FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **27/03/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51163/2014-CU[DB]** dated **19/03/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4)** of the **Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/372/2009	**JAIN ELECTRONICS,** B-102, IST FLOOR, MAYUR DHAWAJ, PATPARGANJ, DELHI.
		Name and Address of Respondent
2	C/372/2009	**C.C. (ICD) NEW DELHI** ICD, TUGHLAKABAD, NEW DELHI 110020.

Other Appellants and Respondents as per Annexure

Copy To
3Advocate(s) / Consultant(s):

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4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. **14** Office Copy **15** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : **19.3.2014**

Appeal No. C/372/2009

(Arising out of Order-in-Appeal No.CC(A)/CUS/ICD/60/2009 dated 9.3.2009 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Jain Electronics — Appellant/Applicant

Vs.

CC, New Delhi — Respondent

Appearance

None - for the appellant

Shri A, Jain, A.R. - for the respondent

CORAM: HON'BLE SHRI D.N. PANDA JUDICIAL MEMBER
HON'BLE SHRI MANMOHAN SINGH, TECHNICAL MEMBER

Final Order No. 51163/2014

Per D.N. Panda :

None present for the appellant. There is an application for decision of this appeal on merit without personal hearing. The appellant having foregone the right of personal hearing, assistance of ld. DR was taken.

2. Revenue submits that the old and used computer, monitors and its component were imported in violation of the Foreign Trade Regulations as well as such goods were undervalued. The Chartered

Engineer's certificate obtained was within the knowledge of the appellant to arrive at the proper value. That remained uncontroverted without any evidence to the contrary. Such impartial assessment by Chartered Engineer was adopted and appropriate valuation of the import was made. Ld. Commissioner (Appeals) considered the nature of goods as well as the Chartered Engineer's certificate. He has properly assessed the value considering the violation of law made by appellant and also the undervaluation of the import made. Therefore there is no scope to disturb his finding or reverse his decision.

3. Heard Revenue and also perused the grounds of appeal of the appellant.

4. Appellant's only plea is that old and used goods being sold as scrap, those are valueless for which the department's reliance on Chartered Engineer's evaluation is of no value. There is no ground on violation of the Foreign Trade Regulation by the appellant. Appellant has taken the ground that there is no under valuation done. So also there is a ground that the duty involvement being Rs. One lakh and the prevalent market conditions suggest the profit margin to be 2 to 3%, there should not have been redemption fine imposed.

5. Examining the grounds, we have also perused the nature of the goods imported depicted in para 2 of the order which throws light that the goods were old and used CPU/HDD/RAM, computer cabinet and old and used monitors etc. Nothing could be adduced by the appellant to show that those goods have no economic value except treating that as scrap. The Chartered Engineer's certificate does not appear to be outcome of an empty formality to arrive at the proper value by reference made by Revenue. Such outcome was also within the knowledge of the appellant. The credibility of certificate remained unchallenged in the grounds of appeal. Nor the certificate by any means is pleaded to be baseless or malafide. Therefore that becomes the reliable evidence with credibility.

6. The goods imported by nature appear to be of economic value without being scrap in absence of any evidence to the contrary. So also in absence of evidence to show that scrap was only imported, the appellant fails to succeed as to the nature of goods. Further, there is no evidence led by the appellant through any ground to consider about different nature of the goods imported. Therefore on that count also ld. Commissioner is correct to hold that there was violation of Foreign Trade Regulation by the appellants in importing the goods.

7. Ld. Commissioner found that the goods were of higher value. He has therefore come to the conclusion that reduction of redemption fine

from Rs.2,50,000/- to Rs.1,50,00/- and penalty from Rs.75,000/- to Rs.50,000/- was warranted. This clearly shows his application of mind in consideration of totality of the facts and circumstances of the case.

8. In view of the above, there is no scope to disturb the finding and conclusion of ld. Commissioner (Appeals) for which appeal is dismissed.

24.3.2014
(Manmohan Singh)
Technical Member

21-3-2014.
(D.N. Panda)
Judicial Member

RM