

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/351 /2007 - CU[DB]

Date 17/01/2011

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

To: M/S ASIA IMPEX,
28/31, LIBASPUR, GALI NO. 16,
NEW DELHI 110042

Appellant

Vs
Respondent

M/S ASIA IMPEX

C.C.(JODHPUR)

I am directed to transmit herewith a certified copy of **Final order** C/25/ 2011 CU[DB] dated 17.01.2011
passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**


Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.(JODHPUR)
HQ AT NEW CENTRAL REVENUE
BUILDING, STATUE CIRCLE,
'C' SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.R.S. SHARMA, ADV.,
C-9/9656, VASANT KUNJ,
NEW DELHI 110070
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file


Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.C/351/2007

Date of Hearing: 11.01.2011

Date of Decision: 11.01.2011

(Arising out of Order-in-Original No.03/Cus/2007 dated 13.04.2007
passed by the Commissioner of Customs (Preventive), Amritsar)

For approval and signature:

Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.M.Veeraiyan 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?	Yes
2	Whether it should be released under Rule 27 of the 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

M/s.Asia Impex

Appellant

Vs.

CC, Amritsar

Respondent

Present for the Appellant: Shri R.S.Sharma, Advocate
Present for the Respondent: Shri K.K.Jaiswal, SDR

Coram: Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Final ORDER NO. C/25/11

PER: M.VEERAIYAN

This is an appeal against the order of the Commissioner
No.03/Cus/2007 dated 13.04.2007.

2. Heard both sides.

3. The appellant imported 1635 numbers old and used monitors of different sizes, 319 numbers old and used P-3 system, 93 numbers old and used TV and 41 numbers of old and used laminators and filed bill of entry declaring the value as Rs.80,8,945/-; the goods were declared to be of UK origin: the import of goods was supported by chartered engineer certificate which also indicated the value of consignment. The goods were subjected to examination with the help of chartered engineer under first check procedure. The goods were found to be old and used; they were found to be originated ^{from} ~~of~~ different countries, Indonesia, Taiwan, Thailand, Korea, China, and Malaysia ^{and} U.K. The Chartered engineer, based on local marketing enquiry, indicated the market value as Rs.25,15,775/- and the assessable value as Rs.20,74,200/-. The importer waived issue of written show cause notice and the Commissioner by the impugned order enhanced the value to Rs.20,74,200/- as against the declared value 80,8,945/-. As old and used items required import licence and the appellant has ~~been~~ imported without a licence issued by the DGFT, he confiscated the goods under 111(d) of the Customs Act but allowed to be redeemed on payment of fine of Rs.5 lakhs and imposed penalty of Rs.5 lakhs on the appellant under Section 112 of the Customs Act.

4.1 Learned Advocate fairly concedes that the goods in question being old and used required import licence and in the absence of production of licence, the goods are liable to confiscation.

4.2. However, he submitted that the value enhancement by the Commissioner is not at all justified. The transaction value has not been questioned and the transaction value declared corresponds to the value in the certificate issued by the overseas chartered engineer. The Commissioner has relied on data of the Valuation Directorate (DOV data) in respect of the goods of UK origin. The countries of origin of the imported goods were found to be Indonesia, Thailand, Korea and Malaysia in addition to UK. Further, comparison of value of old and used goods from the DOV data without taking into accounts the age, residual life, and physical conditions of the goods are not justified.

4.3. Therefore, he submitted that the enhancement of the value for assessment purpose was not justified. Since the redemption fine and penalty for violation of licensing restriction have been imposed in the light of enhanced value, the same requires to be substantially reduced.

4.4 In support of his submissions, he relies on the decision of the Tribunal in the case of Anish Kumar Spinning Mills vs. CC, Tuticorin reported in 2004 (172) ELT 394 and submits that the appeal filed by the department against the said decision before the Hon'ble High Court stands dismissed. He also relies on the decision of the Tribunal in the case of MECH & TECH vs. CC, Tuticorin reported in 2009 (247) ELT 305 which followed the decision of the Tribunal in the case of Anish Kumar Spinning Mills cited supra.

5. The learned SDR reiterates the findings and reasoning of the Commissioner. He also submits that the report of the local Chartered engineer dated 23.3.07 is elaborate and gives the reasoning for arriving at the enhanced value. He seeks upholding the order of the Commissioner.

6. We have carefully considered the submissions of both sides and perused the records. The value declared by the appellant corresponds to the value contained in the overseas chartered engineer certificate. A close reading of the local Chartered engineer certificate dated 23.3.2007 indicates that the said report has been issued after conducting "local market survey for value of this type of old goods." It is settled legal position that the value of the imported goods cannot be based on the value of the goods in the local market. In the present case, no valid reasons have been given by the commissioner to reject the valuation adopted by the overseas chartered engineer. Similarly, comparing the value of the imported goods which are old and used with the data available in DOV is also not appropriate as the said data do not disclose the age, residual life, physical condition of the goods sought to be compared. The decision in the case of Anish Kumar Spinning Mills cited supra is to the effect that "the opinion of one expert cannot be rejected on the basis of that of another expert unless there is sufficient independent reason for such rejection". In the present case, no valid reason exists to reject the value estimated by the overseas chartered engineer basing reliance on the value estimated by local chartered engineer which itself was based on local market enquiry.

7. In view of the above, we set the order of the Commissioner in enhancing the assessable value. We direct that for the purpose of assessment, the declared value shall be adopted.

8. The confiscation of the old and used goods for having imported without the required licence deserves to be upheld. However, considering that the value declared by the appellant stands accepted by us, we deem it appropriate to reduce the redemption fine from Rs.5 lakhs to Rs.2.5 lakhs and the penalty imposed from Rs.5. to Rs.2.5 lakhs.

9. The appeal is disposed of in the above terms.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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