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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/694 /2005,761 /2005-763 /2005 - CU[DB] C/238/2006 Date 09/06/2009

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

To :
SANDEEP SEHGAL
S/O SH. V.M. SEHGAL , PROPRIETOR, M/S BEAM TECHNOLOGY, B-60, DAYA NANG COLONY, LAJPAT NAGAR, NEW DELHI.

SANDEEP SEHGAL Appellant
Vs
C.C NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/214-218/ 2009 CU[DB]** dated 04.06.09 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 NEW DELHI, (EXPORTS),
   AIR CARGO, NEW DELHI
2. Adv. / Consult
   MR.NAVEEN MALHOTRA, 470, LAWYER'S CHAMBERS,
   PATIALA HOUSE COURTS, NEW 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.
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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)

PTO

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

COURT NO. II
Customs Appeal Nos. 694, 761-763 of 2005 and 238 of 2006

[Arising out of the Order-in-Original No. KRB/ACE/08/05 dated 09/06/2005 passed by The Commissioner of Customs (Exports), New Delhi.]

For Approval and signature :
Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

1. Shri Sandeep Sehgal]
2. Shri Rajesh Kumar]
3. Shri Joginder Gulati] Appellant
4. Shri Kishori Lal]

Versus

CC, New Delhi Respondent

And

CC, New Delhi Appellant

Versus

Shri Vishnu Kumar Respondent

Appearance

Shri Navin Malhotra [for appeal No. C/694,761 & 763 of 05) and Shri V.R. Sethi [for appeal No. C/762 of 05 and 238 of 06], Advocates – for the appellant.

Shri Sumit Kumar, Authorized Representative (SDR) – for the Respondent.

CORAM:**Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Sh. Rakesh Kumar, Technical Member

DATE OF HEARING : 06/05/2009.
DATE OF DECISION: 1/6/09

Final Order No. C/214 to 218/09 Dated: __________

Per. Rakesh Kumar :-

The facts of the case giving rise to these appeals are, in brief, as under :-

1.1 On 12/10/02, the officers of Directorate General, Revenue Intelligence, on receipt of a specific information that contraband goods were being smuggled into India through Speed Post Parcels coming from Singapore and Hong Kong, visited the Speed Post at centre Bhai Vir Singh Marg, New Delhi and identified eight post parcels bearing No. EE 56353804/HK, EE 563538038 HK, EE 563538015 HK, EE

563538024 HK, EE 614846874 SG, EE 614846830 SG, EE 614846843 SG, EE 614846857 SG – the last four parcels with suffix SG having come from Singapore. In this case, we are concerned with only the last four parcels from Singapore. These parcels had come from M/s VIST International PTE Ltd., 1, Pochor Canal Road, 04-64 SIM-LIM Square, Singapore and were addressed to M/s Beam Technology, E-92, Amar Colony, Lajpat Nagar – IV, New Delhi (hereinafter referred to as M/s B.T.).

1.2 As per the provisions of Section 82 of the Customs Act, 1962, in case of the goods imported by post, any label or declaration accompanying the goods which contains the description, quantity and value thereof, is deemed to be an entry for import for the purposes of the Customs Act, 1962. The customs declaration pasted on these four parcels did not contain any information about the description, value and quantity of the goods and on each parcel only a four digit number was mentioned. These parcels were opened in the presence of independent witnesses and were found to be containing computer parts. The number mentioned on the customs declaration pasted on each parcel turned out to be the invoice number which was found inside the parcel. However, the description of the goods and quantity, as mentioned in the invoices was different from the description, quantity and value of the goods actually found. Since, prima facie, it appeared that these goods totally valued at Rs. 41,33,555/- have been illicitly imported into India and appeared to be liable for confiscation, the same were placed under seizure.

1.3. On inquiry at the address of M/s B.T., it was found that one Shri Sandeep Sehgal used to live there but he had left the premises. Subsequently on 31/10/02, a letter was received from Shri Pradeep Jain, Advocate, on behalf of the M/s B.T. challenging the seizure of the goods and claiming that the discrepancy between the description, quantity and value of the goods, as mentioned in the invoices and as actually found, was due to typographical mistake and that there was no under valuation or misdeclaration of description.

