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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/248 /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 LOVELY IMPEX Respondent

I am directed to transmit herewith a certified copy of **Final order C/32/ 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 LOVELY IMPEX
WZ-218, MANDIPUR VILLAGE,
NEW DELHI.
2. Adv. / Consult MR.PIYUSH KUMAR,ADV
B-25, LAJPAT NAGAR-III,
NEW DELHI – 110 024.
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

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. 248 of 2007

[Arising out of Order-in-Appeal No. 24/Cus/Appeal/LDH/07 dated 31.07.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Jalandhar (Hqrs.), Chandigarh]

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. (Preventive),
Amritsar — Appellant

Vs.

M/s. Lovely Impex — Respondent

Present for the Appellant : Shri Sonal Bajaj, DR
Present for the Respondent : Shri Prem Ranjan, Advocate

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

Final **ORDER NO.** C/32/11 **DATED** 14.1.11

PER ARCHANA WADHWA:

Being aggrieved with that part of the impugned order of the Commissioner (Appeals) vide which he has reduced the redemption fine and quantum of personal penalty on the respondents while upholding other part of the order passed by the adjudicating authority, the Revenue has filed the present appeal.

2. For better appreciation of the controversy we reproduce para 11 of the order of the Commissioner (Appeals):-

"However, it is also a fact that the appellant has imported "Incomplete Used & Rusted Diesel Engines with Gear Box & Self' and have not misdeclared the description of goods. They have contested the assessable value determined by the Chartered Engineer at their back. Also, they argued that the CE has opined the age of the said goods to be more than 8 years without specifying the year of manufacture and specific age of these goods. He has submitted his report without examining the internal condition of these diesel engines, whereas it is quite possible that in some cases, thesae diesel engines may be completely rusted and might have to be sold as scrap only. Therefore, a common market value arrived for all the diesel engines can not be accepted. Aslo, the appellant referred that the same adjudicating authority in its order dated 04.03.2006 has taken the assessable of the same goods to be Rs. 6,150/- per piece and market value to be Rs. 8,500/- per piece, whereas in the present case the same goods were assessed at Rs. 7,900/- per piece and market value at Rs.

12,500/- per piece. The appellants have placed reliance in case of M/s. Kapson Industries Vs. Commissioner of Customs, Mummbai reported as 2005 (186) ELT 490 (Tri. Delhi) wherein redemption fine have been substantially reduced from Rs. 7.25 lacs to Rs. 50,000/-. More specifically the appellants have cited Hon'ble Tribunal Final Order No. 1071/06-SM(BR) dated 03.07.06 in the case of M/s. Supreme Enterprises, Delhi and No. 1590/06-SM (BR) date d31.10.2006 in their own case 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 from Rs. 1 lac each to Rs. 10,000/- and Rs. 5,000/- 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 huge demurrage/detention/ground charges as the consignment is pending since 10.12.2006, it is held that redemption fine & penalty imposed in this case by the adjudicating authority is quite harsh and excessive and as such need to be suitable modified."

3. It is seen from the above that for reducing the redemption fine and penalty, the Commissioner (Appeals) has given reasons and has followed the earlier decisions of the Tribunal. On the other hand, the Revenue has contended that the imposition of higher redemption fine and penalty was justified in the facts and circumstances of the case inasmuch as the respondents were

repeatedly importing second hand goods without production of licences. Such low fine and penalty will encourage the importers to import such restricted goods. However, we find that the various reasonings given by the Commissioner (Appeals) for reducing redemption fine and penalty doe not stand agitated by the Revenue in their grounds of appeal. On going through the above reproduced para form the order of the Commissioner (Appeals), we find that sufficient and justifiable reasons stand advanced by the appellate authority for reducing redemption fine and penalty. No interference is required in the same.

4. In view of the above, appeal filed by the Revenue, is rejected.

(Dictated & pronounced in the Open Court.)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RK