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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/427-434/2008-CU[DB], C/444-447/2008-CU[DB]

Dated: **02/07/2012**

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

**B.E. OFFICE AUTOMATION**
**PRODUCTS PVT. LTD.**
203, HPSIDC, INDUSTRIAL AREA,
BADDI, DISTT SOLAN (HP)

**B.E. OFFICE AUTOMATION**
**PRODUCTS PVT. LTD.** (Appellant)

**VS**

**C.C. (PREVENTIVE) AMRITSAR** (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **C/A/177-188/2012-CU[DB]** dated **25/06/2012** passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**Copy To,**

**1. Respondent**

**C.C. (PREVENTIVE) AMRITSAR**
Custom House, Central Revenue Building,
The Mall, Amritsar 143001.

**2. Advocate(s) / Consultant(s):**

**K.K Anand**
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 Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3
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. Gaurd 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 : 25.6.2012**

For Approval & signature :

**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 |

## Custom Appeal No. 427 to 434 of 2008

[Arising out of the Order-in-Appeal No. 22-29/CE/Ldh/2008 dated 24.3.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh)

M/s B.E. Office Automation Products Pvt. Ltd. Appellants

Vs.

CC, Amritsar Respondent

## Custom Appeal No. 444 to 447 of 2008

[Arising out of the Order-in-Appeal No. 36-39/CE/Ldh/2008 dated 28.3.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh)

M/s B.E. Office Automation Products Pvt. Ltd. Appellants

Vs.

CC, Amritsar Respondent

**Appearance:**

Appeared for Appellant : Shri Hrishikesh, Advocate
Appeared for Respondent : Shri Sumit Kumar, A.R.

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

Final Order No. C/A/1177-1188/12-Cus dated............

Per **Archana Wadhwa :**

All the appeals are being disposed of by a common order as the issue involved in all of them is identical.

2. The appellant is an importer of old and used photocopier of different countries of origin. The consignments so imported by the appellant were not accompanied with certificate of overseas Chartered Engineer. Accordingly, the Revenue determined the value of the goods in terms of the provisions of Rule 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The same was enhanced on the basis of the opinion of the local Chartered Engineer. The appellant is not aggrieved with such enhancement of the value.

3. The appellant also contravened the provisions of para 2.17 of Chapter – 2 Vol-I of the Foreign Trade Policy 2004-2009, as the import of old and used photocopier was restricted and valid license from the DGFT was required. The appellant is also not contesting the above allegation and findings of the lower authorities.

4. Vide their impugned orders, Revenue has confiscated the photocopiers and had directed the appellant to pay duty on the enhanced value. Options stand given to the appellant in all the cases to redeem the goods on payment of redemption fine fixed in all cases and penalties stand imposed to various extents.

5. The prayer of the ld. Advocate is to reduce the redemption fine and penalties in all the cases. By relying upon the earlier decisions of the Tribunal in the case of **CC, Cochin Vs. Ram Impex** – 2007 (219) ELT 694, **Navpad Enterprises Vs. CC** – 2009 (235) ELT 376 and **Maa Tara Enterprises Vs. CC** – 2009 (248) ELT 730 he prays for reducing the redemption fine to 10% and penalties to 5% of the value, as has been held in all the above decisions of the Tribunal.

6. After hearing ld. A.R. who submits that the quantum of redemption fine and penalty imposed upon the appellant is fair and just, we note that the Tribunal in all the above case, where the issue of import of second hand photocopiers, in contravention of the policy provisions and on the allegation of under valuation, was involved, had thought it fit to reduce the redemption fine to 10% and penalty to 5% of the value. As such, by adopting the same criteria, we reduce the redemption

fine in each case to 10% of the value and penalty in each case to 5% of the value. All the appeals are partially allowed as indicated above.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM

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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

Dated: **10/02/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Misc Order No. C/MO/50280-50288/2014& **C/MO/50289-50297/2014 - CU[DB]** dated 31/1/2014

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

**Asstt. Registrar(CUSTOMS Appeal Branch)**

| | Application | Appeal | Name and Address of Appellant |
|---|---|---|---|
| 1 | C/ROM/60056/2013<br>C/COD/60057/2013 | C/427/2008 | **B.E. OFFICE AUTOMATION PRODUCTS PVT. LTD.**<br>203, HPSIDC, INDUSTRIAL AREA,<br>BADDI, DISTT SOLAN (HP) |
| 2 | C/ROM/60058/2013<br>C/COD/60059/2013 | C/428/2008 | **B.E. OFFICE AUTOMATION PRODUCTS PVT. LTD.**<br>203, HPSIDC, INDUSTRIAL AREA,<br>BADDI, DISTT SOLAN (HP) |

3.C/ROM/60064,60062,60060,60072,60070,60068,60066/2013
C/COD/60065,60063,60060,60073,60071,60069,60067/2013

| | Name and Address of Respondent |
|---|---|
| 3 | **C.C. (PREVENTIVE) AMRITSAR**<br>CUSTOM HOUSE, CENTRAL REVENUE<br>BUILDING, THE MALL,<br>AMRITSAR 143001. |

