

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

BANGALORE

Appeal(s) Involved:

C/526 - 541/2007 & C/656/2008

[Arising out of : (as per the table below) by the
Commissioner of Customs (Appeals), Cochin.]

Sl. No.

Appeal No.

Appellants

Respondents

OIA No.

1

C/526/2007

SAI INTERNATIONAL

CC, COCHIN-CUS

No.398/2007 dt.23.5.2007

2

C/527/2007

SOORAJ GRAPHICS

CC, COCHIN-CUS

No.399/2007 dt.23.5.2007

3

C/528/2007

SAGAR ENTERPRISES

CC, COCHIN-CUS

No.400-402/2007 dt.23.5.2007

4

C/529/2007

SAGAR ENTERPRISES

CC, COCHIN-CUS

No.400-402/2007 dt.23.5.2007

5

C/530/2007

SAGAR ENTERPRISES

CC, COCHIN-CUS

No.400-402/2007 dt.23.5.2007

6

C/531/2007

RAJESHWARI GRAPHIX

CC, COCHIN-CUS

No.392-397/2007 dt.23.5.2007

7

C/532/2007

RAJESHWARI GRAPHIX

CC, COCHIN-CUS

No.392-397/2007 dt.23.5.2007

8

C/533/2007

RAJESHWARI GRAPHIX

CC, COCHIN-CUS

No.392-397/2007 dt.23.5.2007

9

C/534/2007

RAJESHWARI GRAPHIX

CC, COCHIN-CUS

No.392-397/2007 dt.23.5.2007

10

C/535/2007

RAJESHWARI GRAPHIX

CC, COCHIN-CUS

No.392-397/2007 dt.23.5.2007

11

C/536/2007

RAJESHWARI GRAPHIX

CC, COCHIN-CUS

No.392-397/2007 dt.23.5.2007

12

C/537/2007

AISWARYA ENTERPRISES

CC, COCHIN-CUS

No.387-391/2007 dt.23.5.2007

13

C/538/2007

AISHWARYA ENTERPRISES

CC, COCHIN-CUS

No.387-391/2007 dt.23.5.2007

14

C/539/2007

AISWARYA ENTERPRISES

CC, COCHIN-CUS

No.387-391/2007 dt.23.5.2007

15

C/540/2007

AISHWARYA ENTERPRISES,

CC, COCHIN-CUS

No.387-391/2007 dt.23.5.2007

16

C/541/2007

AISHWARYA ENTERPRISES

CC, COCHIN-CUS

No.387-391/2007 dt.23.5.2007

17

C/656/2008

IMPACT SYSTEM INC

CC, COCHIN-CUS

No.14/2008 dt.16.6.2008

Appearance:

Shri B. Venugopal, Advocate

Shri Mhd. Rahim, Advocate

For the Appellant

Shri Naveen Kushalappa, AR

Shri N. Jagadish, AR

For the Respondent

Date of Hearing: 27/02/2017 & 22/03/2017;

& 06/04/2017

Date of Decision: 08/05/2017

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20647 - 20663 / 2017

Per : S.S GARG

The appellants have filed these 17 appeals against the different impugned order passed by the Commissioner of Customs (A). Since in all the 17 appeals, the issue involved is identical and therefore all the 17 appeals are being disposed of by this common order. The details of the 17 appeals are produced in the tabular form.

Sl. No.

Appeal No.

Appellant

Assessable value (Rs.)

Redemption Fine (Rs.)

Penalty (Rs.)

1

C/526/2007

Sai International

1127938

280000

150000

2

C/527/2007

Sooraj Graphics

755916

190000

100000

3

C/528/2007

Sagar Enterprises

1250820

250000

180000

4

C/529/2007

Sagar Enterprises

1005866

250000

150000

5

C530/2007

Sagar Enterprises

1218894

370000

200000

6

C531/2007

Rajeshwari Graphix

1596904

470000

250000

Sl. No.

Appeal No.

Appellant

Assessable value (Rs.)

Redemption Fine (Rs.)

Penalty (Rs.)

7

C532/2007

Rajeshwari Graphix

946383

240000

140000

8

C533/2007

Rajeshwari Graphix

1728797

520000

280000

9

C534/2007

Rajeshwari Graphix

1213162

280000

140000

10

C/535/2007

Rajeshwari Graphix

1632840

400000

210000

11

C536/2007

Rajeshwari Graphix

895970

180000

100000

12

C/537/2007

Aishwarya Enterprises

1926686

450000

235000

13

C/538/2007

Aishwarya Enterprises

330394

65000

35000

14

C/539/2007

Aishwarya Enterprises

910951

225000

115000

15

C/540/2007

Aishwarya Enterprises

1231722

300000

155000

16

C/541/2007

Aishwarya Enterprises

960208

240000

130000

17

C/656/2008

Impact System Inc

2312360

575000

300000

2. For the sake of convenience, the facts of appeal No. C/526/2007 are being taken.

3. The appellant filed bill of entry No.171946 dated 11.1.2006 for the clearance of various number of the used incomplete copier. As the invoice did not contain any details, the services of independent Chartered Engineer were obtained in the presence of the Dock officers at the CFS Petta. On examination, the goods were found to be Medium duty and Heavy duty assemblies. The age of the machines in the two consignments were somewhere between 8 10 years and not reconditioned. The importers vide various letters dated 8.12.2005 and 19.1.2006 had accepted the findings and value as appraised by the Chartered Engineer and requested for waiver of show-cause notice. They have stated that they have imported the goods under the impression that these are capital goods which are freely importable under the Foreign Trade Policy. Since as per para 2.17 of the EXIM Policy 2004-09 import of second-hand goods except second-hand capital goods are restricted and permitted clearance only on the strength of license and since the importers failed to produce a valid license, the said goods were confiscated under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of the FT (D & R) Act, 1992. Options were given to the importers to redeem the goods on payment of fine and penalties. After following the due process, the Commissioner (A) has imposed the redemption fine and penalty. Aggrieved by the same, the appellants have filed these appeals challenging the imposition of high redemption fine and penalty.

4. Heard both the parties and perused the records.

5. The only issue in all these appeals is whether the imposition of redemption fine and penalty is on a higher side as alleged by the appellant or what should be the percentage of redemption fine and penalty to be imposed on the importer who imports photo copier in violation of the Foreign Trade Policy. The learned counsel for the appellant submitted that the impugned order imposing redemption fine of more than 10% of the value of the goods in few cases and imposition of penalty of more than 5% of the value of goods, is not sustainable in law and is contrary to the consistent decisions of various Benches of the Tribunal and the High Court. He further submitted that the importation of the second-hand photocopier was under dispute on the ground that the same are not importable freely and are restricted in terms of para 2.17 of the Foreign Trade Policy read with para 2.13 of the Handbook of Procedure (import of second-hand capital goods are allowed freely). Based on the provisions of Foreign Trade Policy and Handbook of Procedure, the Customs Authorities issued show-cause notices under Section 124 of the Customs Act based on clarification issued in the Circulars alleging that the second hand photocopier were restricted for import and requires a valid import license and in the absence of such license, the goods were liable to be confiscated under Section 111(d) of the said Act read with para 2.17 of the Foreign Trade Policy and that the importers were liable to penalty under Section 112 of the

said Act. The learned counsel further submitted that the different benches of the Tribunal took different views in the matter and therefore the issue was referred to the Larger Bench to resolve the conflicting conclusions. Accordingly, the Larger Bench in the case of Atul Commodities (P) Ltd. vs. CC, Cochin reported in 2005 (184) ELT 135 decided the issue by holding that the second hand photocopier qualify as capital goods and are freely importable in terms of para 2.33 of the Handbook of Procedure. The Revenue challenged the Larger Bench decision before the High Court of Kerala and the High Court overruled the Larger Bench decision as reported in CCE vs. Atul Commodities : 2006 (202) ELT 392. Thereafter, the decision of the Honble High Court was overruled by the Honble Supreme Court as reported in Atul Commodities Pvt. Ltd. vs. CC, Cochin: 2009 (235) ELT 385 (SC) and the Honble Supreme Court upheld the view of the Larger Bench of the Tribunal that photocopier machines are capital goods. It was further held that any amendment to the Policy has to be done only through a Notification and not through policy circular and therefore, the import of photocopier machines stands restricted only on or after 19.10.2005, the date on which Notification No.31 issued restricting import of second hand photocopier. The learned counsel further submitted that from the year 2002 onwards the import of used photocopiers were under dispute as to whether the same are consumer goods or capital goods and can be freely imported or not; whether the restriction imposed under Circular have the legal binding etc., in which the Supreme Court in the case of Atul Commodities (supra) settled the dispute. He further submitted that in all the appeals, it is an admitted fact that the appellant imported the used photocopiers without a license as required under the Foreign Trade Policy read with Handbook of Procedure during the relevant period. He also submitted that there was a lot of confusion during the impugned period during which the imports were made in the present appeals, as to whether the used photocopier can be imported freely or not. He further submitted that keeping in view the history of the dispute, the various Benches of the Tribunal and the High Court reduced the quantum of redemption fine and penalty imposed. In support of his submission, he relied upon the decision in the case of Navpad Enterprises vs. CC, Cochin : 2009 (235) ELT 376 (Tri.-Bang.), wherein the Tribunal has held as follows:

6.?On a very careful consideration of the issue, we find that the value declared by the appellant has already been enhanced by the Revenue on the basis of the Chartered Engineers certificate. It is seen that there is no evidence brought out by the revenue to show that the appellants had paid more than what he had declared to the customs. Therefore, in such circumstances, the Tribunal took a view to impose fine and penalty at 10% and 5% in many of the cases cited by the appellant. As this Bench cannot deviate from the ratio of its own decision, we find that in all these cases the fine and penalty should be fixed only at 10% and 5% of the value of the imported goods determined by the Chartered Engineer, respectively. Therefore, by following the ratio of the several decisions of this Bench we dispose of these appeals on the above terms.

The above decision was upheld by the Honble High Court of Kerala (Jurisdictional High Court) in the case of Commissioner of Customs v. Office Devices 2009 (240) ELT 336 (Ker.) Pg No. 45-47 = Commissioner of Customs v. Navpad Enterprises 2012 (278) ELT 172 (Ker.)Pg. No. 48-50, wherein it was held as follows:

8.?The dispute being only on the rate of redemption fine and penalty which inter alia depends on the totality of the facts and circumstances in each case, we fail to see how any question of law, much less any substantial question of law could arise. A quasi judicial authority in exercising a power of discretion has to do it in an objective manner and cannot do so in a mechanical way. But we find that no peculiar facts were pleaded or materials placed to show that the redemption fine imposed at 10% and penalty at 5% is on a lower side. True that in earlier cases as pointed out in the Tribunals order, redemption was at the rate of 10% and penalty at 5%. If the facts in this case cannot be differentiated, then for parity of reasons, necessarily, the Tribunal has to follow its precedence while imposing the redemption fine and penalty as otherwise, such decision can also be characterised as arbitrary and discriminatory. Coming to the facts of this case, the Tribunal found that the value as fixed by the Chartered Engineers certificate is an enhanced value from the one declared by the assessee. That duty was imposed reckoning the value as fixed by the Chartered Engineers certificate. Therefore, the redemption fine imposed being on such rate as fixed in the certificate issued by the Chartered Engineer, there was escalation in the redemption fine and penalty imposed. Thus, the Tribunal has given its own reasons in the matter of fixing a rate at which the fine should be imposed. Therefore, it cannot be said that it is a perverse finding. What would have been the rate had the matter been dealt with by this Court sitting in the armchair of the Appellate Authority, however, cannot be substituted.

9.?In this regard, we may refer to certain case law cited by both sides. A Bench decision of the Madras High Court in Commissioner of Customs, Tuticorin v. Sai Copiers [2008 (226) E.L.T. 486 (Mad.)] had occasion to consider a similar case where the Tribunal had reduced the amount of penalty and redemption fine to 5% and 15% respectively of the value of the goods. It was held thus :

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 goods. Likewise under Section 112(a), the maximum penalty that could be levied is only prescribed, and there is no statutory prescription that the penalty should not be reduced by appellate authority.

That was also a case where the Tribunal had in fact followed the earlier order of the Tribunal 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 restricted to Rs. 85,000/-. The same was followed in the case of the respondents therein by the Tribunal. It was also held that the court can interfere only in such circumstances where it was demonstrated to be whimsical resulting in miscarriage of justice.

10. In *Commissioner of Customs (Import) v. Shankar Trading Co.* [2008 (224) E.L.T. 206 (Bom.)] a Division Bench of the Bombay High Court also took a similar view. It was held that when the Tribunal noted that for import of similar goods around similar time in other order of the Commissioner (Appeals) the penalty and redemption fine was reduced and once the Tribunal relied on the judgment for reducing penalty and fine, it cannot be said that no reasons were given and consequently no substantial question of law arises.

