

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. C/375/00-NB(SM)

Dated : 9/2/07

CEGAT
NEW DELHI

To,

M/s Vishal Printing Press,

1449/2-A, Gali No. 5,

Durgapuri Extn.
Shahdara, Delhi

In the matter of :

M/s Vishal Printing Press

Appellant

vs.

C C Amritsar

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/205/01/NB(SM)
Dated :2-2-2007.....passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

1. C C Amritsar

Asstt. Registrar
NB(SM)

2. CCE/CEI (Appeal) Chandigarh
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Sh. AKshay Anand, Adv.
190, Patiala House Courts,
New Delhi - 1.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
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Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

APPEAL NO. C/375/00-NB(S) OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

11/Cus/CHD/2K DATED 30.6.2K

PASSED BY Commissioner of Customs (Appeals)
Customs & Central Excise Chandigarh

Date of decision 2.2.2001

M/s Vishal Printing Press

..... APPELLANT (S)

Represented by Sh./Smt. xxxx Akashay Anand, Adv.

VERSUS

CC, Amritsar

..... RESPONDENT (S)

Represented by Sh./Smt. xxxx S.C. Pushkarna, JDR

CORAM :

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not ?

FINAL ORDER NO. A/205/01/NB(S/m)

Per.....P.G. Chacko.....

The brief facts of the case are as follows :-

2. The appellants, engaged in the activity of printing, imported ^{Delhi-110066} a consignment of second hand offset printing machinery and claimed customs clearance of the goods by filing Bill of Entry No.

92/99 dated 24.6.99 through their CHA. Import of second hand capital goods was permitted upto 31.3.99 subject to actual user condition under the provisions of para 5.4 of the EXIM Policy, 1997-2002. Import of such goods, with effect from 1.4.99, was permissible only under specific import licence. Neither any valid import licence was produced by the importer, nor could they produce any evidence to show that the shipment had taken place before 1.4.99. Therefore, the Joint Commissioner of Customs ordered confiscation of the goods under Section 111 (d) of the Customs Act with option to the party to redeem the goods on payment of a fine of Rs.2,10,000/- as well as payment of customs duty leviable on the goods. The Joint Commissioner also stipulated that, on redemption of the goods, the importer shall not part with them for five years or till they were scrapped, whichever was later. He also imposed a penalty of Rs.1,05,000/- on the importer under Section 112 (a) of the Customs Act. In the appeal filed by the aggrieved party against the order of the adjudicating authority, the Commissioner (Appeals) upheld the order of the lower authority on merits but reduced the quanta of redemption fine and penalty to Rs.1,00,000/- and Rs.25,000/- respectively. The present appeal by the importer is against the order of the Commissioner (Appeals).

3. I have examined the records and have heard

both sides. Ld. Advocate Sh. Akshay Anand for the appellants submits that the sole challenge in this appeal is against the quantum of the redemption fine and that of the penalty imposed respectively under Section 125 and Section 112 (a) of the Act. He submits that the proviso to Section 125 (1) of the Customs Act prescribes the maximum limit of redemption fine imposable in lieu of confiscation of imported goods. According to the proviso, the fine was not to exceed the market price of the confiscated goods less the duty chargeable thereon. Ld. Advocate's submission, in this connection, is that the goods in question cannot be considered to be marketable at all inasmuch as the adjudicating authority itself placed an embargo on parting with the goods for five years or till the goods were scrapped, whichever was later. According to Ld. Counsel, the goods were not capable of being marketed for least a period of five years and, therefore, there was no question of any 'market price' existing in respect of the goods. In this view of the matter, Ld. Advocate argues, the proviso might not be applicable to the appellant's case. Ld. JDR has opposed this argument by submitting that the proviso does not pre-suppose any actual sale of the goods and that it is enough, under Section 125, for the Customs authority to consider the price which the goods could fetch in the Indian market at the material time. I

am in full agreement with the submissions of ld. JDR. Therefore, there is no question of the appellants' case falling outside the coverage of the proviso. Coming to the quantum of redemption fine of Rs.1,00,000/-, ld. Advocate pleads that it is excessive, having regard to the total value of the goods as assessed even by the Customs authority. On the other hand, ld. JDR has rated the redemption fine as reasonable. Similar arguments have been put forth by either sides in respect of penalty as well.

4. I have carefully examined the submissions, The total assessed value of the goods is reported to be Rs.4,12,200/- which has not been contested from the valuation angle. The duty paid on the goods is reportedly Rs.2,25,914/-. No market price of the goods in the Indian market can be conceived, which is below the total assessable value accepted by the importer. Even if the said value is taken as the market price, then the market price of the goods less the duty paid thereon will work out to about Rs.1.9 lakhs. As per the proviso to Section 125 (1), the redemption fine can be as high as this amount. The lower appellate authority fixed the fine at Rs.1,00,000/-. That authority imposed a penalty of Rs.25,000/-. Having regard to the totality of the facts and circumstances of the case, I am of the view that the ends of justice would be served if the redemption fine and penalty are further reduced to Rs.50,000/- and Rs.10,000/- respectively. I have

noted that, as regards the quanta of fine and penalty, the lower appellate authority has not disclosed its reasoning and, therefore, it appears that the facts and circumstances of the case were not duly taken into account by that authority while deciding the matter.

5. In view of the the above findings, the redemption fine and penalty are reduced to Rs.50,000/- and Rs.10,000/- respectively. The impugned order will stand modified to this extent. The appeal is disposed of in these terms.

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM