(2010) 09 P&H CK 0402

In the Punjab And Haryana At Chandigarh

Case No : C.U.S.A.P. No. 24 of 2010 (O and M)

Commissioner of Central Excise APPELLANT

Vs

B.E. Office Automation Products Pvt. Ltd. RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:
Customs Act, 1962 — Section 129A(2), 130(1)

Citation : (2010) 09 P&H CK 0402

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of CUSAP Nos. 24 to 27 and 60 of 2010 as they are said to involve same question of law.

2. CUSAP No. 24 of 2010 has been preferred by the revenue u/s 130(1) of Customs Act, 1962 (in short "the Act"), proposing following question of law:

Whether the Hon''ble CESTAT was justified in dismissing the appeal as not maintainable on the grounds that the appeal was filed without the opinion of Committee of Commissioners? Though the fact is that the Committee of Commissioners have examined the Order-in-Appeal No. 417-421/GRM/GGN/2005 dated 24.11.2005 passed by the Commissioner (Appeals) Delhi-III, Gurgaon and found that the same was not legal, proper and correct. After forming the opinion that the said Order-in-Appeal was not proper and legal, an appeal was filed in the Hon''ble CESTAT under the signatures of the Commissioner who was also the member of the Committee. Whereas, CESTAT in their own judgments vide Misc. order Nos. (as mentioned at para 3 (iv) of grounds of this appeal) has allowed the Misc. applications filed by the department in the same cases and on the similar grounds?

3. The assessee filed Bill of Entry for clearance of old and used main frames of photocopier machine. Objection was taken to the value of the machines and to

their importability. After adjudication, the goods were confiscated with an opportunity to the importer to redeem the goods on payment of fine. Penalty was also imposed. On appeal of the assessee, the Commissioner set aside the said order and held that the imported goods were capital goods and, therefore, did not require import licence. Objection of importability was, thus, held to be untenable. Valuation of the photocopier machines as declared by the assessee was also accepted as the adjudicating authority had applied value of new machines while the imported machines were second hand. Further appeal of the revenue was dismissed by the Tribunal on the ground that opinion of the committee constituted u/s 129A(2) of the Act was not filed which was a condition precedent for entertaining the appeal.

4. We have heard learned Counsel for the appellant.

5. Learned Counsel for the appellant submits that the opinion of the committee was available and mere fact that the same was not filed with the appeal, was not enough to dismiss the appeal. We asked learned Counsel whether on merits any interference was required. He fairly states that as per the judgment of the Hon''ble Supreme Court in Atul Commodities Pvt. Ltd. v. Commissioner of Customs Cochin 2009 (235) ELT 385 (SC), objection to importability was no longer valid. As regards valuation, he is unable to show any error in the finding that the machines being second hand, their valuation could not be compared with the new machines.

6. In view of above, no substantial question of law arises.

7. Accordingly, the appeals are dismissed.

