15

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/249 /2007 - CU[DB], C/264/2007-CU DB   Date **17/01/2011**

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 UNITECH ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order C/30-31/ 2011 CU[DB]** dated 14.01.2011 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
M/S UNITECH ENTERPRISES
88, RANA PRATAP MARKET,
KAROL BAGH, NEW DELHI.
2. Adv. / Consult
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions 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 (Haryana)
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
15. **M/S COPYERS COPYERS INTERNATIONAL,**
C-159, PRASHANT VIHAR,
DELHI

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM,
NEW DELHI-110066

COURT NO. IV

Customs appeal No. 249 & 264 of 2007

[Arising out of Order-in-Appeal No. 23/Cus/Appeal/LDH/07 dated 23.01.2007 & 27/CUS/APPEAL/LDH/2007 dated 31.01.2007 both passed by the Commissioner of Customs & Central Excise (Appeals), Ludhiana]

Date of Hearing: 13th January, 2011

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial);
Hon'ble Shri 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?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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. Unitech Enterprises,
M/s. Copyers Copyers International — Respondents

Present for the Appellant : Shri Sonal Bajaj, DR
Present for the Respondent : None

Coram:Hon'ble Smt. Archana Wadhwa, Member (Judicial);
Hon'ble Shri M. Veeraiyan, Member (Tec hnical)

Final **ORDER NO.** C/30-31/11 **DATED** 14.1.11

PER ARCHANA WADHWA:

Since common issue involved in both these appeals they are being disposed by this common order.

2. Being aggrieved with that part of the impugned order of the Commissioner (Appeals) vide which he has reduced the redemption fine to Rs. 1.20 lacs and penalty to Rs. 20,000/- on the respondents Revenue has filed the present appeal. We have heard Shri Sonal Bajaj, learned DR appearing for the Revenue. None appeared for the respondents.

3. As per facts on record the respondents imported old and used incomplete photocopier machines incorporating optical system – low duty at the declared value of Rs. 15,86,658/-. The assessable value was enhanced by the adjudicating authority to Rs. 25,92,000/-. The goods were also confiscated with an option to redeem the same on payment of Rs. 7 lakhs and penalty of Rs. 7 lakhs.

4. The respondents being aggrieved with the said order filed appeal before the Commissioner (Appeals). The appellate authority upheld the value of policy provision which is also the value adopted by the lower authority. However, he reduced the redemption fine and penalty, as observed by him in para 11 of his order:-

"However, it is also a fact that the appellant has imported "Old & Used Incomplete Photocopier Incorporating Optical systems-Low Duty' and have not misdeclared the description of goods. They have contested the assessable value determined by the Chartered

Engineer as well as market enquiry conducted by the department, without taking them into confidence. The appellants have placed reliance in case of M/s. Kapson Industries Vs. Commissioner of Customs, Mumbai reported as 2005 (186) ELT 490 (Tri. Delhi) and some Orders-in-Appeals passed by the Commissioner (Appeals), Chandigarh wherein redemption fine an dpenlaty have been substantially reduced. More specifically the appellants have cited Hon'ble Tribunal Final Order NO. 171/06-SM(BR) dated 03.07.06 in case of M/s. Supreme Enterprises, Delhi and No. 1590/06-SM (BR) dated 31.12.2006 wherein the Tribunal has upheld the Order-in-Appeal passed by the Commissioner (Appeals), central Excise, Chandigarh wherein redemption fine and penalty were substantially reduced under the similar circumstances rejecting the appeal filed by the revenue against the said Order-in-Appeal. Therefore, keeping in view the entire facts wherein the value has been loaded, so as increasing the duty component to Rs. 1 lac approx. and in addition the appellants has suffered the demurrage/detention/grounds charges, I find that there is no much margin of profit left and hence, applying the direct ratio of above case laws especially in the case of M/s. Supreme Enterprises, Delhi, it is held that redemption fine of Rs. 7 lac imposed in this case by the adjudicating authority is quite harsh and excessive and as such need to be suitably modified. Also, it is a fact that the appellant have not misdeclared the description of goods and impugned order does not disclose mens rea of any high degree against the appellant and thus, penalty needs to be reduced."

Identical observation is made in the other matter.

5. As is seen from the above, the appellate authority while reducing the redemption fine and penalty have taken into consideration the fact that there was no mis-declaration by the importer and have followed the earlier decisions of the Tribunal. At this stage we also take note of Tribunal's decision in the case of C.C., Amritsar vs. Champion Photostat Industrial Corpn., Final Order No. C/116/09 dated 31.3.2009 vide which the Revenue against reduction of redemption fine to Rs. 10,000/- and penalty to Rs. 5,000/- by Commissioner (Appeals), was rejected.

6. As such, by taking note of the above decision as also reasoning adopted by the Commissioner (Appeals) for reducing the redemption fine and penalty we find no merit in the appeal filed by the Revenue. Hence, the same is rejected.

(Dictated & pronounced in the Open Court.)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

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