without examining applicability of the law prevailing on relevant date of import.

12. It is noticeable that in M/s Unitech's case reported in 2012 (279) ELT 236 (Tri. Chennai), Tribunal recorded in Para 11 that upon introduction of new heeding 8443.3100, there in complete description of the goods and there shall be no question of choosing of any other entry. The said entry covers machine which perform two or more of the function of printing, copying or facsimile transmission capable of connecting to an automatic data processing machine or to a network. As is held by the Apex Court in Atul commodities 2009 (235) ELT 385 (S.C.), import of photocopier machine was restricted on or after 19.10.2005 in terms of amending notification No. 13/2005-CR dated 19.10.2005. Hon'ble Court held that second hand photocopier machine of all kinds, were subjected to licensing restrictions after 19.10.2005. The restriction imposed by the notification was not with reference to HSN based tariff items but licensing requirement was extended to old and used photo copy machine of any description falling under any tariff entry. When the Central Government issued restriction notification in public interest, such restriction is applied to all kinds of second hand photocopier machines in general but not limited to any particular type of photocopier machine. Accordingly, nothing can be inferred that restriction related to a particular type of goods.

13. The Exim Policy by notification No. 31/2005 dated 19.10.2005 encompassed photocopies of all kind to be restricted good. It does not stand to reason that DGFT notification No. 31/2005 dated 19.10.2005 does not impose restriction on photocopier of different types. Notification No. 31/2005 dated 19.10.2005 is reproduced below for ready reference.

NOTIFICATION NO. 31/2005, DT. 19/10/2005

Amendments in para 2.17 - Second Hand Goods of Foreign Trade Policy, 2004-09

S.O. (E) In exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.3 of the Foreign Trade Policy, 2004-09 as amended from time to time, the Central Government hereby makes the following amendments:

1. The Paragraph of Para 2.17 will be amended to read as follows:

Import of second hand capital goods, including refurbished/ re-conditioned spares shall be allowed freely. However, second hand personal computers/laptops, photocopier machines, air conditioners, diesel generating sets will only be allowed against a license issued in this behalf.

This issues in public interest.

(K.T. Chacko)
Director General of Foreign Trade
And Ex-Officio Additional Secretary to the Govt. of India

14. There is nothing to presume that every case is a case of import after 5.6.2012 as that was presumed in the Best Mega International case reported in 2013 (293) ELT 243 Tri.-(Delhi) without reference to actual date of import. To clarify the situation in the present batch of appeals, the data depicted in the chart at the outset by me shows the date of importation in each case for decision on the basis of law applicable to such importation.

15. It is observed from the Chart in proceeding paras that all imports in present cases relate to period prior to 5.6.2012. Decision in each case depends on its own fact and context taking into

consideration DGFT notification and S.C. Judgement in Atul Commodities case 2009 (235) E.L.T. 385 (S.C.)

16. Import of goods to India is governed by Customs Act, 1962, in addition to any other law that may govern such import. Law of Customs tests the goods imported for permissibility of entry thereof into India according to the provisions therein. Import may be subject to restrictions, prohibitions or open. Apart from this, proper classification of import and valuation thereof for the levy is one of the requirements of the Customs law. The goods imported may also be notified to be exempt from levy of duty fully or partly according to legislative mandate. Therefore Customs Authority is independent of its jurisdiction defined by the law of Customs. They are Administrator of Customs law vested with power to judge applicability of provisions of any other law relating to the goods imported or exported in addition to the administration of law of Customs. He is the best judge in the customs station to allow, prohibit or restrict entry of the imported goods into the territory of India on the basis of law governing the imports. Construction of the provision of customs law in any manner to denude the Customs Authority from exercise of his power shall defeat purpose of section 11 of the Customs Act, 1962. Accordingly Customs law cannot be given go by at that law continues to have its independence

17. Import of the second hand photocopier was subject to restriction. Those were restricted goods as early as 19.10.2005 by Notification No. 31/2005. In addition to such restriction, the Hazardous

Waste (Management Handling and Transboundry) Rule of 2008 additionally recognized such goods w.e.f 5.6.2012 to be hazardous which was observed in the judgment of Apex Court in Atul Commodities case 2009 (235) ELT 385 (S.C.). That position remained unimpaired till stated otherwise by notification of 5.6.2012 under different statute

18. The Hazardous waste Rules are in addition to Customs law but not a substitute thereof. Therefor CBE&C in its Circular No. 27/2011-Cus dated 4.7.2011 classified as under:

> 2. As the field formations are aware, the import and export of hazardous wastes is regulated by the Hazardous Waste (Management, Handling and Transboundary) Rules, 2008. Chapter IV of these Rules deals with import and export of hazardous wastes and Rule 13 thereof states that import of such wastes shall be allowed only for recycling, or recovery or reuse and not for disposal. Further, Rule 14 thereof provides that import and export of hazardous wastes specified in Schedule III shall be regulated in accordance with the conditions specified therein. A perusal of the said Schedule III shows that entries at A1180 and B1110 are relevant for electrical and electronic assemblies.
>
> 3. In this regard, the administrative Ministry viz. Ministry of Environment and Forests has been consulted and they have confirmed that items at A1180 of the said Schedule III relating to waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries etc. require Prior informed Consent. It is also confirmed that items at B1110 of the said Schedule III can be imported with permission from Ministry of Environment and Forests. This entry includes electrical and electronic assemblies (including printed circuit board electronic components and wires) destined for direct re-use and not for recycling or final disposal. The Ministry of Environment and Forests has also confirmed that imports of second hand computers would require the permission of that Ministry.
>
> 4. In view of the above, the Board desires that the field formations should carefully and strictly implement the provisions of Hazardous Waste (Management, Handling and Transboundary) Rules, 2008. In particular, it should be noted that all imported goods falling within the purview of entry B 1110 of Part B of Schedule III of the said Rules, indicating second hand computers, would require the permission of the Ministry of Environment and Forests for import into India. It merits mention that the field formations should also refer to Rule 17 of the said Rules that treats contravening imports as illegal traffic requiring the importer

to re-export the wastes at his cost within 90 days from the date of arrival. We must ensure that India does not become a destination for dumping junk electronic products.

19. Therefore while import is basically governed by Customs law, applicability of other laws is looked into by virtue of provision of S.11 of the Customs Act 1962. Accordingly, it may be stated that what that is restricted or prohibited in terms of Section 11 of Customs Act 1962 that holds the field to deal the imported goods. Object of every notification is defined by the statute under which that notification is issued. Every statute having its own object unless otherwise specifically stated cannot be conceived to be either superseded or overrided by any other statute. Therefore hazardous waste rule serves the purpose of environment protection and the customs law being a fiscal statute operates in its own field in addition to the applicability of various other statutes as required by Section 11 of the Customs Act 1962. No other statute can be considered to make the Customs law redundant and otiose. Accordingly classification in all these appeals is to be made according to the spirit of Apex Court judgment in Atul's case (supra) and interpretation in Unitech case read with Tariff entries as well as Board's clarification. Consequently revenue's contention that old and used multifunctional copying and printing machines are covered under broader classification and DGFT's notification and thus restricted, is upheld and Revenue succeeds in all the appeals.

20. In the result all the appeals of Revenue are allowed.

31.3.2014

(MANMOHAN SINGH)
MEMBER (TECHNICAL)

K. Gupta

Difference of Opinion

Whether the Digital Multifunction printing and photocopying machines imported prior to 6.6.2012 do not require a license for importation of the same as held by Member (Judicial) or the same require a license for importation as held by Member (Technical) ?

31.3.2014
(Manmohan Singh)
Member(Technical)

31/3/14
(Archana Wadhwa)
Member(Judicial)

ss

(Pronounced)

2/4/14

Date - 7/11/2014

CC, New Delhi Vs. Asian Copiers VCs.

Per Rakesh Kumar:

21. Heard both the sides on the point of difference.

22. The point of difference which has been referred for decision is as to whether second hand old and used digital multifunction print and copying machines (hereinafter ~~referred to as~~ "multifunction machines") could be imported prior to 5.6.2012 or whether the import of such second hand machines required an import licence.