11. The learned standing counsel appearing on behalf of the appellant placed reliance on the decision in *Jain Exports Pvt. Ltd. v. Union of India* [1993 (66) E.L.T. 537 (S.C.)]. In that case, the Apex Court, while considering the quantum of redemption fine to be imposed, held that the quantum should depend on the totality of the facts and circumstances of each case and that bona fide action of assessee by itself cannot entitle him to claim full waiver of fine. It was also held that the Apex Court would not ordinarily go into the matter while exercising jurisdiction under Articles 32 and 136 of Constitution of India unless impugned order is shown to be thoroughly arbitrary or whimsical resulting in gross miscarriage of justice.

12. In *State of U.P. and Others v. Sukhpal Singh Bal* [(2005) 7 SCC 615] the Apex Court held that the penalty is intended to protect the public revenue. As per Section 125 of the Customs Act, what is prescribed is the maximum of the amount that could be fixed by way of redemption fine. Therefore what exactly should be the redemption fine to be imposed will necessarily depend upon the facts and circumstances of each case.

13. It is settled that power of discretion by the authority is to be exercised based on well founded principles and should not be done in a mechanical way. We have already perused the order of the Tribunal and found that the Tribunal had given its own reasons for supporting as to why the redemption fine is to be reduced. That the rate at which the redemption fine is imposed in similar cases has been taken note of only for the limited purpose of maintaining consistency. Had it been a case where materials were placed by the appellant to draw a distinction from the rest of the cases, certainly, the Tribunal would have and ought to have considered those additional materials in arriving as to whether the rate imposed should be the same or whether any variation has to be made in the factual situation. In so far as no such attempt is made by the appellant before the Tribunal, we cannot find that this is dissimilar to the other cases. Any authority exercising the power is also bound by law of precedence and it is necessary to maintain consistency as otherwise it will be characterised as discriminatory. Therefore, this is not a case where the rate is applied uniformly in a mechanical way; but similar rate of redemption fine was adopted for parity of reasons.

5.1 The learned counsel further relied upon the decision in the case of CC, Tuticorin vs. Sri Kamakshi Enterprises: 2009 (238) ELT 242 (Mad.) wherein the Honble High Court has observed as follows:

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.

5.2 Further, in the case of Maa Tara Enterprises vs. CC, Cochin reported in 2009 (248) ELT 730 (Tri.-Bang.), the Tribunal has observed in para 8 as under:

7.?Be that as it may, I find that the issue is now covered in favour of the appellants in the case of laws cited by the Id. Counsel. In those cases also, the issue of import of used photocopiers in violation of the Foreign Trade Policy and misdeclaration of the value is involved. In those cases, I find that the Tribunal has put a benchmark of imposition of redemption fine of 10% and penalty of 5% respectively on the value of the imported goods as arrived by the Chartered Engineer. I do not find any reason for deviating from such a benchmark which has been fixed by the Tribunal and also upheld by the Honble High Court of Bombay and P&H.

8.?In view of the above, the impugned orders as regards the fine and penalty are modified to the extent in all these cases, that the appellants are required to pay redemption fine of 10% and penalty of 5% of the value of goods as arrived by the adjudicating authority.

5.3 Further, in the case of Commissioner of Customs, Cochin vs. Dilip Ghelani: 2009 (248) ELT 888 (Tri.-LB), the Tribunal has held as follows:

9.?On a very careful consideration of the issue, we find that in all identical or similar cases of import of second-hand photocopiers, this Tribunal taking into account, the facts and circumstances of the case, had fixed the fine-and penalty at 10% and 5% of the value of the imported goods respectively. The Commissioner (Appeals) has only followed the decisions of this Bench. The restriction of fine and penalty to 10% and 5% has also been upheld by the Honble High Court of Madras. This Bench has decided that in respect of similar imports, different criteria should not be followed. That would amount to discrimination. Moreover, the case-laws cited by the Revenue do not pertain to import of second-hand photocopiers. Even as regards the import of second hand photocopiers, there have been different

views with regard to the fact that whether they can be considered as capital goods or not and whether they can be imported in terms of the Exim Policy. There have been different views taken by the different High Courts. In view of all these things, it would not be correct to impose different quantum of fine and penalty in respect of different importers. In any case, the Commissioner (Appeals) has followed only the decisions of this Bench in the interest of judicial discipline. In view of that, we cannot hold that his order is not legal and proper. So far, the decisions of the Tribunal have not been reversed by any High Court or Apex Court. In view of this, we do not have any grounds to interfere with the impugned orders. Hence, Revenues appeals and stay applications are rejected.

