

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

Appeal No. C/567 /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
Respondent

M/S B.E. OFFICE AUTOMATION (P) LTD.

I am directed to transmit herewith a certified copy of **Final order No.C/360/ 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 B.E. OFFICE AUTOMATION (P) LTD.
203, KPSIDC, INDUSTRIAL AREA,
BADDI, H.P.
2. Adv. / Consult MR. S YADAVA, ADV.
C/O. M/S B.E. OFFICE AUTOMATION (P) LTD.
203, KPSIDC, INDUSTRIAL AREA, BADDI, H.P.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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. 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 (Harvana)
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


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 : 4.8.2011

Custom Appeal No. 567 of 2007

[Arising out of the Order-in-Appeal No. 71/Cus/Apl/Ldh/07 dated 14.5.2007 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 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 B.E. Office Automation (P) Ltd.

Respondent

Appearance:

Appeared for Appellant : Shri R.K. Gupta, SDR
Appeared for Respondent : Shri S. Yadav, Advocate

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

Final Order No. C/360/11 dated 8.8.11

Per Archana Wadhwa :

Being aggrieved with the order passed by the Commissioner (Appeals), vide which he has reduced the redemption fine and penalty, Revenue has filed the present appeal.

2. We have heard Shri R.K. Gupta, Id. SDR for Revenue and Shri S. Yadav, Id. Advocate for the respondent.

3. As per the facts on record the respondents filed Bill of Entry dated 25.4.2007 for clearance of 114 pieces of Old and Used Complete Photocopier Incorporating Optical Systems – Low Duty and Medium Duty. The assessable value declared was to the tune of Rs. 13,90,383/- . The said consignment was not accompanied by the overseas Chartered Engineer certificate as regards the value, year of manufacture and residuary life of the said goods.

4. The goods were accordingly subjected to first check examination and services of ^{Chartered Engineer JP} Central Excise 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 Rs.16,10,570/-, 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.8.75 lakhs. In addition a penalty of Rs.8.75 lakhs 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.2.50 lakhs and penalty to Rs.5000/-. 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 :-

“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 rent 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 misdeclared 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 to the tune of Rs.22.60 lakhs and the duty chargeable was around Rs. 5.00 lakhs, the redemption fine up to Rs.17.60 lakhs was imposable on the respondents. However, the original adjudicating authority has imposed lower redemption fine of Rs. 8.75 lakhs by taking a lenient view and Commissioner (Appeals) should not have further reduced the same.

deals with confiscation of contraband and

9. We find that the said Section 115¹ only lays down the maximum limit for imposing the redemption fine *as the market price of goods sought to be smuggled* 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 on 141 machines would be around 70,000/-. Even if the entire margin of profit is wiped out the redemption fine of Rs.2.50 lakhs confirmed by the Commissioner (Appeals) is much on the higher side. Similarly, the penalty reduction to Rs.50,000/- 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 appeal is accordingly rejected.

(Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM