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

Custom Appeal No. C/50538/2015-CU[SM]
[Arising out of Order-In-Appeal No. CC(A)Cus/1042/2014 dated 10.11.2014 passed by Commissioner of Customs Appeals, New Custom House, New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s Kuldeep Impex Pvt. Ltd. ...Appellant(s)

Vs.

Commissioner of Customs Air Cargo (Export) …Respondent(s)
New Delhi (air Cargo Export)

Appearance:
Mr. M.S. Bhatia (Advocate) for the Appellant
Mr. Vaibhav Bhatnagar & Mrs. Kanu Verma Kumar (DRs) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 01.12.2015

Final Order No. 54339 /2015

Per S K Mohanty:

This appeal is directed against the impugned order dated 10.11.2014 passed by the Commissioner of Customs (Appeals), IGI Air Port, New Delhi. The grievance of the appellant in this appeal is that the Commissioner while deciding the appeal of the Revenue has passed the impugned order holding that absolute confiscation of goods is legally tenable and to that effect the original order passed by the Adjudicating Authority is not sustainable however, while passing the impugned order the Commissioner (Appeals) has taken into consideration regarding the fine and penalty imposed in the adjudication order in favour of the appellant herein, which according to the present appellant is beyond the scope and purview of the Commissioner (Appeals)'s power to decide the appeal against the appellant. In other words, the appellant's grievance is that as far as the redemption in the fine and penalty is concerned, the predecessor Commissioner (Appeals) vide order dated 28.10.2013 has decided the quantum of penalty that is required to be paid by the appellant. Said part of the order has not been contested by the Revenue. Accordingly, the appellant's submission in this appeal is that the Commissioner (Appeals) vide the impugned order dated 10.11.2014 has travelled beyond the scope and purview of his jurisdiction and thus the impugned order is liable to be set aside.

2. Heard the Ld. Counsels for both the sides.

3. I find that the Commissioner (Appeals) has passed the impugned order dated 10.11.2014 in deciding the appeal filed by the Revenue, where the grievance was for absolute confiscation of goods. So far as ordering for absolute confiscation, the impugned order to my opinion is sustainable. However, since the

Commissioner (appeals) has decided in the impugned order that the fine and penalty imposed in the order-in-original should stand, and that very aspect has already been decided by the predecessor Commissioner (Appeals) vide order dated 30.10.2013 by deciding the quantum of penalty that the appellant is required to pay, I am of the view that the impugned order to the extent of confirming the penalties is not legally sustainable. Therefore, I do not find any merits in the impugned order passed by the Commissioner (Appeals) and I set aside the same and allow the appeal in favour of the appellant.

4. Both sides agree that the impugned order passed by the Commissioner (Appeals) for absolute confiscation of goods is legal and proper to which none of the parties contest to that liability.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha