

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41557 of 2016

(Arising out of Order-in-Appeal C.Cus.II.No. 578/2016 dated 13.05.2016 passed by Commissioner of Customs (Appeals-II), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Jaya Trading Company

B-474, B-Block,
Gall No. 6, Sonia Vihar,
Delhi – 110 094.

...Appellant

Versus

Commissioner of Customs

Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. N. Viswanathan, Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40262 / 2026

DATE OF HEARING : 29.10.2025

DATE OF DECISION : 19.02.2026

Per Mr. VASA SESHAGIRI RAO

The Appellant, M/s. Jaya Trading Company, is engaged in the import and trading of second-hand digital multifunction print and copying machines. In the course of its business, the Appellant imported a consignment of old and used digital multifunction machines and filed Bill of Entry No. 321038 dated 29.09.2009 at Chennai Port, declaring the

goods at a value of EUR 16,490/- (C&F) on the basis of the overseas supplier's invoice.

1.2 Since the goods were second-hand, the Department ordered first-check examination and valuation through an approved Chartered Engineer who certified the machines as old and used (7-9 years) and appraised their value at EUR 20,923/- (C&F). To avoid demurrage and detention charges, the Appellant accepted the enhanced value for assessment and paid duty thereon, while disputing the licensing objection.

1.3 The Additional Commissioner of Customs, Group-5A, passed the Order-in-Original No. 9899/2009 dated 09.10.2009, rejecting the declared value, adopting the Chartered Engineer's valuation, confiscating the goods under Section 111(d) of the Customs Act read with Section 3(3) of the FTDR Act, permitting redemption on payment of ₹4,49,000/-, and imposing a penalty of ₹1,50,000/- under Section 112(a).

1.4 The Appellant filed an appeal on 29.01.2010 before the Commissioner of Customs (Appeals-II), Chennai. The appeal was admitted and heard on merits on 07.04.2010, but remained pending due to identical issues

concerning importability of second-hand digital multifunction machines being under consideration before the Hon'ble Madras High Court in a batch of writ petitions.

1.5 The Hon'ble Madras High Court, in decisions such as City Office Equipment and Sai Graphics Systems, conclusively held that second-hand digital multifunction print and copying machines were freely importable prior to 05.06.2012, and that the amendment to Para 2.17 of the Foreign Trade Policy was prospective. These judgments attained finality and were accepted by the Department.

1.6 Despite the above settled position, the Commissioner (Appeals) passed Order-in-Appeal No. 578/2016 dated 13.05.2016, rejecting the Appellant's appeal solely on the ground of limitation by erroneously treating the date of dispatch as the date of service, without examining the appeal on merits and without notice to the Appellant.

1.7 In parallel and connected matters, the CESTAT, Chennai, *vide* Final Order No. 40059/2015 dated 22.01.2015, remanded similar cases for denovo adjudication, pursuant to which confiscation, redemption fine and penalties were dropped for imports prior to 05.06.2012. The Appellant

alone was denied similar relief due to rejection on limitation, leading to the present appeal before this Tribunal.

2. The Ld. Advocate Mr. N. Viswanathan, appeared for the Appellant and the Ld. Authorized Representative Ms. Anandalakshmi Ganeshram, appeared for the Revenue.

3. The Learned Counsel appearing for the appellant submitted as follows: -

- i. The rejection of the appeal on limitation is legally unsustainable, as the date of dispatch was erroneously treated as the date of receipt. The endorsement on the Order-in-Original itself records receipt on 03.11.2009, making the appeal well within the condonable period under Section 128 of the Customs Act, 1962.
- ii. On merits, it is submitted that:
 - a. During September 2009, second-hand digital multifunction print and copying machines were freely importable capital goods under Para 2.17 of FTP 2004-09 / 2009-14.
 - b. The restriction on digital multifunction machines was introduced only w.e.f. 05.06.2012.
 - c. The issue is squarely covered by the judgment of the Hon'ble Madras High Court in *Commissioner of*

Customs v. City Office Equipment [2014 (302) ELT 212 (Mad.)] and *Sai Graphics Systems v. CC.*

- iii. It was further submitted that: -
- a. Mere enhancement of value based on Chartered Engineer's opinion cannot attract Section 111(m) in the absence of evidence of undervaluation.
 - b. When confiscation itself is unsustainable, redemption fine and penalty cannot survive.

4. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram supports the findings in the impugned order and submitted that the Commissioner (Appeals) correctly rejected the appeal as time-barred.

5. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, considered the statutory provisions, and the case Laws cited.

6. Upon such comprehensive consideration, the following issues arise for our determination in this appeal as to: -

- i. Whether the appeal before the Commissioner (Appeals) was barred by limitation?

- ii. Whether second-hand digital multifunction print and copying machines were restricted for import in September 2009?
- iii. Whether confiscation under Section 111(d) of the Customs Act is sustainable?
- iv. Whether redemption fine and penalty under Section 112(a) are legally tenable?

