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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/699 /2007 - CU[DB]   Date **19/10/2011**

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, C.R. BUILDING,
THE MALL, AMRITSAR 143001.

C.C. (PREVENTIVE) AMRITSAR Appellant

Vs

M/S GILL AND AULAKHTRADERS, AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/455/ 2011 CU[DB]** dated 14.10.2011 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 GILL AND AULAKHTRADERS,
NEAR MAHAJAN PALACE,
MAJITHA ROAD, AMRITSAR

2. Adv. / Consult

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 (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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:5.10.2011

Customs Appeal No.699 of 2007

Arising out of the order in appeal No.126/CUS/APPL/JAL/2007 DATED 6.7.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar, Chandigarh.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of 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.(Prev.), Amritsar .. Appellant

Vs.

M/s Gill and Aulakh Traders .... Respondents

Appearance:

Shri N. Pathak , DR for the respondent
None for the respondents

Coram: Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final Oral Order No. 94455/11

Per Mrs. Archana Wadhwa:

Being aggrieved by the order passed by the Commissioner (Appeals), Revenue has filed the present appeal. We have heard the learned DR , Shri N. Pathak. Nobody appeared for the Respondents.

2. The dispute in the present appeal relates to undervaluation of the imported old and used computers. The Commissioner (Appeals) while upholding the finding of the lower authority as regards the value of the imported goods has reduced the redemption fine and penalty. Revenue is aggrieved with the said reduction and hence the present appeal.

3. For better appreciation, we reproduce the relevant paragraph from the order of the Commissioner (Appeals):

> ***" However, it is also a fact that the appellant has imported old and used computer sets and computer monitors and have not misdeclared the description of goods. They have contested the assessable value determined as per market enquiry conducted by the department, without taking them into confidence. The appellant 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 and penalty have been reduced. More specifically the appellants have cited Hon'ble Tribunal Final Order No.1071/06-SM(BR) dated 03/07/2006 in the case of M/s Supreme Enterprises, Delhi and No.1590/06-SM(BR) dated 31/10.2006 in the case of M/s Lovely Impex, New Delhi 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 significantly loaded, enhanced duty already paid on loaded value and the demurrage/detention/ground charges of Rs.1,53,396/- incurred by the appellants and the VAT paid invoices produced by the appellant indicating lower market value of the said goods to the tune of Rs.1,60,000/- and the case laws produced above, it is felt that redemption fine of Rs.4,00,000/- imposed is on the higher side and as such needs 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 against the appellant. Thus, penalty of Rs.1,25,000/- imposed by the adjudicating authority are also on the higher side and needs to be modified."***

4. As is seen from ~~the~~ above, the appellate authority ~~by~~ for reducing the redemption fine and penalty has referred to and has relied upon various factors including the fact of sale of the imported goods at lower market value. The said evidences relied upon by the Commissioner (Appeals) do not stand effectively rebutted by the Revenue. We, accordingly, find no reason to interfere with the said order of the Commissioner (Appeals). The Revenue's appeal is accordingly rejected.

(Archana Wadhwa)
Judicial Member

(Rakesh Kumar)
Technical Member

scd/