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Other Appellants and Respondents as per Annexure

**Copy To**

4Advocate(s) / Consultant(s):

**K. K. ANAND ,ADV**
**A-5, BASEMENT,**
**LAJPAT NAGAR-III,**
**NEW DELHI,**
**110024**

**5** Bar Association, CESTAT, Delhi

**6** Director Publications, Customs, Excise. I.P. Estate, Delhi

**7** M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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**10** Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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**Asstt. Registrar(CUSTOMS Appeal Branch)**

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

**COURT NO. III**

**DATE OF HEARING : 31/01/2014.**
**DATE OF DECISION : 31/01/2014.**

**Customs ROM Application No. 60058 of 2013 with COD Application No. 60059 of 2013 in Appeal No. 428 of 2008**

**Customs ~~ROM~~ COD Application No. 60057 of 2013 with ~~COD~~ ROM Application No. 60056 of 2013 in Appeal No. 427 of 2008**

**Customs ROM Application No. 60064 of 2013 with COD Application No. 60065 of 2013 in Appeal No. 434 of 2008**

**Customs ROM Application No. 60062 of 2013 with COD Application No. 60063 of 2013 in Appeal No. 430 of 2008**

**Customs ~~ROM~~ COD Application No. 60061 of 2013 with ~~COD~~ ROM Application No. 60060 of 2013 in Appeal No. 431 of 2008**

**Customs ROM Application No. 60072 of 2013 with COD Application No. 60073 of 2013 in Appeal No. 447 of 2008**

**Customs ROM Application No. 60070 of 2013 with COD Application No. 60071 of 2013 in Appeal No. 446 of 2008**

**Customs ROM Application No. 60068 of 2013 with COD Application No. 60069 of 2013 in Appeal No. 445 of 2008 &**

**Customs ~~ROM~~ COD Application No. 60067 of 2013 with ~~COD~~ ROM Application No. 60066 of 2013 in Appeal No. 444 of 2008**

M/s B.E. Office Automation Products Pvt. Ltd. Appellant

Versus

CC (Preventive), Amritsar Respondent

**Appearance**

Shri Jatin Singal, Advocate – for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

(COD) Misc. Order No. 50280-50288/2014 Dated : 31/01/2014
(ROM) Misc. Order No. 50289-50297/2014 Dated : 31/01/2014

**Per. Archana Wadhwa :-**

The present ROM applications stand filed by the applicant in respect of final order No. C/A/177-188/2012-CUS dated 25/06/2012. It is seen that vide the said order all the appeals filed by the appellant were disposed of by reducing the redemption fine to 10% and penalty to 5% of the value of the imported goods.

2. The appellant challenged the said order before the Hon'ble High Court of Punjab & Haryana and subsequently withdrew the said petition under the order of High Court being ~~orders~~ order dated 07/5/13, with liberty to file the ROM applications before the Tribunal, Accordingly, the present rectification of mistake applications stand filed by them.

3. After hearing both the sides, we find that the said applications stand filed in terms of the provisions of Section 129B (2) of the Customs Act, 1962. The said section lays down the time limit of six months from the date of the order for rectifying any mistake in the order. Admittedly the said order was passed on 25/06/12 and the ROM applications stand filed on 28/08/13

i.e. after a period of 7 months and 10 days. Alongwith the said ROM applications, the applicant has also filed COD application.

We find that the ~~instead~~ only provision in the Customs Act, 1962 relating to the condonation of delays exist in Section 129A (5) of the Customs Act, which confers jurisdiction on the Tribunal to admit an appeal or Cross Objections after the expiry of the relevant period, on being satisfied that there was sufficient cause for non-presenting within the period. In as much as the said provision relates to condonation of delays in fact presenting the appeals or Cross Objections, the same cannot be made applicable to the delays in filing the ROM applications. Section 129B (2), which prescribes a limit of six months in filing the applications, does not confer any jurisdiction on the Tribunal to condone the delays beyond the said period. As such, we find that the applications having been filed after a period of 7 months and 10 days from the date of the order are barred by limitation and cannot be entertained on this ground itself.

4. Even otherwise also, we find that the mistake pointed out by the appellant is ~~as~~ regards non-consideration of their plea regarding the import of photocopiers not being restricted items during the relevant period. Learned advocate fairly agrees that the said plea was neither raised nor argue at the time of disposal of the appeal and the only prayer was to reduce the redemption fine and penalty, which stand accepted by the Tribunal.

In view of the foregoing, there can be no mistake on the part of the Tribunal, requir~~ed~~ing any rectification, when the plea itself was not raised and argued.

5. In view of the above, ROM applications are rejected. COD applications are also disposed of.

(Dictated and pronounced in open court)

**(Archana Wadhwa)**
**Member (Judicial)**

**(Rakesh Kumar)**
**Member (Technical)**

PK