Whether the appeal before the Commissioner (Appeals) was barred by limitation?

7.1 We find that Section 128 of the Customs Act, 1962 mandates that the period of limitation is to be reckoned from the date of communication of the order and not from the date of its dispatch. In the present case, the endorsement on the Order-in-Original itself clearly records the date of receipt as 03.11.2009, whereas the appeal was filed on 29.01.2010, which is well within the condonable period prescribed under the law.

7.2 The Commissioner (Appeals), having admittedly entertained the appeal and heard it on merits earlier, could not have rejected the same after a lapse of six years solely on the ground of limitation, and that too without putting the Appellant to notice. Such rejection is contrary to law and violative of the principles of natural justice.

7.3 We also find support for this view from the judgment of the Hon'ble Supreme Court in *CCE v. Krishna Carbon Paper Co. [1989 (43) ELT 214 (SC)]*, wherein it was held that once an appeal is admitted and heard on merits, it cannot subsequently be dismissed on a technical ground of limitation without affording the appellant an opportunity of hearing. The action of the Commissioner (Appeals) in rejecting the appeal after several years, despite having entertained and heard it earlier, is therefore contrary to settled law.

Importability under Foreign Trade Policy

8.1 We find that Para 2.17 of FTP prior to 05.06.2012 allowed second-hand capital goods freely, except certain specified items. Digital multifunction print and copying machines were not specifically restricted during the relevant period.

8.2 We also find that The Hon'ble Madras High Court in *City Office Equipment (supra)* and *Sai Graphics Systems* categorically held that Digital multifunction print and copying machines became restricted only w.e.f. 05.06.2012 and not prior thereto.

8.3 We further note that the aforesaid judgments of the Hon'ble Madras High Court have been accepted and implemented by the Department without further challenge in *denovo* adjudications and connected cases.

8.4 The Notification dated 05.06.2012 is prospective, as held by the Supreme Court in *Asian Food Industries [2006 (204) ELT 8 (SC)]*.

8.5 Since the present import took place in September 2009, the goods were freely importable, and confiscation under Section 111(d) is unsustainable.

8.6 We also take note of the fact that the import in question pertains to the year 2009, and the legal position governing such imports has long since been settled by the Hon'ble Madras High Court and accepted by the Department. In identical and connected matters, the first appellate authority, in *denovo* proceedings, has already granted relief to all similarly placed importers. In such circumstances, no useful purpose would be served by remanding the matter back to the Commissioner (Appeals), particularly when the issue stands concluded on facts and law and only the Appellant has been denied relief on a technical ground.

Valuation and Section 111(m)

9.1 We find that the value was enhanced solely based on Chartered Engineer's estimation of residual value. There is no evidence of extra consideration, forged invoices, or suppression except the Chartered Engineer's Certificate there was no evidence produced for enhancement of the value of the imported goods. As the imported goods are second hand digital multifunctional machines, the valuation is peculiar to each consignment.

9.2 Further, we also find that The Tribunal in *Sri Nakoda Impex [2004 (177) ELT 349 (Tri.)]* and *Best Mega International [2013 (293) ELT 243 (Tri.)]* has held that mere enhancement of value is not a mis-declaration. Hence, confiscation under Section 111(m) is also not attracted.

Redemption Fine and Penalty

10.1 When goods are not liable for confiscation, redemption fine under Section 125 and penalty under Section 112(a) automatically fail.

10.2 The import was made under a bona fide belief, supported by prevailing policy and judicial pronouncements. There is no *mens rea* or contumacious conduct.

10.3 Accordingly, we hold that the redemption fine imposed under Section 125 and the penalty imposed under Section 112(a) of the Customs Act, 1962 are without authority of law and are hereby set aside.

11. In view of the foregoing findings and discussions, we finally hold as under: -

11.1 The impugned Order-in-Appeal No. 578/2016 dated 13.05.2016 passed by the Commissioner of Customs (Appeals-II), Chennai, is hereby set aside, the rejection of the appeal on the ground of limitation being unsustainable in law.

11.2 The Order-in-Original No. 9899/2009 dated 09.10.2009 passed by the Additional Commissioner of Customs, Group-5A, Chennai, is set aside insofar as it relates to confiscation of the goods, imposition of redemption fine under Section 125 and penalty under Section 112(a) of the Customs Act, 1962, the same being without authority of law.

11.3 We further hold that the second-hand digital multifunction print and copying machines imported by the Appellant in September 2009 were freely importable, and that the enhancement of value based solely on Chartered

Engineer's opinion does not warrant confiscation, fine or penalty.

11.4 In view of the settled legal position, considering the age of the dispute, and the fact that similarly placed importers have already been granted relief by the first appellate authority in *denovo* proceedings, no useful purpose would be served by remanding the matter, and the appeal is therefore allowed on merits with consequential relief, if any, in accordance with law.

12. Accordingly, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 19.02.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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