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

REGIONAL BENCH – COURT NO. 1

Customs Miscellaneous [COD] Application No. 76554 of 2019
(on behalf of Appellant/Revenue)

Customs Stay Application No. 76555 of 2019
(on behalf of Appellant/Revenue)

In

Customs Appeal No. 76869 of 2019

(Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AA/1125-1130/2018 dated 25.06.2018 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Port) **: Applicant / Appellant**
Appraising Group-V,
15/1, Strand Road, Custom House,
Kolkata 700 001

VERSUS

M/s. Gee Kay Computers **: Respondent**
B-7, Prabhat Kiran Building, Rajendra Place,
New Delhi – 110 008

<u>APPEARANCE</u>:

Shri Ashwini Kr. Choudhary, Authorized Representative for the Applicant-Revenue

Shri Shovendu Banerjee, Advocate for the Respondent

<u>CORAM</u>:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75494 / 2025

DATE OF HEARING / DECISION: 24.02.2025

ORDER: [PER SHRI ASHOK JINDAL]

Being satisfied with the explanation given by the Revenue in their application for condonation of delay for the delay caused in filing the present appeal, we condone the same. Accordingly, the petition for condonation of delay is allowed.

2. Further, it is observed that the Revenue has filed the present stay petition seeking stay of operation of the impugned order dated 25.06.2018 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001. However, *prima facie*, it is observed that the order passed by the Ld. Commissioner of Customs (Appeals) is not ex facie, illegal or without jurisdiction. Thus, the stay petition filed by the Revenue is rejected, being devoid of merit.

3. With the consent of both the sides, the appeal is also taken up today for disposal.

4. The Revenue is in appeal against the impugned order wherein redemption fine and penalty were reduced to 10% and 5% of the assessed values respectively.

4.1. The facts of the case are that the respondent, M/s. Gee Kay Computers, B-7, Prabhat Kiran Building, Rajendra Place, New Delhi – 110 008, filed six Bills of Entry viz. Nos. 2997110 dated 14.08.2013, 2124452 dated 16.06.2017, 2079893 dated 13.06.2017, 8511293 dated 10.02.2017, 8564770 dated 15.02.2017 and 9895564 dated 30.05.2017, for import of "Old and Used Digital Multifunction Printer and Copying Machines with standard accessories and attachment", which were assessed after value enhancement, confiscation, imposition of redemption fine and penalty under the Customs Act, 1962 by the Ld. Joint/Additional Commissioner of Customs (Port), Appraising Group-V, Custom House, Kolkata. The respondent challenged the assessment orders before the Ld. Commissioner (Appeals), who vide the impugned order, has reduced the redemption fine to 10% and penalty to 5% of the assessed values.

4.2. Aggrieved from the said order, the Revenue is before us.

5. Heard the parties and considered their submissions.

6. We find that in the instant case, the respondent has imported the old / second-hand digital multifunctional printing and copying machines without obtaining the license, which are in violation of ITC Regulations, Exim Policy and Foreign Trade Policy [Para 2.17] during the impugned period, which is after 28th February, 2013. We find that the Ld. Commissioner (Appeals) has confirmed the enhancement value as the respondent had accepted the same before the ld. adjudicating authority. As the goods were imported in violation of the Foreign Trade Policy [Para 2.17], therefore, the goods are liable for confiscation as has been held by the Ld. Commissioner (Appeals) in the impugned order.

7. With regard to the imposition of redemption fine and penalty, the Ld. Commissioner (Appeals) has considered the bona fide conduct of the respondent and relied upon certain judicial pronouncements on the issue, to reduce the redemption fine and penalty imposed to 10% and 5% of the assessed values respectively. We find that in similar cases, in the cases of *Commissioner of Customs, Cochin Vs. Office Devices reported in 2009 (240) E.L.T. 336 (Ker.)* and *Commissioner of Customs (Export), Chennai Vs. Sri Venkateswara Enterprises reported in 2014 (310) E.L.T. 433 (Mad.),* the Hon'ble High Courts have reduced the redemption fine and penalty to the tune of 10% and 5% respectively of the assessed value. We also find that an identical issue has been examined by this Tribunal in the case of *Commissioner of*

Customs (Port), Kolkata v. Atul Automation Pvt. Ltd. [Final Order No. 75403 of 2023 dated 12.05.2023 in Customs Appeal No. 76090 of 2014 (CESTAT, Kolkata)] wherein the same view has been taken by the Tribunal. In these circumstances, we hold that the Ld. Commissioner (Appeals) has correctly reduced the redemption fine and penalty in the impugned order.

8. In view of the above, we do not find any infirmity in the impugned order and accordingly, the same is upheld.

9. Consequently, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd