IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT HYDERABAD

C/820/2008

(Arising out of Order-in-Appeal No. 43/2008 (H-II) Cus. dated 28.08.2008 passed by the Commissioner of Customs,Central Excise and Service Tax (Appeals-II), Hyderabad).

CCE, Hyderabad-II : Appellant

Vs.

M/s. Big Apple Computers : Respondent

Appearance

Shri Dass Thavanam, AC (AR)
for the appellant

Shri T.Jaypathi Rao, Advocate
for the Respondent.

CORAM :

Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **29.01.2018**

FINAL ORDER No. **30366/2018**

Per: Madhu Mohan Damodhar,

M/s. Big Apple, the respondent herein, vide the Bill of Entry dated 20.03.2008 have declared value as 8553.80 USD imported computer hard disks through Air Cargo Complex, Hyderabad. Goods were got examined by the Chartered Engineer who assessed the value as 8917.23 USD. The original authority vide an order dated 24.04.2008 rejected the declared value of the impugned goods and re-determined the assessable value as RS.4,28,428/-, confiscated the goods, imposed redemption fine and also imposed penalty on the importer. In appeal, the Commissioner (Appeals) vide the impugned order set aside the order of the original authority and allowed the appeal. Aggrieved, the department is before this forum.

2. On 29.01.2018, when the matter came up for hearing, on behalf of the appellant Shri Dass Thavanam reiterated the grounds of appeal. He further submitted that the Commissioner (Appeals) has concluded that the goods are new ones based on the Chartered Engineer's Certificate. However, from the report of the Chartered Engineer there is no conclusive evidence to decide whether the goods are ole or new ones. The Chartered Engineer has also opined that the residual life was 80 to85 % which might mean that the goods were used.

3. On the other hand, on behalf of the respondent, Ld. Counsel, Shri Jaypathi Rao submitted that the Commissioner has analysed all the aspects of the matter and has given a just and fair decision which does not call for any interference.

4. Heard both sides.

5. We find that the Chartered Engineer has categorically reported that the impugned goods are out dated models, they have been manufactured in earlier years but the external appearance and condition is very good and he has also mentioned

that the items do not appear to have been used. These crucial findings have been taken into account by the Commissioner (Appeals) in arriving at his decision. We are therefore unable to find any infirmity in the following conclusions of the Commissioner (Appeals) in the impugned order. The relevant portion is reproduced as under:-

> "5. As seen from the facts of the case, the lower authority has concluded that the impugned goods were 'used ones' based on the packing condition. The appellants have drawn my reference to the Chartered Engineer's certificate, wherein he has remarked that 'the items do not appear used based on no dust/no colour change of metal parts, terminals etc.'' Though the lower authority has made a mention about the said certification, he has still concluded that the goods were not new as they were not in the original pacing condition. As rightly pointed out by the appellants, one cannot judge whether the goods are old or new based on the pacing condition. Such a decision can be made only on examination of the goods ''per se''. Once the Chartered Engineer has certified that the goods were ''not used'', the lower authority cannot conclude otherwise without any valid reason. The reasoning adopted by him is flawed. Going by the facts of the case, I find no reason as too why the contention of the appellants, that the goods are new should not be accepted. Hence, I extend the benefit of doubt to the appellants.
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> 6. Coming to the valuation aspect, the lower authority has rejected the transaction value without nay valid grounds. He has arrived at his decision going by the presumption that the goods were second hand in nature. Though the appellants had initially agreed to he value determined by the department based on the Chartered Engineer's certificate, it has been contended that they had to accept the enhancement in value under duress

> as the demurrage charges were mounting day by day. In any case, there should be proper justification for enhancement of the value, which is lacking in the instant case. There is a catena of judicial pronouncements to the effect that the department cannot reject the transaction value in an arbitrary manner."

6. In the event, no merit is found in the contention of the Department, for which reason the appeal is dismissed.

(Operative part of the order pronounced in the open Court)

(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)	(M.V. RAVINDRAN) MEMBER (JUDICIAL)

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