1.4 Inquiry was made with some employees of the speed post centre. Shri Kumesh Chauhan, who earlier had been delivering parcels to M/s B.T., in his statement dated

28/11/02 informed that nine parcels of the same type, as the ones seized by DRI officers had been delivered to Shri Sandeep Sehgal at the address of M/s B.T. on 11/10/02 and no customs duty has been charged in respect of those parcels, as had there been any duty liability, the delivery clerk would have handed over the yellow slip on which he would have been collected the duty from the consignee and deposited in the office. Inquiry was made with Shri Rajesh Kumar, the Sorting Assistant, posted at Speed Post Centre and he, in his statement dated 10/12/02 stated that he was posted in the International Branch on 11/10/02 and 12/10/02 and had presented post parcels to Custom Inspector on duty on these dates, that on 11/10/02 a total of 393 EM/SPAs from foreign countries has been received, which had been presented to the custom officer also named Shri Rajesh Kumar, on duty on that day for sorting and the custom inspector had detained only 58 SPAs and remaining 335 SPAs including the nine parcels delivered to M/s B.T., had been cleared for duty free delivery through the respective post offices. Inquiry was made with Shri Rajesh Kumar, Customs Inspector on 17/12/02, wherein he explained the procedure of sorting of the post parcels for duty free delivery and for delivery after examination by the customs and stated that the customs inspector deputed for this job had to select parcels for customs examination in a very short time of about two hours in course of which 400 to 600 parcels were required to be seen and selected for duty free delivery or delivery after customs examination, and that in respect of nine parcels, which had been marked by him for duty free delivery, there was no custom declaration and those parcels were similar to the four parcels seized by DRI on 12/10/02. Inquiry was made with Shri Vishnu Kumar, another Sorting Assistant on 21/01/03, wherein he stated that one Shri Kishori Lal posted as Postal Clerk at the Foreign Post Office (FPO) was his friend, that sometime in August 2002 Shri Kishori Lal asked him to keep watch for parcels of certain parties including M/s B.T. and M/s Abhishek Electronic and inform him about the arrival, that he used to do the needful on account of his friendship with Shri Kishori Lal, that all the parcels about which Shri Kishori Lal had inquired was sent directly to parties for duty free delivery without being sent to FPO for customs examination, and that on 11/10/02 nine parcels of

M/s B.T. and two parcels of M/s Abhishek Electronic had been cleared for duty free delivery by Shri Rajesh Kumar, Customs Inspector. Statement of Shri Kishori Lal, Postal Clerk posted at FPO was recorded on 21/01/03, wherein he stated that he was using a mobile phone No. 9811512325, that he was posted in FPO since 1977 and had worked in all the sections of FPO, that he used to get the post parcels in the name of M/s B.T. cleared duty free during period from August 2002 to 11/10/02, that in respect of the parcels in the name of M/s B.T., their one Shri Sandeep Sehgal, Proprietor of M/s B.T. used to approach him and for this Shri Sandeep Sehgal used to give him Rs. 15,000/- (Rupees Fifteen Thousand) per parcel and he alongwith the customs officer Shri Rajesh Kumar shared this money, that he never introduced Shri Sandeep Sehgal to the Customs Inspector Shri Rajesh Kumar, that on 11/10/02 nine parcels in the name of M/s B.T. were cleared for duty free delivery, that the parcels addressed to M/s B.T. seized by DRI on 11/10/02 were also to be cleared duty free delivery as in the past with the help of Customs Inspector Shri Rajesh Kumar, that he used be in touch with Shri Sandeep Sehgal on his mobile phone No.

