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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/500 /2009 – SM[BR] Date 09/10/2009

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

To :
M/S DHILLON ENTERPRISES,
255, PHULKIAN ENCLAVE, JAIL ROAD, PATIALA.

M/S DHILLON ENTERPRISES, Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1202 / 2009 –SM[BR] dated 17.9.2009 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
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.
2. Adv. / Consult
MR.SAURABH KAPOOR, ADVOCATE
11-YADVINDRA COLONY, THE MALL, PATIALA 147001
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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Customs Appeal No. 500 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 26/CUS/LDH/2009 dated 02/6/2009 passed by The Commissioner of Customs (Appeals), Chandigarh.]

For Approval and signature :
Hon'ble Shri 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 Department Authorities?	:

M/s Dhillon Enterprises — Appellant

Versus

CC, Amritsar — Respondent

Appearance

Shri Saurabh Kapoor, Advocate – for the appellant.

Shri Surendra Shah, Authorized Representative (JDR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 17/09/2009.

Final Order No. 1202/2009 SM BN Dated :

Per. Rakesh Kumar :-

This is an appeal against order-in-appeal No. 26/CUS/LDH/2009 dated 02/6/2009 by which CCE (Appeals), Chandigarh – I upholding the order-in-original dated 18/8/08 passed by the Additional Commissioner, Customs, Ludhiana, enhancing the assessable value of the imported – "used CRT monitors 17" and 19" and old and used P-III computer system with monitor" to Rs. 8,22,300/- ordering confiscation of the goods with option to be redeemed on payment of redemption fine of Rs. 2,30,000/- redemption plus duty on the enhanced the value and also imposing penalty of Rs. 60,000/- on the appellant.

2. Heard both the sides.

2.1 Shri Saurabh Kapoor, Advocate, the learned Counsel for the Appellant pleaded that he accepts that the import of the old and used CRT monitors and computers also P-III computer system with monitors was in contravention of the EXIM policy, that this is the first import of these items made by the appellant and after this import, no other import had been made, that since the appellant have accepted the loaded value and paid duty on that basis. the profit margin has been totally wiped out and the appellant have suffered a loss of Rs. 1,78,813/- and that if the redemption fine of Rs. 2,30,000/- and penalty of Rs. 60,000/- is maintained, their loss would further increase and that enhancement of the assessable value levied of the redemption fine and penalty upheld by the impugned order. He, therefore, pleaded for waiver of the redemption fine and penalty and at least redemption. He also pointed out that the order-in-original itself mentions the market value of the goods at Rs. 8,22,300/- and the each had been charged on this basis and thus from the order-in-original itself is clear that the goods have been sold at a loss. He cited the judgments of Tribunal in the case of **Bansal Industries vs. CC, Chennai** reported in **2007 (217) E.L.T. 375 (Tri. – Chennai)**, wherein taking into account the loss suffered by the importer on the import, the fine was totally waived.

2.2 Shri Surendra Shah, the learned Departmental Representative defending the impugned order pleaded that when the appellant have themselves accepted that the import was the contravention of the EXIM policy and hence in contravention of the prohibitions imposed under Section 11 of the Customs Act, 1962, the goods would be liable for confiscation under Section 111 (d) of Customs Act, 1962 and the importer would be liable for penalty under Section 112 ibid and that in view of this, the redemption fine and penalty have been correctly imposed. He also pleaded that the redemption fine of Rs. 2,30,000/- and penalty of Rs. 60,000/- is not too high and that loss offered by the importer on account of payment of duty on the loaded value is of no relevance for determination of the quantum of redemption fine.

3. I have carefully considered the submissions from both the sides and perused the records.

3.1 There is no dispute about the fact that the import is in contravention of the provisions of the EXIM policy and hence the provisions of Section 111 (d) would be attracted for confiscation of the goods and the provisions of Section 112A of the Customs Act would be attracted for penalty on the Appellant. The dispute is over the quantum of the redemption fine. It is settled law that in such cases of imports, which have been made in contravention of the provisions of the EXIM policy and hence in violation of the prohibitions imposed under Section 111 of the Customs Act, the quantum of redemption fine in lieu of confiscation should be sufficiently high to mop up the entire margin of profit. However, in this case, I find that there is no calculation of the quantum of redemption fine in the order-in-original and according to the appellant, they have suffered a loss of Rs. 1,78,813/- excluding the redemption fine and penalty and if the redemption fine and penalty are maintained their losses would increase. On the other hand I find that since this is a case of import of goods in contravention of the provisions of EXIM policy, this is not a case for total waiver of fine and penalty, even if the imposition of the same results in loss to the Appellant. Having regard to the circumstances of the case and the fact that the appellant have paid duty on the enhanced value, I am of the view that the ends of the justice would be met if the **redemption fine is reduced to Rs. 1,00,000/- (Rupees One Lakh) and the quantum of penalty is reduced to Rs. 20,000/- (Rupees Twenty Thousand)**. The impugned order stands modified, as above.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK