TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/581 /2006 – CUS DB Date 03/08/2009

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

To :
M/S UNITED COPIER SYSTEM
RZ-60, SURAJ VIHAR, KAKROLA,
UTTAM NAGAR, N.DELHI – 110 059

M/S UNITED COPIER SYSTEM Appellant
Vs
C.C.DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/314/ 2009 CU[DB] dated 22.07.09 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.DELHI III, UDYOG VIHAR,UDYOG MINAR,
   VANIJYA NIKUNJ,PHASE V,GURGAON.
2. Adv. / Consult
   MR.HEMANT BAJAJ, ADV., 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. 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)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

# Custom Appeal No. 581 of 2006-Cust. Br.

(Arising out of Order-in-Appeal No. 235/NS/GGN/2006 dated 10.8.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Gurgaon)

M/s United Copier Systems — Appellant

Vs.

CC, Delhi-III — Respondent

**Appearance**

Appeared for Appellant : Shri Hemant Bajaj, Advocate

Appeared for Respondent: Shri S.L. Kumar, DR

**Date of Hearing: 9.7.2009**

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. C/314/09 dated............

Per D.N. Panda :

Ld. Counsel Shri Hemant Bajaj fairly agrees that licence is required to import second hand photo copier. But he argues that the Appellant although had no license to import such goods, what that was imported was not under-valued. According to him, when there is no significant discrepancy in the value, that should not have been discarded and disproportionate redemption fine of Rs. 5.00 lakhs and penalty of Rs.3.00 lakhs should not have been imposed. Even if the transaction was made without license, value thereof enhanced in Adjudication was exorbitant. Therefore he challenges the valuation made by the Authorities submitting to be without any basis. Further, he submits that when appropriate value was under confusion, benefit of doubt should go to the Appellant.

2. Ld. DR Shri S.L. Kumar appearing for Revenue supports the order passed by the Authorities below. According to him, licence is a pre-requisite for import of second hand photo copier machine. In absence of that, Adjudication was made correctly imposing duty, redemption fine and penalty. Therefore the Appellant should not get any concession at this stage.

3. Heard both sides and perused the record.

4.1 There is no disagreement by both the sides that import licence is pre-requisite for bringing second hand photo copier machine to India. In absence of such licence with the Appellant, the Appellant was bound to suffer consequence of Adjudication. But the Appellant's grievance being that the value of import was exorbitantly enhanced, that only calls for consideration.

4.2 Ld. Counsel's serious cry being on valuation arbitrarily made by Authorities, he relied on the decision of the Tribunal in the case of **Digitech Photo Copier Vs. CC** reported in 2009 (233) ELT 425. He submits that when there is no material available for the enhancement of value, the Authority cannot enhance the same as they please. When the basis of valuation was asked, Revenue replies that Chartered Engineer's certificate was basis. When the finding in the Adjudication is looked into as appearing at page 41 of the order in original, that show that the valuation has been done on the basis of contemporaneous evidence available on NIDB data. But nothing is discussed as to which was the basic data that supported the valuation for Revenue. In absence of any cogent evidence and NIDB data not being confronted to Appellant for rebuttal, the Appellant is entitled to the benefit of doubt on valuation. Accordingly, the valuation declared by the Appellant calls for no disturbance for the purpose of re-calculation of the duty liability.

5. Record exhibits that the gap between declared value and assessed value is only Rs. 1.00 lakhs. This does not appear to be significant. The Appellant deserves consideration on the quantum of redemption fine and penalty, while there is no cogent evidence available on record calling for enhancement. It is also noticed that imposition of penalty of Rs. 3.00 lakhs was disproportionate. Therefore it would be proper to reduce the same to Rs. 1.00 lakhs.

Since the act of the Appellant is in relation to infringement of law, the benefit enjoyed by the Appellant out of such infringement should also suffer by redemption fine to a proper extent. Imposition of redemption fine in Adjudication is not backed by any basis. This calls for interference to reduce the same to Rs. 2.00 lakhs from Rs.5.00 lakhs.

6. With the aforesaid observation and findings, we allow the appeal of the Appellant partly.

(Dictated & pronounced in open Court)

(D.N. PANDA,
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM