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

Appeal No. C/485 /2008

Date 11/08/2008

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

To :
M/S A.M.IMPEX
B-188, VASANT KUNJ ENCLAVE,
NEW DELHI.

2. PRIYADARSHI MANISH,
FLAT NO. 27,
VIDYUT NIKUNJ,
P

M/S A.M.IMPEX

Appellant

C.C.E. DELHI IV

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. C/304/2008-Custom dated 5.8.08

passed by the Tribunal under Section 129. (B) of the Customs Act.1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar

(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.
2. Adv. / Consult Priyadarshi Manish,Flat No.27, Vidyut Kunj,
Plot No.112, I.P. Extn..Patparganj, Delhi

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 Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony, New Delhi -
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), Thyagaraya Road, T. Nagar,Chennai 60017
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

(Customs Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Customs Appeal No. 485 of 2008

[Arising out of Order-in-Appeal No. 8/Cus/Appl/DLH-IV/2008 dated 5.6.2008 passed by Commissioner of Central Excise (Appeals), Faridabad, Delhi I]

For approval and signature:
Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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?	:	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

M/s. A M Impex — Appellant

Vs.

Commissioner of Central Excise & Customs, Faridabad, Delhi I — Respondent

Appearance: Mr. Priyadarshi Manish, Advocate for the Appellant
Mr. R.K. Verma , DR for the Respondent

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 5.8.2008

Final **ORDER NO. C/304/08**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No. . 8/Cus/Appl/DLH-IV/2008 dated 5.6.08.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The appellants imported 93 old and used photocopier machines of different brands(mostly cannon) and declared the value of Rs.9,63,282/- supported by invoices. The import of old and used photocopier machines required licence and they did not have the licence.

b) As per the practice followed in assessing old and second hand machinery, a Chartered Engineer was engaged to examine the consignments. He after examination of the consignments machine-wise gave a detailed report by Certificate No. DKT/CE/54/07-08 dated 5.3.08 wherein he certified that the value declared by the appellants is fair and reasonable. While giving the report, he has gone into the relevant details like model number, year of make, present condition of the machines and the fact that they were not reconditioned, the residual life left over.

c) The original authority took note of the report of Chartered Engineer and followed the value declared in respect some photocopiers but ignored the same while valuing many of the photocopiers and in respect of those photocopiers, he relied on higher value recorded in NIDB data. He accordingly, enhanced the value to Rs.16,73,467/-; he ordered confiscation of the goods and imposed a redemption fine of Rs. 17,25,829/-. He also imposed a penalty of Rs.2,00,000/-. The confiscation was ordered and penalty imposed mainly on the ground that the appellants have not obtained the required licence for the import of photocopiers.

d) The Commissioner (Appeals) has concurred with the order of the original authority.

4.1. Learned Advocate for the appellants submits that it is incorrect to say that they have accepted the enhancement of the price; they have merely waived the issue of written show cause notice as they were requiring the consignments urgently. However, as the value has been steeply enhanced and very heavy redemption fine has been imposed, they could not take release of the consignment from the Customs.

4.2. He is not contesting the issue that licence is required for import of photocopier as different High Courts have taken different views as to whether the photocopiers can be considered as capital goods and whether licence is required for import or not. He fairly concedes that in the case of Commissioner of Customs, Cochin vs. Atul Commodities Pvt. Ltd. [2006 (202) ELT 392 (Ker) Hon'ble High Court of Kerala has held that licence is required for import of the second hand photocopiers under EXIM policy 2002-2007.

4.3. Regarding the value, he submits that the authorities below were not correct in ignoring the Chartered Engineer's certificate and rely on NIDB data in respect of old and used photocopiers. He submits the value declared by them is genuine price.

4.4. He submits the redemption fine imposed is exorbitant. He also submits that they have incurred heavy demurrage amounting to Rs.3,00,000/- so far.

5. Learned DR reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions made from both sides. As licence is, admittedly, required for import of photocopiers, their confiscation adjudged is upheld. However, we hold that the enhancement of the value is not justified. We feel that no two consignments of second-hand photocopiers can be easily compared and therefore to adopt the value based on NIDB data for imported consignments with actually comparing the conditions of the second-hand photocopiers in cases covered by NIDB to those in the present case is not proper. We find that neither the original authority nor Commissioner (Appeals) has given any reason as to overlook the detailed report of Chartered Engineer which contained the relevant details machine-wise and certified that the value declared was reasonable and fair. Therefore, we hold that the declared value which was found to be fair and reasonable by the Chartered Engineer has to prevail over NIDB data relating to other imports of photocopier.

7. In the light of the above, we accept the value declared by the appellant and direct that duty shall be paid accordingly. We uphold the confiscation for having been imported without obtaining the licence. However, taking into account the entire facts and circumstances of the case, including demurrage incurred so far by the appellants, we allow

confiscated goods to be redeemed on reduced redemption fine of Rs.2,50,000/- (Rupees Two and a half lakh only). The penalty imposed is reduced from Rs.2,00,000/- to Rs. 1,00,000/- (Rupees One lakh only).

8. The appeal is disposed of on the above terms.

(Dictated & pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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