IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 50217 of 2015

[Arising out of Order-In-Appeal No. CC(A)/CUS/D-II/ ICD/759/2014 dated 12.12.2014 passed by Commissioner Customs (Appeals), New Delhi]

M/s. Data Enterprises **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri K K Sharma, Advocate for the Appellants
Shri K Poddar, AR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 15.3.2017

FINAL ORDER NO . 52453 /2017

Per Archana Wadhwa :

2. After hearing both sides, we find that the appellants imported old and used digital multifunctional printing and copying machine and declared the transaction value as the

assessable value of the goods. Based upon the Chartered Engineer certificate and the NIDB data, the transaction value was enhanced and the appellant was directed to pay the duty at a higher assessable value. Further, as the imports of the said goods require license and appellant was unable to produce the same, goods were confiscated with an option to redeem the same on payment of redemption fine and penalties were also imposed.

3. At this stage, we find that the issue is no more res integra. In the case of ***Omex International vs. CC, New Delhi [2015 (328) ELT 579 (Tri-Del)***], there was originally difference of opinion between the two Members and the matter was resolved by a third Member. As per the majority decision, the value of old and used photocopier was held to be not enhancable on the basis of the Chartered Engineers' certificate or a NIDB data, in the absence of any evidence to show additional payment to the exporters. As such, the Tribunal held that the transactional value is required to be accepted, in the absence of evidence to the contrary.

As regards the Redemption Fine and penalty, it was observed that inasmuch as the goods were imported without license, they are liable to be confiscated and the importer was liable to imposition of penalty. However, taking into account, various precedent decisions, the Redemption Fine was fixed as 10% and penalty is 5% of the assessable value.

4. By adopting the ratio of the above majority decision, we set aside the impugned order relatable to enhancement of value. As regards, non production of license, we uphold the liability of the goods to be confiscated and liability of the appellant to face penalty. However, by adopting the above criteria as laid down in the case of ***Omex International***, Redemption Fine is reduced to 10% and penalty to 5% of the assessable value.

5. The appeal is disposed of in the above manner.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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