IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:27.12.2017

Customs Appeal No.56666/2013 (DB)

[Arising out of Order-in-Appeal No.CC(A)CUS/ICD/537/2012 dated 20.11.2012 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

CC, New Delhi Appellant

Vs.

M/s.Pearl Enterprises Respondent

Appearance:
Rep. by Shri A.K. Singh, AR for the appellant.
Rep. by Shri Sagar Rahtogi, Advocate for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.58616/2017

Per B. Ravichandran:

The Revenue is in appeal against the order dated 21.11.2012 of Commissioner (Appeals), New Delhi. The respondent imported used multi functional machines and filed a bill of entry dated 30.03.2012 for the clearance. The Revenue entertained a view that the said import is in violation of the restrictions imposed by the Foreign Trade Policy 2009-2014 as these are used second-hand items. The impugned order held that these items are not restricted for import and relied on the decision of the Hon'ble Madras High Court in **Anand Impex – 2012 (281) ELT 178 (Madras)** as well as the decision of the Tribunal in **Shivam International - 2012 (286) ELT 545 (Tribunal)**.

2. We have heard ld. AR for the Revenue and ld. Counsel for the Respondent.

3. The Revenue relied on the certain other decisions of the Tribunal to hold that old and used photocopier machines are restricted for import. The Revenue also distinguished the decisions relied upon by the Appellate Authority. We note that the Tribunal in **Asian Copiers – 2016 (344) ELT 942 (Tribunal-Delhi)** examined the similar set of disputes and held that the multi functional printing machines are not restricted for import. The Tribunal observed as under:-

> **"27**. Thus, it will be seen that while during the period prior to 5-6-2012, Para 2.17 mentioned among other items, the second-hand photocopier machines as the items which could be imported only against import licence, during the period w.e.f. 5-6-2012, in addition to the second-hand photocopier machines, the second-hand multifunction machines were also put in the restricted category. The point of dispute is as to whether the term 'photocopier machines' also covered the multifunction machines. Though a Division Bench of the Tribunal in the case of *Unitech Enterprises* (supra) has held in Para 13 of the judgment, that the word 'photocopier machines' also covers the Digital Multifunction Print and Copier Machines, this issue has also been considered by the Hon'ble Madras High Court in the case of *Anand Impex* v. *Commissioner* reported in 2012 (281) E.L.T. 178 (Mad.) and *Sai Graphic Systems* (supra) and in both these judgments, the Hon'ble High Court has held that the import of second-hand multifunction machines became restricted only w.e.f. 5-6-2012 and before 5-6-2012, these second-hand capital goods could be imported without any import licence. When on a particular issue, there is a judgment of particular High Court and there is no contrary judgment of any other High Court, that judgment of the High Court is binding on the Tribunal."

4. In the present case, the respondent imported only multi-functional printing /copying machines, which were not governed by the restrictions of Trade Policy

during the relevant time. Following the ratio of the above mentioned decision, we find no reason to interfere with the impugned order. Accordingly, the appeal by Revenue is dismissed.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.