

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

~~SINGLE~~ MEMBER APPEAL BRANCH

Appeal No. C/365 /2005 – CUS.

Date 03/11/2008

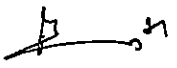
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. DIGITECH PHOTOCOPIER
1024-P, SECTOR-7 EXTENSION, NEAR VIVEKANAND
ACADEMY, GURGAON (HARYANA)
M/S. DIGITECH PHOTOCOPIER

C.C., MUMBAI

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. C/551/08-CUS. DATED 16.06.08
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(~~8th~~ Appeal Branch)

Copy to :

1. Respondent

C.C., MUMBAI, IMPORT,
NEW CUSTOM HOUSE, MUMBAI – 400001.

2. Adv. / Consult MR. K.K. ANAND, ADV.,
A-5, BASEMENT, LAJPAT NAGAR-III,
NEW DELHI – 110 024.

3 S.D.R

4 J.C.D.R.

5 Bar association, CESTAT, New Delhi

6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7 M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT. U.P.

10 Nidheshak publications, I.P.Estate, new Delhi

11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kunj, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 Office Copy

16 Guard file


Assistant Registrar
(~~8th~~ Appeal Branch)

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

CUSTOMS APPEAL NO. 365 OF 2005

[Arising out of Order-in-Appeal No. 80/2005-MCH dated 4.2.2005
passed by the Commissioner of Customs (Appeals), Mumbai]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

M/s. Digitech Photocopier

Appellants

Vs.

C.C., Mumbai

Respondent

Appearance:

Shri K.K. Anand, Advocate for the appellants;
Shri Amit Jain, Departmental Representative for the Revenue.

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 16th June, 2008

FINAL ORDER NO. C/551/08 dated 16/6/08

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order whereby value of imported photocopier machines and their components were enhanced and goods were confiscated as the second-hand capital goods are restricted item.
3. Contention of the applicants in respect of enhanced value is that goods in question are second-hand goods and as per examination report, year of manufacture is not available and goods were not found re-conditioned goods. Contention is that transaction value, as declared by the appellants, was rejected without any evidence. The price of second-hand goods depends on the condition and their use. Therefore, enhanced value is not sustainable. The examiner opined that the goods were of higher value. Fair value as per appraiser was Rs. 13, 70, 000/-. The adjudicating authority also ^{took} taken into consideration the import of similar goods made at other ports and enhanced the value to Rs. 15,03,228/-. In respect of two models, value, was enhanced on the ground that the goods are being imported at higher value at different ports.
4. The Revenue also submitted that the appellants accepted enhancement of the value at the time of import. Hence, now they

cannot challenge the enhancement. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Primella Sanitary Products Pvt. Ltd. Vs. CCE, Goa, reported in 2005 (184) ELT 117 (SC), and in the case of Akash International vs. C.C., Kolkata, reported in 2006 (197) ELT 200 (Tri. – Del.). Both the sides also argued on the issue of confiscation. The case of the appellants is that the goods are capital goods and, therefore, not liable for confiscation as the same are not restricted item.

5. On the issue of confiscation we find that Larger Bench of the Tribunal in the case of Atul Commodities (P) Ltd. Vs. C.C., Cochin & Hyderabad, reported in 2005 (184) ELT 135 (Tri.-LB) has held that the goods are capital goods and not liable for confiscation but the Hon'ble Kerala High Court reversed the view taken by the Larger Bench in the case of C.C., Cochin vs. Atul Commodities Pvt. Ltd., reported in 2006 (202) ELT 392 (Ker.) and held that second-hand photocopiers not freely importable as capital goods. In view of the above decision of the Hon'ble High Court we find no infirmity in the impugned order whereby goods were held liable for confiscation. In respect of enhancement of value of goods on the basis of comparable goods imported at higher value, we find that the present goods are second-hand goods and as per report of the appraiser year of manufacture is not available and the goods are not re-conditioned. As the year of manufacture is not available in respect of goods in dispute, therefore,

enhancement of value of on the basis of import of the same goods at higher value is not sustainable. In case transaction value is not accepted by the Revenue, then onus is on the Revenue to show fair value of the goods.

6. Contention of the Revenue is also that the appellants accepted the enhanced value, therefore, he has no right to challenge the same. We find ^{from the} ~~that~~ correspondence between the appellants and the Asst. Commissioner of Customs ^{by the Appellants} vide letter dated 20.1.2004 ~~the appellants~~ ^{find} informed the Revenue that they had already suffered detention charges of Rs. 2,42,000/- and demurrage of Rs. 25,000/-. In these circumstances they were forced to accept the decision taken by the authorities. Since the goods were under detention, therefore, acceptance of value as per revenue does not debar the appellants to challenge the same. In the case of Primella Sanitary Products Pvt. Ltd. (supra) the assessee made the concession before the Tribunal as well as before the Commissioner (Appeals). The Hon'ble Supreme Court held that when concession is made, manufacturer is bound and concession cannot be withdrawn. In the case of Akash International the Revenue shown the value of the same goods or similar goods import at other Customs House at higher value and in view of this evidence the importer accepted the enhanced value of the goods. The facts in the present case are different. In the present case year of manufacture is not available on the goods. Therefore, comparison of goods with the goods imported at

other ports at higher value is not sustainable. In these circumstances impugned order regarding enhancement of value is not sustainable. Hence, set aside.

7. As we have set aside the enhancement of value redemption fine is reduced to Rs. 1,50,000/- from Rs. 3 lakh and penalty is reduced to Rs. 75,000/- from Rs. 1,50,000/-. Appeal is disposed of as indicated above.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 17th June, 2008
RK