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

Appeal No. C/199 /2008-202 /2008 - CU[DB] Date 25/05/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To:
1. M/S SUN INFORMATICS PVT. LTD.
2. SH. R.C.KHURANA
R-6, IIND FLOOR, G.K. PART-I,
NEW DELHI-110048

M/S SUN INFORMATICS PVT. LTD. Appellant

Vs

C.C.(PREVENTIVE) Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/199-202/ 2009 CU[DB]** dated 22.05.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.(PREVENTIVE), NEW CUSTOM HOUSE,
NEAR I.G.I. AIRPORT, NEW DELHI 110037.
2. Adv. / Consult
M/S. BHASIN SETHI & ASSO., 401,
SATYAM CINEMA BUILDING,RANJEET NAGAR,DELHI
3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(Customs Appeal Branch)

4. SH. GAURAV KHURANA
N-57, FIRST FLOOR, SRI NIWAS PURI,
NEW DELHI.

5. SHRI S.B.MAHESHWARI
S/O LATE SH. H.S.MAHESHWARI,
R/O 1528/13, GOVINDPURI,NEW DELHI.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 199-201 of 2008

(Arising out of common Order-in-Original No. 09/COMMR/JMS/2007 dated 17.12.2007 passed by the Commissioner of Customs (Prev.), New Delhi)

M/s Sun Informatics Pvt. Ltd. — Appellant
Shri R.C. Khurana
Shri Gaurav Khurana

Vs.

CC, New Delhi — Respondent

Appearance

Appeared for Appellant : Shri J.P. Kaushik, Advocate

Appeared for Respondent: Shri A.K. Madan, DR

Custom Appeal NO. 202 of 2008

Shri S.B. Maheswari — Appellant

Vs.

CC, New Delhi — Respondent

Appearance

Appeared for Appellant : Shri J.P. Kaushik, Advocate

Appeared for Respondent : None

Date of Hearing: 28.4.2009

CORAM: HON'BLE DR. C. SATAPATHY, TECHNICAL MEMBER
HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. C/199 to 202/08 dated............

Per D.N. Panda

All the four Appellants came in Appeal before this forum being aggrieved by an order passed by the ld. Commissioner of Customs (Prev.) imposing following penalties on them :-

S.No.	Appeal Case No.	Name of the Appellant	Penalty imposed
1.	C/199/08	M/s Sun Informatics Pvt. Ltd.	Rs.25 lakhs
2.	C/200/08	Shri R.C. Khurana, Director of M/s Sun Informatics	Rs.50 lakhs
3.	C/201/08	Shri Gaurav Khurana, Director	Rs.25 lakhs
4.	C/202/08	Shri S.B. Maheshwari	Rs.30,000/-

2. Learned Counsel appearing for Appellants submitted that grievance of M/s Sun Informatics Pvt. Ltd. is that when the goods imported by them was lying in the godown along with domestically procured goods, Revenue officers making investigation, were of opinion that the Appellant was involved in smuggling and illegally importing the goods for which they should face penalty to the aforesaid extent under Section 112(a) of Customs Act. 1962 proceeded harshly against the Appellants. DRI searched the premises of the Appellants Shri R.C. Khurana in Appeal Case No. C/200/08 on 22.4.09 and recovered certain documents including Indian currency of Rs.2,10,200/- and foreign currency US $ 245 (244). There was seizure of the currencies. Sequel to this, premises of M/s Sun Informatics Pvt. Ltd. was searched and computer parts valued at Rs.37,66,940/- were found. However, mere recovery of the goods through search shall not *ipso facto* bring the Appellants to charge.

3. Ld. Counsel pleaded that when the Appellant purchased goods from local dealers and also imported the computer parts from abroad for trading, Authority below without examining relevant evidence, merely relying on certain statements should not have held that the goods were smuggled. The Appellants replied to show Cause Notice and well explained their case specifically submitting

that large quantity of goods were duly imported while few goods were purchased locally. Department over-valued the goods and imposed unreasonable penalties which is disproportionate to the gravity of the case. Since prices in local market did not suggest higher valuation when price of the computer parts heavily came down. The over valuation made by Adjudicating Authority was unreasonable and baseless. Department has not discharged its onus of proof to make allegation of under valuation. Because number of bill showing import was recovered during search that does not establish the case of smuggling. Confiscation without the evidence of smuggling was uncalled for and when there was no material to suggest that the goods have come from Nepal, entire action of Authorities below is prejudicial to interest of justice.

3. Ld. DR Shri A.K. Madan appearing for Revenue brought to our notice that seizure was never disputed by the Appellant. Ld. Commissioner in para 40.1 held that computer parts seized from the three premises and from the three carriers were illegally brought into India from Nepal through unauthorised routes. Such act called for confiscation. Ld. Adjudicating Authority has also held that the packing materials/stickers/rollers seized from the residential premises of Shri S.B. Maheshwari, one of the Appellant proved use thereof to conceal the smuggled goods rendering such goods liable to confiscation. Following principles of natural justice, ld. Commissioner has passed appropriate order and does not require interference.

4. Heard both the sides and perused the record.

5. When we perused para 44.3 of the order of adjudication, we understand that there was smuggling of third country contraband goods into India through the route not known to law. Although there were few legal imports, recovery of fake bills in the course of search made the transactions questionable. Connivance of the parties became patent. Smuggling operation was established by pre-ponderance of probability. Evasion of Revenue became undeniable due to questionable conduct of Appellant patent from record. Our anxiety was to know the modus operandi followed. We looked into para 44.2 of the order in original. Ld. Commissioner has found the manner of dealing smuggled goods and proceeds thereof as well as modus operandi of trade. The Authority has extensively examined the matter including the statements recorded from different persons. This is patent from para 35 of the order of Adjudication. That Authority further went on demonstrating extent of examination done bringing entire material to record. This is exhibited by para 36.2 and para 39.6. The examination depicted, proves that all pleadings of the Appellants were also considered and rightly discarded the same for valid reasons assigned by the order. Carefully examining the matter, ld. Commissioner had framed three issues under para-31 and when such issues went against the appellants, that authority ordered the seized goods to be confiscable.

6. We do appreciate that smuggling is done under concealment in the mind of smuggler. The concealed facts come to see the light of day only when the process of law unearths the same. We have noticed that the entire design of the Appellant was discovered by

search. We have no hesitation to say that the Appellants are to be dealt under law following the ratio laid down by Apex Court in the case of **CC Vs. D. Bhoormull** reported in 1983 (13) ELT 1546. When we asked for answer from the Appellants on the specific findings of the ld. Adjudicating Authority in the aforesaid paragraph, we got no answer to the same. Also pleading of the appellants aforesaid do not meet satisfaction of law. However, we noticed that the penalty imposed is disproportionate to the gravity of the offence when habitual offence alleged is not corroborated by any evidence on record. Therefore the cases call for reduction of penalty and we reduce the same. The Appellants shall face ultimate penalty as follows:-

1.	M/s Sun Informatics	-	Rs. 5 lakhs
2.	Shri R.C. Khurana	-	Rs. 10 lakhs
3.	Shri Gaurav Khurana	-	Rs. 5 lakhs
4.	Shri S.B. Maheshwari	-	Rs. 10,000/-

7. In view of our findings and observations and consideration of totality of facts and circumstances, reduction of penalty to the extent indicated above is ordered. Otherwise all the four appeals are rejected.

(Pronounced in open Court)

(DR. C. SATAPATHY)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

RM.