9811095624 from his mobile phone No. 9811512325, that from August 2002 to 11/10/02 about 70 to 80 parcels had arrived in the name of M/s B.T., out of which about 40 parcels contained printed material and the rest contained computer parts and all these parcels were cleared for duty free delivery for which he received around Rs. 5,00,000/- (Rupees Five Lakhs) out of which half the amount was given to the Customs Inspector Shri Rajesh Kumar and that he had never told Shri Vishnu Kumar about the contents of the parcel though he had given him Rs. 200/- just like that. In view of the above statement of Shri Kishori Lal, further statement of Shri Rajesh Kumar, Customs Inspector was recorded, on 22/01/03, wherein he corroborated the statement of Shri Kishori Lal and also implicated his Superintendent Shri G.C. Nautial and K.S. Dahiya and his Deputy Commissioner Shri Pratap Singh, saying that the money received for the illicit clearance for the post parcels was shared by him with the Superintendents and Deputy Commissioner. Shri Pratap Singh, Deputy Commissioner and Shri G.C. Nautial and K.S. Dahiya, Superintendents, however, in their statements claimed that Shri Rajesh Kumar never told them about these illicit activities and that they have not received any such illicit gratification from Shri Rajesh Kumar. Shri Sandeep Sehgal was finally traced sometime in February 2003 and his statement was recorded on 18/02/03, wherein he stated that he owned/control, three firms M/s B.T., M/s Sadhika Peripherals and M/s V.S. Infotech, that he carried out his business activities from his house ~~on~~ at 107A/91, Bhandari House, Nehru Place, New Delhi and B-6, Dayanand Colony, Lajpat Nagar, New Delhi, that M/s B.T. was a private limited company in which, in addition to himself, Shri Joginder Gulati who generally resided in Singapore and Shri Deepak Sethi are other Directors, that Shri Joginder Gulati was an active Director and Shri Deepak Sethi was inactive Director, that M/s V.S. Infotech and M/s Sadhika Peripherals were proprietary concerns solely owned by him, that Shri Joginder Gulati owned and controlled two companies namely VIST International PTE Ltd., 1, Pochor Canal Road, 04-64 SIM-LIM Square, Singapore and Jorgi International, Singapore situated at same address, that he alongwith Shri Joginder Gulati decided to import computer parts into India from Shri Joginder Gulati's companies at Singapore, that initially they imported some consignments at Air Cargo Complex, Delhi till July 2002 and thereafter they started importing through speed post parcels, that his friends introduced him to one Shri Kishori Lal, a Postal Clerk posted at FPO who made an offer to him to arrange duty free clearance of the computer parts on payment of Rs. 15,000/- per parcel, that as per this arrangement he would not be required to pay any duty and goods were to be delivered from the speed post centre, Bhai Vir Singh Marg, New Delhi to Lajpat Nagar post office instead of routing same through FPO, that during period from August 2002 to 11/10/02 about 70 to 80 post parcels were cleared in this manner, out of which only about 50% were containing computer parts and rest were containing printed material and that the computer parts being imported by him from Singapore were mainly memory chip. When asked about the delivery of nine parcels to M/s B.T. on 11/10/02 without payment of duty, he explained that seven out of nine parcels were having 520 pieces each of 128 S.D. memory chip and the rest two parcels were containing printed material and that the total value of the goods was around 43,000 U.S. $. He also stated for duty free delivery of these nine parcels on

11/10/02, he had paid an amount of Rs. 1,00,000/- and for clearance of the remaining parcels duty free, he had paid an amount of Rs. 5,00,000/- to Shri Kishori Lal.

1.5 On scrutiny of the print outs of the mobile phone number 9811095624 in the name of M/s B.T. and used by Shri Sandeep Sehgal, No. 9811512325 being used by Shri Kishori Lal and No. 9811017560 being used by Shri Rajesh Kumar, Customs Inspector, it was found that –

(a) Mobile No. 9811095624 was in interaction with telephone No. 3231281 of FPO on 10/10/02 and 11/10/02 where Shri Kishori Lal was posted and similarly mobile No. 9811095624 was in interaction with Mobile No. 9811512325 of Shri Kishori Lal on 10/10/02 and 11/10/02 ; and

(b) Mobile No. 9811512325 of Shri Kishori Lal was in interaction with Mobile No. 9811017560 of Shri Rajesh Kumar, Customs Inspector on 10/10/02 and 11/10/02 and Mobile No. 9811017560 was in interaction with telephone No. 3231281 of FPO on 11/10/02 and

12/10/02 where Shri Kishori Lal was posted at the material time.

1.6 From the records of the speed post centre it was found that prior to 12/10/02, seventy four post parcels had been delivered to M/s B.T. duty free (including nine parcels delivered duty free on 11/10/02).

1.7 On the basis of above evidence, a show cause notice dated 07/4/03 was issued to M/s B.T., Shri Sandeep Sehgal, Shri Joginder Gulati, Shri Kishori Lal, Shri Rajesh Kumar and Shri Vishnu Kumar for-(a) confiscation of the goods valued at Rs. 41,53,555/- seized at speed post centre, Bhai Vir Singh Marg, New Delhi on 12/10/02 and also for recovery of duty amounting to Rs. 10,62,231/- in respect of these goods and, (b) imposition of penalty of all the noticees under Section 112 (a) & 112 (b) of the Customs Act, 1962.

1.8 The Commissioner of Customs, Air Cargo Complex, Delhi vide the impugned order order-in-original No. KRB/ACE/08/05 dated 09/6/05 -

(a) ordered confiscation of the seized goods under Section 111 (d), (l) & (m) of the Customs Act, 1962 with option to be redeemed on payment of redemption fine of Rs. 10,00,000/- and payment of duty of Rs. 10,62,231/- ;

(b) imposed penalty of Rs. 5,00,000/- on Shri Sandeep Sehgal, Proprietor of M/s B.T. under Section 112 (a) of Customs Act, 1962,

(c) imposed penalty of Rs. 1,00,000/- on Shri Joginder Gulati, and

(d) imposed penalty of Rs. 1,00,000/- each on Shri Rajesh Kumar, Customs Inspector and Shri Kishori Lal, Postal Clerk under Section 112 (a) of Customs Act, 1962.

1.8.1 The Commissioner, however, dropped the penal proceedings against Shri Vishnu Kumar, the Postal Assistant.

1.9 While Shri Sandeep Sehgal, Proprietor of M/s B.T., Shri Joginder Gulati, Shri Rajesh Kumar, Customs Inspector and Shri Kishori Lal, Postal Clerk filed appeals No. C/694, 761-763/2005 against this order, the Department has filed a review appeal No. C/238/2006 against the part of the Commissioner's order dropping the penal proceeding against Shri Vishnu Kumar.

2. Heard both sides.

2.1 Shri Navin Malhotra, Advocate, representing Shri Sandeep Sehgal – M/s B.T., Shri Rajesh Kumar, Customs Inspector and Shri Kishori Lal, Postal Clerk and Shri V.R. Sethi, Advocate representing Shri Joginder Gulati and Shri Vishnu Kumar appeared for hearing. The submissions of Shri Navin Malhotra, Advocate and Shri V.R. Sethi, are in brief, as under :-

(1) There was neither any attempt to clear the goods under seizure nor any misdeclaration in respect of the same, as firstly, on the declaration form pasted on each parcel, the invoice number was mentioned and the invoice containing the detailed description, quantity and value of the goods was inside each parcel and secondly, since, at the point of time when the post parcels were intercepted and opened by the DRI, the goods were yet to be sorted out by the Customs and the parcels had not been cleared for duty free delivery since these goods were yet to be handed over to the Customs for detailed

examination, it cannot be said that there was any misdeclaration on the part of the importers. The circumstances in which the goods were seized, non-mention of the description, quantity and value of the goods on the customs declaration pasted on the post parcel was not relevant, as the post parcels were likely to be opened and examined by the Customs.

(2) The discrepancy between the description and quantity of the goods actually found vis-à-vis that mentioned in the invoice is only due to typographical mistake in preparing the invoices and subsequently the importers has produced the correct invoices.

(3) There is no substance in the allegation of conspiracy between the Kishori Lal, Postal Clerk and Rajesh Kumar, Customs Inspector for illicit clearance of dutiable goods. At the time of seizure Shri Rajesh Kumar, Customs Inspector, had been posted at the speed post centre only for about 15 days earlier. Moreover Shri Vishnu Kumar has already been exonerated by the Department.

(4) As regards the allegation that prior to 12/10/02, Seventy four post parcels containing dutiable goods had been illicitly imported into India and had been illicitly cleared and delivered duty free to M/s B.T. with the connivance and abetment of Shri Vishnu Kumar, Shri Rajesh Kumar and Shri Kishori Lal and Shri Sandeep

Sehgal, no show cause notice has been issued up till now in this regard and, therefore, on this basis no penalty can be imposed on any noticees.

(5) As regards, Shri Joginder Gulati it was pleaded that since he is a NRI, no penalty can be imposed on him and in this regard reliance was placed on Tribunal's judgment in the case of **Ankit Gopal Agarwal vs. CC, Cochin** reported in **2008 (89) R.L.T. 756 (CESTAT – Bang.)**. In any case, he was only a supplier and he had no role to play in alleged supplied by his company from Singapore.

(6) No penalty is imposable on Shri Vishnu Kumar as he was not in any way involved in alleged illicit import and clearance of post parcels containing dutiable goods and for this reason only, no penalty was imposed on him by the Commissioner.