5.4 Further, in the case of *New Copier Syndicate vs. Commissioner of Customs* reported in 2015 (232) ELT 620 (Tri.-Bang.), the Tribunal has held as follows:

4. We have carefully considered the submissions. We find that the issue is no longer *res integra* and this very aspect on this very ground as raised in the present cases, has been gone into in great detail by the Apex Court in the case of *Tolin Rubbers* and in *MICO Ltd.* The Apex Court has noticed that the transaction value of second-hand machineries cannot be rejected in the absence of any contemporary import of identical goods at identical prices. The issue has been settled in assessee's favour by the Apex Court judgment. This has been followed by the Tribunal in the above noted judgments. Therefore, the value adopted by the appellants in terms of the Transaction Value is required to be accepted. The value has been supported by the Certificates also. The learned consultant also raised an issue that the question of imposing higher penalty and RF does not arise as the Tribunal, for not obtaining licences in respect of other machineries, has restricted the RF and penalty to 10% and 5% respectively. In view of the ruling in *Rex Printing Press v. CC, Kolkata - 2005 (184) E.L.T. 73 (Tri.-Bang.)* and *Sooraj Graphics* (cited *supra*), the redemption fine and penalty in these cases is restricted to 10% and 5% respectively. In the result, the Transaction Value is accepted while restricting the RF and penalty to 10% and 5% respectively. The appeals are disposed of in the above terms.

5.5 Further, in the case of *Omex International vs. Commissioner of Customs, New Delhi* reported in 2015 (228) ELT 57 (Tri.-Del.), wherein the Tribunal held as follows:

14. As regards the violation of EXIM Policy, the learned advocate has drawn our attention to various decisions of the Tribunal, wherein the redemption fine and penalty was reduced to 10% and 5% of the value of the photocopier. We note that in the case of *Navpad Enterprises v. CC, Cochin [2009 (235) E.L.T. 376 (Tri.-Bang.)]*, redemption fine and penalty was reduced to 10% and 5% after rejecting the contention of the learned Departmental Representative that the assessee in that case was repeatedly committing violation of the EXIM Policy. The Tribunal observed that inasmuch as in the earlier decisions the view has already been taken to impose fine and penalty at 10% and 5% of value, the Bench cannot deviate from the ratio of its own decision. The said decision of the Tribunal stand confirmed by the Honble Kerala

High Court reported as [2012 (278) E.L.T. 172 (Ker.)] when the appeals filed by the Revenue was dismissed. Honble Court observed that discretion to fix the redemption fine and penalty is not be exercised in mechanical way but the same is to be exercised in objective manner by quasi judicial authorities and in the absence of any evidence that quantum of fine and penalty fixed by the Tribunal was on the lower side, the Revenues prayer for enhancement of the same cannot be accepted. To the similar effect is decision of the Honble Kerala High Court in the case of CC, Cochin v. Office Devices [2009 (240) E.L.T. 336 (Ker.)] and the decision of the Tribunal in the case of CC, Cochin v. Dilip Ghelani [2009 (248) E.L.T. 888 (Tri.-Bang.)]. Some further reference can be made to the following decisions, where redemption fine and penalty was reduced to 10% and 5% of value :-

1. L.K. International v. CC (Prev.) Amritsar, Final Order No. C/A/205-212/2012 Cus(DB), dated 25-6-2012.
2. B.E. Office Automation Products P Ltd. v. CC (Prev.) Amritsar, Final Order Nos. C/A/177-188/2012-Cus(DB), dated 25-6-2012.

Honble Bombay High Court in the case of Tejus Proprietary concern of Tejus Rohitkumar Kapadia [2012 (275) E.L.T. 175 (Bom.)] has observed that Tribunal is duty bound to follow the binding precedent and further observed that the CESTAT as a judicial body, must realize the importance of doctrine of precedent as in our legal system. Deference to judgments of the Supreme Court is a matter of constitutional principle. Equally, unless Coordinate Benches of the Tribunal have due deference and regard for decisions rendered by the Tribunal, the elements of certainty and consistency in the judicial process which lie at the heart of judicial functioning would be seriously disrupted.

In terms of said decision of the Bombay High Court, the precedent decisions of the Coordinate Benches have to be given due respect and are required to be followed unless the same are specifically deviated from by giving suitable reasoning. In those cases also, it is seen that matter needs to be referred to Larger Bench for consideration of the disputed legal issues. Inasmuch as in the present case, all the Coordinate Benches have taken a categorical view of imposition of redemption fine of 10% and penalty of 5% of the value of imported goods, we find no justification to take a different view. It may not be out of place to mention here that in some of the cases, the importers were repeatedly violating the EXIM policy provisions. Inspite of that, the Tribunal imposed redemption fine and penalty of 10% and 5% of the value only. Some of the Tribunals decision also stand upheld by the Honble High Courts.

