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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/230 /2008 – SM[BR] Date 06/01/2009

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 DEE BEE MARKETING PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1674 / 2008- **SM[BR]** dated 30.12.2008 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 DEE BEE MARKETING PVT. LTD.
   # 463, NEEL KANTH ,SECTOR-13, ROHINI,DELHI.
2. Adv. / Consult MR. R.G.JAIN ADV.
   M/S RESPONDENT

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. 230 of 2008-SM
[Arising out of Order-in-Appeal No. 169/CUS/APPL/LDH/2007 dated 26.12.2007 passed by the Commissioner (Appeals) Customs & Central Excise, Jalandhar]

Date of Hearing/Decision : 26.12.2008

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?	No
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, Amritsar — Appellant

Vs.

M/s Dee Bee Marketing (P) Limited — Respondent

Appearance:

Mr. R.K. Saini, DR for the appellant
Mr. R.G. Jain, Advocate for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final **Order** No. 1674/08-SM(BR)

Per Jyoti Balasundaram:

The Revenue is aggrieved by the reduction of the fine in lieu of confiscation from Rs. 65,000/- to Rs. 15,000/- and reduction in penalty from Rs.30,000/- to Rs. 5,000/-. The case relates to 'old and used computer monitors' whose value has been enhanced by the authorities below and the confiscation is for the reason that the goods required a licence for their import which the importer did not possess.

2. I have heard both sides. I find that the Commissioner (Appeals) has given clear reasons in para 11 of the impugned order for reduction in quantum of fine and penalty. Para 11 is reproduced herein below.

> "11. However, it is also a fact that the appellant has imported 'Old & Used Computer Monitors' and have not misdeclared the description of goods. They have contested the assessable value determined by the Chartered Engineer as well as market enquiry conducted by the department, without taking them into confidence. The appellants have placed reliance in case of M/s Kapson Industries vs. Commissioner of Customs, Mumbai reported as 2005 (186) ELT 490 (Tri. Delhi) wherein Hon'ble Tribunal has held that the ceiling mentioned in Section 125 of the Act is the upper limit for redemption fine, while the fine itself is to be fixed keeping in mind the facts and circumstances of the case. More specifically the appellants have cited Hon'ble Tribunal Final Order No. 1071/06-SM(BR) dated 3.7.2006 in the case of M/s Supreme Enterprises, Delhi and No. 1590/06-SM (BR) dated 31.10.2006 in the case of M/s Lovely Impex, New Delhi wherein the Tribunal has upheld the Order-in-Appeal passed by the Commissioner (Appeals), Central Excise, Chandigarh wherein redemption fine and penalty were substantially reduced under the similar circumstances rejecting the appeal filed by the revenue against the said Order-in-Appeal. Therefore, keeping in view the entire facts, wherein the value has been loaded, enhanced duty already paid on loaded value & the inland haulage/transport/ clearing/ demurrage/detention/ warehousing charges incurred by the appellants & the case laws produced above, it is felt that redemption fine of Rs. 0.65 lacs imposed is on higher side and as such needs to be suitably modified. Also, it is a fact that the appellant have not misdeclared the description of goods and impugned order does not disclose mens rea against the appellant. Thus, penalty of Rs. 0.30 lacs imposed by the adjudicating authority are also on the higher side and needs to be modified".

3. I also find that in the case of the same importer, the Tribunal vide Final order No. 411/2008-SM dated 4.3.2008 has upheld the reduction in quantum of fine and penalty by the Commissioner (Appeals). Following the above decisions and the decision of the Tribunal relied upon in the Commissioner (Appeals) impugned order, namely that in the case of M/s Supreme Enterprises and M/s Lovely Impex, I find no reason to interfere with the order of the Commissioner (Appeals) and accordingly uphold the same and dismiss the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]