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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Feb-07-2014

Judge : Mathew John, Technical Member

Appeal No. : Appeal No. C/242 of 2005 [Arising Out of Order-in-Appeal No.36 of 2004-Cus. dated 28.12.2004 passed by the Commissioner of Central Excise (Appeals), Coimbatore]

Appellant : Electro Graphics

Respondent : Commissioner of Customs and Central Excise

Judgement :

1. The appellant filed Bill of Entry No.22 dt. 21.7.2004 for clearance of 116 pieces of goods declared as "Used Photocopiers Copying Assembly". On preliminary examination, it was seen that the goods were used. Therefore, with the help of specialists dealing in photocopiers, the goods were examined to record the nature of goods and its age. The said specialist certified that the units were sub-units (incomplete units) and the value of the machine was Rs.5000/- per Medium Duty Machine and Rs.8000/- for Heavy Duty Machine and the assessable value was worked out backwards from these figures and arrived at accordingly. The age of the machine parts could not be ascertained by the specialist. During the relevant time, there was prohibition on import of used goods except capital goods. Also used capital goods were allowed to be imported freely only if life of the goods were not more than 10 years old. Further there was a dispute going on between trade

and the department on the issue whether photocopiers could be considered as capital goods. It was settled by Supreme Court in the case of Atul Commodities Pvt. Ltd. Vs CC Cochin 2009 (235) ELT 385 (SC) that photocopiers have to be considered as capital goods till 19.10.2005 when the Import Policy was amended to make the position clear.

2. In this case, the goods were confiscated and allowed to be redeemed on payment of a fine of Rs.2 lakhs and penalty of Rs.50,000/- was imposed on the above by the adjudicating authority. On appeal, the Commissioner (Appeals) reduced the redemption fine to Rs.1 lakh and the penalty was retained at Rs.50,000/-. Aggrieved by the order of Commissioner (Appeal), the appellant has filed this appeal.

3. Ld. advocate for the appellant submits that the adjudicating authority and the appellate authority have recorded that the goods were photocopiers with some missing parts. If that was the case, they were eligible to import goods as capital goods as per the decision of Apex Court referred to above. Therefore, confiscation should be set aside. As a fall back argument, the learned advocate submits that in the valuation worksheet already the profit is recorded as 10% only. Therefore, redemption fine imposed cannot be more than 10%. Therefore, penalty imposed is excessive and reduction may be given.

4. Opposing the prayer, Ld. AR for Revenue submits that though in the initial examination, there is some observation that the goods were photocopiers with some components missing, the detailed examination report showed that the goods imported were actually sub-units of photocopiers and some of the sub-units required to make complete photocopiers were actually missing. Since the goods were not photocopiers it could be considered only as old goods and not as old capital goods. Since imported of old goods was prohibited, confiscation under section 111 (d) is correct and redemption and penalty imposed are reasonable.

5. I have considered submissions on both sides. I agree with the argument of the learned AR for Revenue that the goods were old and used goods and not old and used photocopiers and therefore confiscation is upheld. However, considering the overall facts and circumstances of the case, and considering that profit margin of

the appellant was only 10%, I reduce the redemption fine to Rs.40,000/- (Rupees Forty thousand only) and penalty to Rs.20,000/- (Rupees twenty thousand only). The appeal is thus partially allowed.