

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Customs Appeal No. 76960 of 2017

(Arising out of the Order-in-Appeal No. KOL/CUS(PORT)/AA/996/2017 dated 11.09.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s Star Copiers,
9869/6, Sadar Thana Road, Multani Dhanda,
Pahar Ganj New Delhi-110055.

...Appellant (s)

VERSUS

Commissioner of Customs (Port), Kolkata.

Customs House, 15/1, Strand Road, Kolkata-

...Respondent(s)

APPEARANCE :

Shri Amit Kumar, Advocate for the Appellant

Shri Tariq Suliaman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...77287/2023

DATE OF HEARING : 06.10.2023

DATE OF DECISION : 06.10.2023

PER K. ANPAZHAKAN :

The Appellant, M/s Star Copiers, Delhi has filed this appeal against the impugned Order-in-Appeal dated 11.09.2017, passed by Commissioner (Appeals), wherein he has upheld the Order-in-in Original dated 20.05.2013, and rejected the Party's appeal.

2. Briefly stated facts of the case are that the Appellant imported old and used Printer cum Multi function Device of Xerox/Canon make from USA vide Bill of Lading No.6053707730 dated 25.03.2013 and filed the Bill of Entry dated 06/05/2013, for clearance of the goods. The value declared was USD 28025/- equivalent to Rs.21,10,438.72/-. While assessing the Bill of Entry, the assessing officer rejected the transaction

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value and enhanced the same to USD 38617.36/- on the basis of report and opinion from Chartered Engineer. The goods were confiscated and allowed to be redeemed on payment of redemption fine of Rs.4,22,000/- and penalty of Rs.1,06,000/- was also imposed under Section 112(a) of the Customs Act, 1962. The Commissioner (Appeals) upheld the Order-in-Original. Aggrieved against the impugned order, the Appellant has filed the present appeal, with a prayer to hold that the impugned goods were not liable for confiscation and no fine and penalty imposable and to set aside the impugned order.

3. In their grounds of appeal, the Appellant stated that import of second hand goods were restricted under para 2.17 of FTP and para 2.33 of Hand Book of Procedures. The Hon'ble Madras High Court in the case of Shrishti Digital Solutions, reported in 2013(298)ELT197(Mad) held that even though the photocopier and multi function print and copying machines fall under the restricted category in second hand capital goods group in para 2.17 of the FTP, they cannot be brought under any assumed restriction on par with personal computers/laptops. To overcome this decision, para 2.17 of [FTP 2009-14](#) was amended w.e.f.28.02.2013 and the said goods became importable only against authorization. In view of the decision of the Hon'ble Madras High Court, the impugned goods were not liable for confiscation for violation of the provisions of [FTP 2.17](#) and no redemption fine or penalty imposable.

4. Regarding enhancement of the value, the Appellant stated that the goods were under detention and to avoid demurrage charges, they accepted the enhanced value of the goods as opined by the Chartered Engineer. The stated that acceptance of value is no bar in challenging

the enhanced value. They cited the decision of Digitech Photocopier Vs Commissioner of Customs, Mumbai, reported in 2009(233)ELT 425 (Tri-Mum) in support of their contention.

5. Regarding redemption fine and penalty imposed, they stated that the redemption fine of Rs.4,22,000/- is more than 30% of the declared value, which is very harsh. In the case of Navpad Enterprises Vs Commissioner of Customs, Cochin, Tribunal, Bangalore has held that Redemption fine of 10% and penalty of 5% is reasonable and the Appellate authorities cannot deviate from the decisions.

6. The Ld. A.R. reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal records.

8. We observe that the issue involved in the present appeal is related to enhancement of value and consequent imposition of redemption fine and penalty. Regarding the valuation of the goods we find that the enhancement of value has been done on the basis of the value estimation given by the Chartered Engineer. The Appellant also gave their consent for the value enhancement and paid customs duty on the enhanced value. The Appellant contended that they have accepted the enhanced value only to avoid demurrage. The Appellant cited the decision of the Tribunal in the case of CC Vs Ajax & Turner reported in 2012(279) ELT 394(Tri-Del) and contended that merely because the importer has cleared the enhanced value to avoid demurrage charges, it does not mean that they have accepted the enhanced value. They have the right to contest the value after clearance of the goods.

9. We agree with the contention of the importer. The consent given before clearance of the goods does not take away their right to appeal

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on this issue. However, we find that the enhancement of value in this case was done as per the value estimation done by the Chartered Engineer. The Appellant has not submitted any evidence to substantiate their claim that the value was enhanced arbitrarily. Hence, we agree with the enhanced value and do not interfere with the enhanced value determined in the impugned order.

10. Regarding the confiscation of the goods, we observe that the goods imported are used Digital multi function printer, which are not freely importable. Para 2.17 of [FTP 2009-14](#) was amended w.e.f.28.02.2013 and subsequent to the amendment the said goods became importable only against authorization. The goods were imported vide Bill of Entry dated 06/05/2013, ie, after 28.02.2013 and hence the goods were restricted goods. Since the Appellant was not having any authorization, the goods were liable for confiscation. Accordingly, we find that the goods were rightly confiscated and allowed to be redeemed on redemption fine. Thus, we find no infirmity in the order of confiscation of the goods.

11. Regarding the quantum of redemption fine imposed , we observe that in the case of M/s Navpad Enterprises, reported in 2009(235) ELT 376 (Tri-Ban), affirmed by Hon'ble Kerala High Court , it has been held that fine upto 10% and penalty upto 5% would be reasonable when goods were imported against restriction in EXIM policy. We observe that the Redemption fine imposed in this case works out to 30% of the declared value, which is very high. Accordingly, we reduce the redemption imposed from 4,22,000/- to Rs.2,00,000/-. As the penalty

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imposed is works out to 5% of the declared value, we uphold the penalty imposed in the impugned order.

12. In view of the above discussion, we uphold the enhanced value and confiscation of the goods for violation of para 2.17 of [FTP 2009-14](#). However, the redemption fine is reduced to Rs. 2,00,000/-. The penalty imposed is upheld. The impugned order is modified on the above terms.

(Dictated and pronounced in the open Court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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