2.2 Shri Sumit Kumar, the learned Departmental Representative, defended the impugned order in respect of M/s B.T., Shri Sandeep Sehgal, Shri Joginder Gulati, Shri Rajesh Kumar and Shri Kishori Lal and opposed the impugned order reiterating the grounds in the Revenue's appeals, in respect of the part of the impugned order dropping the penal proceedings against Shri Vishnu Kumar, the Postal Assistant. He made the following submissions :-

(1) There was a conspiracy between Shri Joginder Gulati and Shri Sandeep Sehgal on one hand and Shri Kishori Lal and Vishnu Kumar postal employees and Rajesh Kumar, the Customs Inspector on the other hand for illicit clearance of the dutiable goods imported through post parcels, without payment of duty and in this regard, the statements of these persons recorded under Section 108 of the Customs Act are clear evidence. The post parcels under seizure were going to be cleared by Shri Rajesh Kumar, Customs Inspector in an illicit manner without assessment of duty and this is clear from the fact that on 11/10/02, nine post parcels addressed to M/s B.T., which are similar to the four post parcels seized by the DRI on 12/10/02, had been cleared for duty free delivery by Shri Rajesh Kumar without routing the same through FPO, even though those parcels also did not have any customs declaration on them and, therefore, the same should have been marked for delivery only after customs examination ;

(2) As regards the argument that the seized goods are not liable for confiscation as the same had been seized from the international sorting area, which is not customs area and the same were yet to be handed over to customs for examination, this plea is incorrect and un-

exceptable, as the very fact that the customs declaration pasted on these post parcels did not mention the description, quantity and value of the goods, by itself renders their import contrary to the prohibition imposed under Section 11 of the Customs Act, 1962 and thus renders the goods so imported liable for confiscation. In this regard, he relied upon the Customs Notification No. 78-CUS dated 02/4/1938, as amended, issued under Section 11 of the Customs Act, 1962, which restricts the import of dutiable goods by letter packet or post parcels only to cases where such letter packet or post parcel bears on the front, a declaration stating the nature, weight and value of the contents of the letter packet/post parcel. Since none of these post parcels were accompanied by any such declaration, their import is contrary to the prohibitions on import imposed under Section 11 of Customs Act, 1962 and hence the same would be liable for confiscation under Section 111 (d) of Customs Act, 1962, and M/s B.T. Shri Sandeep Sehgal, Shri Kishori Lal and Shri Rajesh Kumar, would be liable for penalty under Section 112 (a).

(3) As regards the penalty on Shri Vishnu Kumar, reiterating the grounds of appeal in the Revenue's appeal, he pleaded that he was also a part of the conspiracy for illicit clearance of the dutiable goods without payment of duty and, therefore, he being an abettor is also liable for penalty under Section 112 (a)

and Commissioner's order dropping the penal proceeding against him is not correct.

3. We have carefully considered the submissions from both the sides and perused the records. The first point to be decided in this case is, as to whether the goods seized from the speed post centre at Bhai Vir Singh Marg, New Delhi on 12/10/02 are liable for confiscation under Section 111 (d), (l) & (m) of Customs Act, 1962. The plea of Shri Sandeep Sehgal of M/s B.T. and Shri Joginder Gulati is that the place from where the goods were seized is not the customs area and the goods has been seized at the point of time prior to their sorting out by the Customs Inspector and prior to being handed over to Customs and, therefore, there is neither any attempt to clear the goods without payment of duty nor there is any misdeclaration in respect of value, quantity or description thereof and on this basis, it is pleaded that the goods are not liable for confiscation. We do not agree with this plea. The Section 82 of the Customs Act, 1962 requires that in respect of the goods imported by post, the same have to be accompanied by a label or description containing their description, quantity and valued thereof which shall be