23. Shri Sanjay Jain, ld. DR, relying upon the Tribunal's judgement in the case of **Unitech Enterprises Vs. Commissioner of Customs** reported in **2012 (279) ELT 236,** pleaded that that even during the period prior to 5.6.2012, the second hand capital goods, whose import was restricted covered "photocopier machines", that multifunction machines, as discussed in detail in the Tribunal's judgement in the case of **Unitech Enterprises** (supra), are photocopier machines and that in view of this, even during the period prior to 5.6.2012, the import of second hand multifunction machines required an import licence. He, therefore, pleaded that it is the order recorded by the Hon'ble Member (T), which is the correct decision.

24. Shri Priyadarshi Manish, Advocate, and Ms. Anjali, Advocate, ld. Counsels for the respondent, pleaded that in all these cases, the respondent had imported second hand multifunction machines during the period prior to 5.6.2012, that multifunction machines are classifiable under sub-heading 8443 3100 while the "electrostatic photocopying apparatus operated by reproducing the original image via and intermediate onto the copy (indirect process)" are classifiable under sub-heading no.84433930, that during the period prior to 5.6.2012, in terms of para 2.17 of the Exim Policy, while import of the second hand capital goods will be

allowed freely, second hand personal computer, photocopier machines, air conditioner and DG sets shall be allowed only against an import licence, that during the period prior to 5.6.2012, para 2.17 did not cover the "Digital Multifunction Print and Copier Machines" and this item was made a restricted item for import only w.e.f. 05.06.2012, that as is clear from the minutes of 24th meeting of Technical Review Committee held on 16.11.2011, a copy of which has been placed on record, the committee recommended to the DGFT for the necessary amendment to restrict the import of second hand Digital Multifunction Print and Copier Machines, that in view of the recommendation of the Technical Review Committee para 2.17 of the Exim Policy was amended w.e.f. 05.06.2012 to specifically include the second hand Digital Multifunction Print and Copier Machines, that in view of this during the period prior to 5.6.2012, the old & used/ second hand multifunction machines could be freely imported and no import licence was required, that this issue was considered in detail by the Divisional Bench of the Tribunal in the case of **Shivam International reported in 2012 (2860 ELT 545 (T-LB)** wherein the Tribunal after considering para 2.17 of the Exim Policy as it stood during the period prior to 5.6.2012 and also the HSN Explanatory Notes to Heading 84.43, held that multifunction machines are different and distinct from photocopying machines and since the import of second hand multifunction machines was restricted w.e.f. 5.6.2012, during the period prior to 5.6.2012, import of these goods did not require any import licence, that the Hon'ble Madras High Court in the case of **Sai Graphic Systems Vs. CC, Chennai reported in 2013 (289) ELT 423 (Mad)** has held that during the period prior to 5.6.2012, the second hand multifunction machines were freely importable and no import licence was required and that it is only w.e.f. 5.6.2012, that their import became restricted, that Hon'ble Madras High Court in the case of **Shrasti Digital Solution vs.**

Commissioner of Customs reported in 2013 TIOL 359- HC-MAD-Cus, relying upon its earlier judgment in case of **CC vs. City Office Equipment** (judgment dt. 14.03.2013 in W.A. No. 890/2012) has held that even ~~if~~ after the amendment of para 2.17 of the Exim Policy w.e.f. 05.06.2012 second hand multifunction machines became restricted for import only ~~of~~ after the amendment to para 2.33 of the Handbook of Procedures, that though the Tribunal in the case of **Unitech Enterprises Vs. CC reported in 2012 (279) ELT 236 (T-Ch)** has expressed a contrary view and has held that even during the period prior to 5.6.2012 import of second hand Digital Multifunction Print and Copier Machines required an import licnece, it is settled law that judgement of a High Court is binding on the Tribunal and that in view of this, it is the order recorded by the Hon'ble Member (J), which is correct.

