

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2008

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.Nos.127 to 130 of 2008

The Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin-628 004.

... Appellant in all these C.M.As.

versus

M/s.Sai Copiers
No.14, Vairams Complex
No.112, Thiagaraya Road
T.Nagar
Chennai.

... 1st respondent in C.M.A.No.127
of 2008

M/s.Sri Venkateswara Enterprises
No.567/3, Mount Road
Teynampet
Chennai-600 018.

... 1st respondent in C.M.A.No.128
of 2008

M/s.TTC Services
No.5, Aziz Mulk Seventh Street
Thousand Lights
Chennai-8.

... 1st respondent in C.M.A.No.129
of 2008

M/s.Sun Copier Systems
No.200, Maruthamalai Main Road
Kalveerampalayam
Bharathiar University Post
Coimbatore-641 046.

.. 1st respondent in C.M.A.No.130
of 2008

Customs, Excise and Service Tax Appellate Tribunal
South Zonal Bench
Shastri Bhawan Annexe, 1st Floor
26, Haddows Road
Chennai-600 006.

.. 2nd Respondent in all these CMAs

PRAYER: CMA.Nos.127 to 130 of 2008 are filed under Section 130(1) of the Customs Act, 1962, against the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 28.5.2007 made in Final Order Nos.674 to 680 of 2007.(Order in Original Nos.7/07,259/07,156/06 & 155/06 respectively dated 28.12.06, 12.12.06,12.12.06 & 20.7.06 on the file of the Commissioner of Customs, Tuticorin).

For appellant in all these appeals :Mr.T.Chandrasekaran

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

In all these cases, the Revenue is on appeal under Section 130 (1) of the Customs Act, 1962 against the Final Order Nos.674 to 680 of 2007 dated 28.5.2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The material facts for disposal of these appeals are as follows:

The first respondents - importers have imported old used photocopiers and filed bills of entry for clearance of the goods under OGL. The value of the goods as invoiced by the Overseas Supplier was declared in the bills of entry. These imports were made subsequent to the amendment of Para 2.17 of the Foreign Trade Policy by which the import of second hand photocopiers would be allowed only against a specific licence. After presentation of the bills of entry by the first respondent - importers, the goods were subjected to examination by Officers of Customs, as also by a local chartered engineer. The Chartered Engineer appraised the value of the goods to be higher than what has been declared by the importer. On the basis of the result of investigation, the Department issued show cause notice to the importers calling for their objections as to why the the imported goods should not be confiscated for want of import licence, as to why penalty should not be imposed on the importers and as to why the value appraised by the Chartered Engineer should not be adopted for the purpose of assessment.

3. On adjudication, the Commissioner of Customs passed orders (a) enhancing the value of the goods under Rule 8 of the Customs Valuation Rules, 1988 read with Section 14(1) of the Customs Act on the basis of the Chartered Engineer's appraisal, (b) confiscating the goods under Section 111(d) of the Customs Act read with Section 3(3) of the Foreign Trade (Development and Regulation) Act with option for redemption against payment of fine under Section 125 of the Customs Act as well as payment of appropriate duty and (c) imposing penalties on the appellants under Section 112(a) of the Customs Act.

4. Aggrieved by the said order, the importers filed appeals before the Customs, Excise and Service Tax Appellate Tribunal. The Tribunal confirmed the order of the Commissioner, Customs in respect of confiscation of the goods, however reduced the redemption of fine and penalty to 15 percent and 5 percent respectively of the value of the goods. The Department aggrieved by the order of the Customs, Excise and Service Tax Appellate Tribunal in reducing the penalty as stated above, filed the present appeals by formulating the following common questions of law:

(i) Whether the Customs, Excise and Service Tax Appellate Tribunal was justified in reducing the redemption fine imposed under Section 125 of the Customs Act, 1962 without giving any reasons, when the adjudicating authority imposes deterrent fine in order to stop the imports in violation of the Foreign Trade Policy?

(ii) Whether the Customs Excise and Service Tax Appellate Tribunal was justified in reducing the penalty imposed under Section 112(a) of the Customs Act, 1962 without giving any reasons, when the adjudicating authority imposes deterrent penalty in order to stop the imports in violation of the Foreign Trade Policy?

5. Learned counsel appearing for the appellants referring the notification of the Central Board of Excise and Customs Circular No.78/2003-Cus dated 1.9.2003, contended that the Board has issued the circular to the effect that in case of import of second hand machinery imported in contravention of the EXIM policy, the fine imposed should be such so that the importer does not, under any circumstance, make a profit on its use or resale in India. The penalty should also be commensurate with the offence committed, particularly when the importers deliberately imported goods knowing fully well that the import of such goods is restricted under the EXIM Policy. He further contended that in this case there was no evidence adduced by the importers that they had made an attempt to procure import licence for the purpose of importing the goods. Thus, he contended that the action of the importers is deliberate and the Central Excise and Service Tax Appellate Tribunal should not have reduced the redemption fine and penalty.

6. We heard the argument of the learned counsel appearing for the appellants and perused the material on record.

7. Section 125 of the Customs Act, 1962 reads as follows:

" Section 125: Option to pay fine in lieu of confiscation:

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose

possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods. "

8. Section 112 of the Customs Act, 1962, which authorises imposition of penalty for improper importation of goods, reads as follows:

"Section 112: Penalty for improper importation of goods, etc.:
Any person-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made

under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereinafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest. "

(bold supplied)

9. From the reading of the above provisions, it is clear that the statutory requirement is that the imposition of redemption fine shall not exceed the market price of the goods confiscated, less in the case of imported goods, the duty chargeable thereon. The language employed "shall not exceed" indicates that the authorities under Act are empowered to impose redemption fine less than the market price of the goods confiscated. Thus, a discretion is vested on the authorities with a rider that the imposition of redemption fine should not exceed the market price.

10. Likewise, under Section 112(a) also, the statutory prescription is in the case of goods in respect of which any prohibition is in force under the Customs Act, or any other law the penalty imposable shall not exceed the value of the goods or Rs.5,000/-, which ever is greater. In respect of dutiable goods other than prohibited goods, the penalty could be imposed not exceeding the duty sought to be evaded on such goods or Rs.5,000/- which ever is greater.

11. Here again, the maximum that could be levied is only prescribed. There is no statutory prescription that the penalty should not be reduced by the appellate authority. Before the Tribunal, the importers relied on the earlier order of the Tribunal in the case of SRI VENKATESH ENTERPRISES VS. COMMISSIONER OF CUSTOMS, CHENNAI (2005) 192 ELT 818, wherein the quantum of redemption fine imposed in lieu of confiscation of second-hand photocopiers valued at Rs.17.7 lakhs was restricted to Rs.2.5 lakhs and the quantum of penalty was restricted to Rs.85,000/-. The same was followed in the case of the respondents also

exercise of discretionary jurisdiction of the authorities under the Customs Act. The Court can interfere only in the circumstances in which it was demonstrated before it that the order of the Tribunal is thoroughly arbitrary, whimsical and resulting in miscarriage of justice. As already stated, the Tribunal has followed its own earlier decision wherein the Tribunal has consistently imposed the redemption fine at 15 percent and penalty under Section 112(a) at 5 percent of the value of the goods, which factum has not been disputed by the counsel appearing for the Department. In the above said view of the matter, we find no question of law, much less a substantial question for entertaining these appeals. Hence, the appeals are dismissed. However, there is no order as to costs. Consequently, connected M.P.Nos.1, 1, 1 and 1 of 2007 in C.M.A.Nos.127 to 130 of 2008 are also dismissed.

kSV/usk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin-628 004.
2. The Customs, Excise and Service Tax
Appellate Tribunal
South Zonal Bench
Shastri Bhawan Annexe, 1st Floor
26, Haddows Road
Chennai-600 006.

+1 cc to Mr.T.Chandrasekaran, Advocate Sr.No.4648.

NG(CO)
DCP/15.2

C.M.A.Nos.127 to 130 of 2008

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