(2011) 09 KAR CK 0010

In the Karnataka High Court

Case No : CSTA No. 27 of 2009

The Commissioner of Customs — APPELLANT

Vs

Comat Technologies Pvt. Ltd. — RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Citation : (2011) 188 ECR 156 : (2012) 280 ELT 511

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—The Revenue has preferred this appeal against, the Tribunal upholding the order of the Commissioner (Appeals) and setting aside the order of the original authority which has ordered for confiscation and imposition of penalty.

2. The Assessee is a STPI unit and imported capital goods (113 numbers of computer systems) free of duty under the scheme without taking the permission of Customs authority and shifted 76 number of computer systems to the licensed warehouse at Mysore and 37 number of computer systems were shifted to unlicensed premises at Rajajingar. In respect of shifting the imported goods to an unlicensed premises at Rajajinagar, proceedings were initiated. The order for confiscation was made and a redemption fine of Rs. 60,000/- was imposed, penalty of Rs. 1,00,000/- was also imposed. Aggrieved by the said order, the Assessee preferred an appeal. The appellate authority held that the Assessee ought not to have shifted the goods to an unlicensed premises, contravening the provisions of the Customs Act. Therefore he upheld the confiscation of 37 number of computer systems and imposition of fine and penalty. However taking into account the circumstances, he reduced the fine to Rs. 30,000/-. As regards the demand of duty, he has given a clear finding that there is no allegation that

the goods have not been used for the purpose for which they had been imported. In other words, the impugned goods were used only for export purpose for which it was imported. Therefore he set aside the demand for duty and he also observed that the demand of duty on these goods was premature. It is not in dispute that subsequently the premises to which goods has been shifted, i.e., at Rajajinagar, have later been licensed by the Customs authority as private bonded warehouse. Aggrieved by the said order, the Revenue preferred an appeal. The appellate authority held, the violation is only technical. If the totality of the circumstances is taken into consideration, the order passed by the appellate commissioner is proper and do not call for any interference. Therefore they dismissed the appeal. Aggrieved by the said order, the Revenue is in appeal.

3. We have heard the learned Counsel for the Appellant. From the aforesaid material, it is clear, even before the premises at Rajajinagar was licensed as a private bonded warehouse by the Customs authority, the Assessee was not justified in shifting 37 computers to the said premises, merely on the ground that he has filed an application requesting for recognising the same as private bonded warehouse. In view of the admitted facts of this case that those goods were not misused and subsequently the authorities have recognised it as a private bonded warehouse from the date it was shifted till it is recognised, there is violation of law. The said violation is not with any malafide intention. When two authorities, in the facts of the case, after noticing the violation, when they have granted the relief to the party, in the facts of the case we do not see any justification to interfere with the said order.

In that view of the matter, no merit, appeal dismissed.