25. I have considered the submissions from both the sides and perused the records.

26. In this case, the import of second hand multifunction machines have been made during the period prior to 5.6.2012 and the point of dispute is as to whether during that period, import of second hand multifunction machines required a specific import licence in terms of para 2.17 of the Exim Policy, as the same stood during that period. There is also no dispute that while the multifunction machines are classifiable under sub-heading 8443.3100, the "electrostatic photocopying apparatus operated by reproducing the original image via and intermediate onto the copy (indirect process) ~~is~~ are covered under sub-heading 84433990. During the period w.e.f. 5.6.2012 para 2.17 of the Exim Policy was as under:-

> **"For Second Hand Goods, the Import Policy Regime is given as under:-**

	Import Policy	Conditions, if any
1. Second hand capital goods group		
(a) Restricted Category:		
(i) Personal computers /laptos (ii) Photocopier machines/Digital multifunction Print & Copying Machines. (iii) Air Conditioners (iv) Diesel generating sets.	Restricted	Allowed to be imported only as per provisions of FTP, ITC (HS), HBV v1, Public Notice or an Authorization issued for import of the specified second hand item.
(b) Free Category:		
(i) Refurbished/re-conditioned spares of capital goods.	Free	Subject to conditions specified in para 2.33 of HBPv1.
(ii) All other second hand capital goods.	Free	
II. **All other second hand goods.**	Restricted.	

Para 2.17 of the Exim Policy during period prior to 05.01.2012 was as under:-

"All second hand goods, except second hand capital goods shall be restricted for import, and may be imported only in accordance with the provisions of FTP, ITC (HS), HBPv1, Public Notice or an Authorisation issued in this regard.

Import of second hand capital goods, including refurbished/re-conditioned spares shall be allowed freely. However, second hand personal computers /laptops, photocopiers machines, air conditioners, diesel generating sets will only be allowed against a licence".

27. Thus, it will be seen that while during the period prior to 5.6.2012, para 2.17 mentioned among other items, the second hand photocopier machines as the

items which could be imported only against import licence, During the period w.e.f. 5.6.2012, in addition to the second hand photocopier machines, the second hand multifunction machines were also put in the restricted category. The point of dispute is as to whether the term 'photocopier machines' also covered the multifunction machines. Though a Division Bench of the Tribunal in the case of **Unitech Enterprises (supra)** has held in para-13 of the judgement, that the word 'photocopier machines' also covers the Digital Multifunction Print and Copier Machines , this issue has also been considered by the Hon'ble Madras High Court in the case of **Anand Impex Vs. Commissioner reported in 2012 (281) ELT 179 (Mad.) and Sai Graphic Systems (supra)** and in both ~~the~~ these judgements, the Hon'ble High Court has held that the import of second hand **multifunction** machines became restricted only w.e.f. 5.6.2012 and before 5.6.2012, these second hand capital goods could be imported without any import licence. When on a particular issue, there is a judgement of particular High Court and there is no contrary judgement of any other High Court, that judgement of the High Court is binding on the Tribunal.

28. Moreover, it is seen that amendment to para 2.17 of the Exim Policy so as to specifically include the import of second hand Digital Multifunction Print and Copier Machines in the restricted category had been preceded by a recommendation in this regard made by the Technical Review Committee held on 16.11.2011 in the minutes of its meeting. In this regard para-5 of the minutes of the meeting are reproduced below:-

> "5. It was also informed that in the Exim Policy, there is no specific mention about multifunction devices. There are separate ITHS codes for multifunction devices and the photocopier machines. While discussing the issue, DIT representative mentioned and that the basic function of multifunction devices is for photocopying, as the import of photocopier machines is restricted, therefore, import of multifunction

devices also needs to be placed in the same category in the policy. All the members agreed that DGFT may be requested to include the import of multifunction devices under the restricted list."

Thus, the Technical Review Committee of the Ministry of Environment and Forest in meeting held on 16.11.2011 considered the photocopier machines and multifunction machines as different goods, though with similar function and recommended putting restrictions on import of second hand multifunction machines. In fact, if the word 'photocopier machines' also covered the "Digital Multifunction Print and copying machines", there would have been no necessity for the DGFT to specifically ~~under~~ include the second hand multifunction machines in para 2.17 of the Exim Policy.

29. In view of the above discussion, I agree with the decision of the Member (Judicial). The point of difference referred stands answered as above.

(Rakesh Kumar)
Member (Technical)

Ckp.

FINAL ORDER No. 50657-50662/2015

Per: Archana Wadhwa:

In view of the Majority Order, all the appeals filed by the Revenue are rejected.

B.S.V. MURTHY
MEMBER TECHNICAL

ARCHANA WADHWA
MEMBER JUDICIAL

5/2/15

(Pronounced)

18/2/15

18/2/15