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
CUSTOMS APPEAL BRANCH

Appeal No. C/612 - 613/2007 - CU[DB] Date **12/08/2011**

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 OFFICE TEC. INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/358-359/ 2011 CU[DB]** dated 08.08.2011 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 OFFICE TEC. INDUSTRIES
1024 P, SECTOR 7 EXTN., NEAR
VIVEKANAND ACADEMY,
GURGAON.

2. Adv. / Consult MR. K.K. ANAND,ADV.
A-5, (BASEMENT), 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 Delhi
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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. M/S B.E. OFFICE AUTOMATION,
203, HPSIDC, INDUSTRIAL AREA,
BADDI, H.P.

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 3.8.2011

Custom Appeal No. 612 of 2007

[Arising out of the Order-in-Appeal No. 85/Cus/Appl/Ldh/07 dated 18.6.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar]

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

CC, Amritsar — Appellant

Vs.

M/s Office Tec Industries — Respondent

Custom Appeal No. 613 of 2007

[Arising out of the Order-in-Appeal No. 83/Cus/Appl/Ldh/07 dated 14.6.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar]

CC, Amritsar — Appellant

Vs.

M/s B.E. Office Automation Products Pvt. Ltd. — Respondent

Appearance:

Appeared for Appellant : Shri K.K. Jaiswal, SDR
Appeared for Respondent : Shri K.K. Anand, Advocate

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. C/358-359/11 dated 8.8.11

Per Archana Wadhwa :

Both the appeals filed by Revenue are being disposed of by a common order as the issue involved is identical. Revenue is aggrieved with lowering of redemption fine and penalty by Commissioner (Appeals)..

2. We have heard Shri K.K. Jaiswal, ld. SDR for Revenue and Shri K.K. Anand, ld. Advocate for the respondent.

3. As per the facts on record the respondents filed Bill of Entries for clearance of Old and Used Complete Photocopier Incorporating Optical Systems – Low Duty and Medium Duty and declared the assessable value. As the said consignments was not accompanied by the overseas Chartered Engineer certificate as regards the value, year of manufacture and residuary life of the said goods. The goods were accordingly subjected to first check examination and services of Chartered Engineer were also availed. It was found that the machines were more than seven years old and the residuary life of the same were more than five years. The value of the said goods was ascertained to be higher than declared by the importers, based upon the local market enquiries. It

was also found that the import of second hand photocopier machine required a licence from the DGFT, which the respondents have failed to produce.

5. Accordingly, the proceedings were initiated against the respondent culminating into an order passed by the original adjudicating authority, enhancing the assessable value of the goods and confiscating the same with redemption fine of Rs. 4.00 lakhs in the case of M/s Office Tec Industries and Rs.1,50,000/- in the case of M/s B.E. Office Automation Product Pvt. Ltd. In addition a penalty of Rs.2.00 lakhs in the case of M/s Office Tec Industries and Rs.1.00 lakh in the case of M/s B.E. Office Automation Product Pvt. Ltd. was also imposed by the respondent.

6. On an appeal against the said order, the Commissioner (Appeals) rejected the appeal on merits but taking into account the over all facts and circumstances of the case reduced the redemption fine to Rs.80,000/- and penalty to Rs.20,000/- in the case of M/s Office Tec Industries and Rs.50,000/- and penalty to Rs.20,000/- in the case of M/s B.E. Office Automation. But for the reduction in the above quantum of fine and penalty the appeal was otherwise rejected. Revenue is in appeal against such reduction of fine and penalty.

7. For better appreciation, we reproduce relevant portion of the impugned order of Commissioner (Appeals), detailing therein the reasons for reducing the fine and penalty:- (The said para is common in both the appeals).

> "However, it is also a fact that the appellant has imported 'Old and Used complete Photocopiers Incorporation Optical systems-Low duty and Medium 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, behind their back, wherein the market value same goods was obtained as Rs.15,200/- and Rs.25,750/- per piece for low duty and medium duty Photocopier Machine by the adjudicating authority. The appellant have produced some VAT paid sale bills/invoices of same items in which market value of low duty Photocopier machine is Rs.10,000/- per piece and Medium duty Photocopier machine is Rs.15,000 per piece. They have alleged that the market value of the goods taken is thus on the higher side. They have stated that if enhanced duty paid of Rs.2,400/- for low duty Photocopier machine and Rs.4,400/- for medium duty Photocopier machine, expenditure on account of freight from Mumbai to ICD Ludhiana and Baddi of Rs.500/- for low duty Photocopier machine and Rs.1000/- for medium duty Photocopier machine. Reconditioning charges and miscellaneous charges, office/marketing expenses etc. incurred by them in respect of the consignment are taken, then there is nominal margin of profit left to them. They pleaded that in addition to the aforesaid expenses, they already had suffered detention/demurrage/ground rend charges of Rs.1.50 lacs approx. The appellant has concluded

> that the margin of profit is only Rs.500/- per machine. However, keeping in view the entire facts and circumstances and keeping in view the judgement of the Hon'ble Tribunal in the case of Kapsons Industries Vs. Commissioner of Customs, Mumbai reported as 2005 (186) ELT 490 (Tri.-Del.) and the fact that the appellant have not misdelcared the description of goods and the value has already been loaded, leading higher payment of duty, it is felt that ends of justice will be met if the redemption fine is reduced to Rs.2,50,000/- (Rupees Two lakhs and fifty thousand only) and penalty is reduced to Rs.50,000/- (Rupees Fifty thousand only). The Order-in-Original No. 24/ADC/CFS/LDH/07 dated 5.5.07 stands modified only to the above extent."

8. The Revenue in their memo of appeal have pleaded that in terms of the provisions of Section 115(2) of the Act, the redemption fine imposed under Section 125 shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. As such, they have contended that as the market price of the goods was higher and after deducting the duty chargeable the redemption fine imposed by the original adjudicating authority by taking a lenient view was justified and Commissioner (Appeals) should not have further reduced the same.

deals with confiscation of conveyance and

9. We find that the said Section 115 only lays down the maximum

as the market price of goods sought to be smuggled

limit for imposing the redemption fine and does not mandate the fixing of redemption fine equivalent to the market price of the goods less duty payable. For fixing the redemption fine, various factors have to be taken into consideration. The Commissioner (Appeals) have already, after taking into account various expenses incurred by the respondent arrived at a finding of nominal margin of profit of Rs.500/- per machine. As such, the profit earned by the respondent was on the lower side and even if the entire margin of profit is wiped out the redemption fines confirmed by the Commissioner (Appeals) are much on the higher side. Similarly, the penalty reduction to Rs.20,000/- cannot be faulted upon inasmuch as there was no mis-declaration of description of the goods. Accordingly, we do not find any reason to interfere in the impugned order of Commissioner (Appeals), as regards the quantum of redemption fine and penalty. Revenue's appeals are accordingly rejected.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM