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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/163 /2008 – SM[BR] Date 05/01/2009

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.

C.C. (PREVENTIVE) AMRITSAR — Appellant

Vs

M/S B.E.OFFICE AUTOMATION PVT. LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1648/2008 – SM[BR]** dated 26.11.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S B.E.OFFICE AUTOMATION PVT. LTD.
   203, HPSIDC,INDUSTRIAL AREA,BADDI
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 - 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). Thyagaraya 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-1
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I

Customs Appeal No. 163 of 2008-SM
[Arising out of Order-in-Appeal No. 111/CUS/APPL/LDH/2007 dated 25.9.2007 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh]

Date of Hearing/Decision : 26.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President

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 (Prev.), Amritsar — Appellant

Vs.

M/s B.E. Office Automation Pvt. Ltd., — Respondent

Appearance:

Mr. R.K. Verma, DR for the appellant
Mr. Hemant Bajaj, Advocate for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1648/08-SM(BR)

Per Jyoti Balasundaram:

In this case old and used photocopiers imported by the respondents herein have been confiscated on the ground that their import required possession of valid licence by the importers which was not available. The fine in lieu of confiscation of Rs. 9,57,000/- and penalty of Rs. 10,00,000/- levied and imposed by the Additional Commissioner stand reduced to Rs. 1,50,000/- and Rs. 50,000/- respectively by the Commissioner (Appeals).

2. It is against the reduction of the quantum of fine and penalty that the revenue is in appeal.

3. Learned DR contents that the old and used machines cannot be compared with other old and used photocopier machines for the reason that the value would depend upon the wear and tear of the items in question. He contended that the Commissioner (Appeals) has wrongly relied upon VAT paid sale bills of other old and used photocopiers to come to the conclusion that the per machine margin of profit is only Rs. 200/- for low duty & Rs. 500/- for medium duty photocopier machine so as to warrant reduction of fine and penalty and relied upon CCE, Amritsar vs. Venus Enterprises reported in 2008 (225) ELT 239 (Tri. Del) in which the the Hon'ble Tribunal held that in cases of second-hand items, their value cannot be equated with those shown in VAT paid sale bills/invoices in which reduction of fine was set aside by the Tribunal. He also relied upon in the case of Vikas Spinners vs. CC, Lucknow -2001 (128) ELT 143 (Tri.-Del.) he therefore, pleads that no diversion with the Tribunal's order may be done in this case.

4. I have carefully considered the rival submission. I find that the reliance placed by the Commissioner (Appeals) on VAT paid sale bills/ invoices produced by the importer to support their contention that the margins of profit in such case have not been challenged by the Revenue. Further, the orders of Tribunal bearing final Order Nos. 1145-1150/67-SM (Br.) dated 01.06.2007, and final Order No. 1363-1371/07-SM (Br.) dated 07.09.2007 Final Order Nos. 525 to 528/08-SM (Br.) dated 4.3.2008 in the case of same assessee and also in the case of Nova

Office Systems & Ors. final Order No. C/17 to 24/2008 dated 29.1.2008 with respect to the same goods hold that there is no warrant for interfering with the reduction in the quantum of fine and penalty by the Commissioner (Appeals). The relevant extract from Tribunal's final Order Nos. 1145-1150/67-SM(Br.) dated 01.06.2007 are reproduced herein below:-

> "5. The items under import were old and incomplete photocopiers. They were declared in the bill of entry as "Reconditioned Incomplete Copier Incorporating Optical Systems". Examination of the goods confirmed that they were incomplete, old, photocopiers. It is in this factual situation that the Commissioner found that there was no misdeclaration and the fines and penalties imposed were excessive.
>
> 6. Upon perusing the record and hearing both sides, I find no reason to interfere with the impugned order. Description of the goods was correctly declared. There is no evidence on record about the appellant having declared a value other than the transaction value. The item under import is an office equipment. Clearly, the Commissioner has not acted illegally or improperly. In the overall facts and circumstances of the case, there is no compelling reason to interfere with the order. It is upheld and the appeals are rejected".

4. The above order was followed in the final order dated 7.9.2007 cited supra. In the light of the orders of the Tribunal in the case of the import of identical goods by the same importer and in the absence of the challenge by the Revenue to the Commissioner (Appeals) finding that the margin of profit in the case of such goods is nominal as claimed by the importers, I uphold the order of the Commissioner (Appeals) and dismiss the appeal of the Revenue.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]