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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/211 /2007-214 /2007 – SM[BR] Date 08/09/2009

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 BE OFFICE AUTOMATION PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1125 – 1128 / 2009–SM[BR]** dated 25.8.2009 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

(1-4) M/S BE OFFICE AUTOMATION PVT. LTD.
1, MINI MARKET, NANAKPURA, NEAR MOTI BAGH, GURDWARA, NEW DELHI.

2. Adv. / Consult SHRI HEMANT BAJAJ ADV.
A-5, BASMENT LAJPAT NAGAR-III
NEW DELHI

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 25.8.2009

Customs Appeals No.211, 212, 213, 214 of 2007

Arising out of the order in appeal No.69-72/CUS/APPL/LDH/2006 dated 29.12.2006 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

C.C., Amritsar ... Appellant

Vs.

M/s BE Ofice Automation Pvt. Ltd. .... Respondent

Appearance:

Shri S. N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue and Shri Hemant Bajaj, Advocate for the respondents

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1125 TO 1128/2009 SM(BR)

Per M. Veeraiyan :

All these four appeals by the Department are against the common order in appeal No. 69-72/CUS/APPL/LDH/2006 dated 29.12.2006 involving the same respondents.

2. Heard both sides.

3. The respondents imported used photocopiers and filed bills of entry in July 2006 and August 2006; the photocopiers were subjected to examination on first check basis with the help of a Chartered Engineer and on the basis of the opinion given by the said Chartered Engineer, the value of photocopiers was enhanced and the duty on the enhanced value stands paid. As the old and used photocopier required licence for importation, the original authority held that the said consignments are liable for confiscation and confiscated the same but allowed the same on payment of redemption fines and penalties as mentioned below:

S. No.	Order in original No.and date	Bill of Entry	RF Imposed (Rs.)	Penalty Imposed (Rs.)
1.	102/JC/CFS/LDH 06 dtd.16.09.06	108779 dt. 7.9.06	150000/-	100000/-
2.	75/JC/CFS/LDH 06 dtd.19.08.06	108311 dt. 8.8.06	150000/-	100000/-
3.	63/JC/CFS/LDH 06 dtd.31.07.06	107970 dt. 24.7.06	175000/-	100000/-
4.	70/JC/CFS/LDH 06 dtd.07.08.06	107977 dt. 24.7.06	100000/-	50000/-

The respondents filed appeal before the Commissioner (Appeals) who upheld the confiscation of the old and used photocopiers but reduced the redemption fines and penalties as mentioned below:

S. No.	Order in original No.and date	RF Imposed (Rs.)	Penalty Imposed (Rs.)	RF upheld (Rs.)	Penalty upheld (Rs.)
1.	102/JC/CFS/LDH 06 dtd.16.09.06	150000/-	100000/-	90000/-	10000/-
2.	75/JC/CFS/LDH 06 dtd.19.08.06	150000/-	100000/-	90000/-	10000/-
3.	63/JC/CFS/LDH 06 dtd.31.07.06	175000/-	100000/-	100000/-	10000/-
4.	70/JC/CFS/LDH 06 dtd.07.08.06	100000/-	50000/-	40000/-	10000/-

4. Learned SDR submits that the reduction of redemption fines and penalties by the Commissioner (Appeals) are not justified. The respondents were found to have imported several consignments in the past and these should have been taken into account and the redemption fines and penalties imposed by the original authority should not have been reduced. He reiterates the other grounds mentioned in the appeal. He seeks setting aside the order of the Commissioner (Appeals) and restoring the order of the original authority.

5. Learned Advocate for the respondents reiterates the finding and reasoning of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. There is no dispute that the import of old and used photocopiers require a licence and having been imported without licence, the goods are liable for confiscation. The dispute relates to the quantum of redemption fines and penalties imposed . The Department wants restoration of the order of the original authority. For example, in the case in Appeal No.C/211/07, it is noticed that the value declared by the party was 5700 US $ which on the opinion of the Chartered Engineer was enhanced to 114 00/- US $ and the market value was determined as 7,98,000/-. The original authority imposed redemption fine of Rs.1 lakh which was reduced in appeal to Rs.40000/-and penalty of Rs.50,000/- imposed by the original authority was reduced to Rs.10000/-. The only ground urged is that the party is in the habit of importing many consignments and therefore,higher redemption fine and penalty was justified. It is to be appreciated that quantum of redemption fine and penalty imposed by the original authority was on the basis of his subjective satisfaction based on value of the consignments estimated by the Chartered Engineer. Using his discretion ,the Commissioner (Appeals), as appellate authority, while upholding the confiscation, reduced the redemption fine and penalty in each of the above cases. It cannot be said that the same was arbitrary. I hold that no valid grounds have been adduced to interfere

with the quantum of redemption fine and penalty and to enhance the same to the level imposed by the original authority.

7. Appeals by the Department are , therefore, rejected.

(M. Veeraiyan)
Member (Technical)

scd/