15. In view of the above, we set aside the impugned order as regards the enhancement of the value. However the imported goods are confiscated with an option to the appellant to redeem the same on payment of redemption fine of 10% of the value of the goods and penalty of 5% of the value of goods is upheld.

5.6 Further, in the case of *Larsen & Tubro Ltd. vs. CST*: 2013 (32) STR 410 (Tri.- Del.), the Honble Tribunal has observed as under:

2. We find that the said issue was the subject matter of the various decisions of the Tribunal for a long time. One such reference can be made to the Tribunal's decision in the case of *Omex International vs. Commissioner of Customs, New Delhi*: 2015 (328) E.L.T. 579 (Tri.-Del.) = 2014-TIOL-678-CESTAT-DEL wherein the entire case law was discussed. However initially difference of opinion emerged between two Member of the original Bench and the issue was decided, on reference, by the third Member. It was held by the majority decision that the redemption fine to the extent of 10% and penalty to the extent of 5% is appropriate and proper. By following the above decision, we reduce the redemption fine and penalty to the extent of 10% and 5% respectively, of the assessed value of the goods. But for the above reduction in quantum of redemption fine and penalty, the appeal is rejected.

5.7 Further, in the case of *Office Devices vs. Commissioner of Customs, Cochin*: 2016-TIOL-2557-CESTAT-BANG., this Tribunal in para 5.2 has observed as under:

5.2. Considering ratio of the CESTAT, Bangalore in the case of *Rex Printing Press (supra)*, we are of the considered view that redemption fine and penalty imposed by the original adjudicating authority are not proportionate to the contravention(s) committed by appellants. Here, we would like to follow the decisions of the CESTAT, Bangalore in the case of *Rex Printing Press (supra)* and in the cases of *Mudra Offset Vs. Commissioner of Customs, Bangalore* [2004 (175) E.L.T. 470 (Tri.-Bang.)] and *New Copier Syndicate Vs. Commissioner of Customs* [2015 (320) E.L.T. 620 (Tri.-Bang.)] = 2008-TIOL-2442-CESTAT-BANG; and accordingly, we hold and order that in all these appeal cases, the redemption fine and the penalty are reduced to 10% and 5% of the assessable value of the goods respectively.

5.8 The learned counsel further submitted that the various decisions cited supra have consistently imposed redemption fine and penalty at 10% and 5% of the value of the goods and in all the decisions, the period of import is almost the same with a difference of few months when compared to the period involved in the present appeals.

6. On the other hand, the learned AR reiterated the findings of the impugned order and submitted that the importers are repeated violators and there should be stringent penalty and the fine, so that they should be discouraged to import in future in violation of the policy restrictions. In reply to this, the learned counsel submitted that in the cited decisions also the importers were repeated

offenders even then the Tribunal and High Court have consistently imposed 10% fine and 5% penalty. Learned counsel further submitted that while imposing redemption fine no market enquiry has been conducted to arrive at the margin of profit, which is an important requirement. Only in some of the Orders-in-Original it is merely observed that the margin of profit in respect of impugned machines is around 20% which again has no basis as no such market enquiry report has been provided to the appellant to counter the same. It is settled law that quantum of redemption fine always depend on determination of market price which is one of the prerequisite prescribed in the statute itself in terms of the decision of the Honble Supreme Court in the case of Commissioner of Customs, Mumbai vs. Mansi Impex reported in 2011 (217) ELT 631 (SC).

7. After considering the submissions of both the parties and the perusal of the various decisions, I am of the considered view that the issue of imposition of redemption fine and penalty has been settled and now various Benches of the Tribunal have consistently held that the redemption fine of 10% of the value of the goods and penalty of 5% of the value of the goods is sufficient punishment to the importer. Therefore, following the ratios of various decisions cited supra, I hold that the imposition of redemption fine to the extent of 10% of the value of the goods and penalty of 5% of the value of the goods is sufficient and I accordingly reduce the redemption fine and penalty to 10% and 5%. Accordingly, the appeals are disposed of in above terms.

(Order was pronounced in open court on 08/05/2017.)

S.S GARG

JUDICIAL MEMBER