deemed to be an entry for their import. Notification No. 78-CUS dated 02/4/1938 as amended by Notification No. 151-CUS dated 24/12/1938 and No. 44-CUS dated 26/7/1941 issued under Section 11 of Customs Act, 1962 put restrictions on the import of goods through post parcel and restrict the import of goods through post parcel only when such post parcels bear on the front, a declaration stating the description, weight and value of the content of the post parcel. This notification issued under Section 11 of Customs Act, 1962 has to be treated as a notification imposing restriction on the import of the goods through post parcel/letter packet unless the same are accompanied by a declaration declaring the nature, weight, value of the contents. There is no dispute about the fact that in respect of the four post parcels seized by DRI on 12/10/02, there was no such declaration mentioning their description, weight and value of the content and the evidence on record indicates that this was not an innocent omission – after all clearing the post parcels for duty free delivery at sorting stage at the speed post centre, without sending the same to FPO would have been impossible if the actual description, quantity and value had been declared on the customs declaration form pasted on the parcels. Simply mentioning a four digit number which subsequently turns out to be the invoice number without mentioning the exact description, quantity and value of the goods does not constitute the declaration required to be made under the law. Therefore, we hold that the goods seized by the DRI on 12/10/02 had been imported contrary to the prohibition imposed under Section 11 of the Customs Act, 1962 and hence the same have been rightly confiscated by the Commissioner under Section 111 (d) of the Customs Act, 1962.

4. Next comes the question of penalty on M/s B.T., Shri Sandeep Sehgal and Shri Joginder Gulati under Section 112 (a) & 112 (b) of Customs Act, 1962. Though Shri Sandeep Sehgal in his statement dated 18/2/03 had mentioned that M/s B.T. is a private limited firm with himself, Shri Joginder Gulati and Shri Deepak Sethi as Directors, the Commissioner at page 28 of the order, relying upon letter dated 31/07/2000 issued by Joint Director General of Foreign Trade, New Delhi, Ministry of Commerce, allotting an import and export

Code No. to M/s B.T. has given a finding that since this letter mentions M/s B.T. as proprietorship concern of Shri Sandeep Sehgal, there is no question of any other person being its Director. However, in any case, since, the above-mentioned four parcels intercepted by DRI on 12/10/02, had been imported by Shri Sandeep Sehgal, Proprietor of M/s B.T. into India contrary to the prohibitions imposed under Section 11 of Customs Act, 1962 and thereby rendering there goods liable for confiscation under Section 111 (d) of the Customs Act, 1962, Shri Sandeep Sehgal as proprietor of the importer firm would be liable for penal action under Section 112 (a) of Customs Act. Beside this, we also find that prior to the seizure of four post parcels containing computer parts, seized by DRI officers on 12/10/02, as per the record of the post office 74 post parcels had been delivered to M/s B.T. during period from August 2002 to 11/10/02, out of which according to the statement of Shri Sandeep Sehgal about 50% parcels contained computer parts and all these 74 parcels including nine parcels delivered on 11/10/02 had been cleared without payment of duty. In view of these circumstances, we uphold the imposition of penalty on Shri Sandeep Sehgal, Proprietor of M/s BT. As regards, Shri Joginder Gulati, he is a proprietor of the supplier firms M/s VIST International PTE Ltd., Singapore and M/s Jorgi International, Singapore and other than being the supplier of the goods under seizure, there is no other role of Shri Joginder Gulati discussed either in the show cause notice or in the adjudication order. Though the Commissioner has imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh) on Shri Joginder Gulati, we find that there is no discussion in the order as to how he is liable for penalty. In view of this, the penalty on Shri Joginder Gulati is set aside.

5. Next comes the question of imposition of penalty under Section 112 (a) of Customs Act, 1962 for abetment on Shri Rajesh Kumar, Customs Inspector, Shri Kishori Lal, Postal Clerk posted at FPO and Shri Vishnu Kumar, the Postal Assistant posted at Speed Post Centre, Bhai Vir Singh Marg, New Delhi. While, the Commissioner has imposed penalty on Shri Kishori Lal and Shri Rajesh Kumar, he has exonerated Shri Vishnu Kumar but in respect of Shri Vishnu Kumar, the Department has filed a Review Appeal challenging the part of

the Commissioner's order dropping the penal proceeding against him. All these three officers are sought to be penalized as abettors under Section 112 (a) of the Customs Act.

5.1 Before coming to role played by these officials and their liability for penal action as abettors under Section 112 (a), it would be useful to first, discuss the system of clearance of the letter packet post parcels imported into India. As mentioned above, as per the provisions of Section 82 of the Customs Act, in case of the goods imported by post any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for their import and as per the Notification No. 78-CUS dated 2/4/1938, as amended, issued under Section 11 of Customs Act, 1962, there is prohibition on import of goods through post parcels/LPs which are not accompanied by a declaration containing the details of their description, quantity and value. Since, the number of post parcels/LPs entering into India from foreign countries is very large and a large number of them contain duty free items or items within the duty free limit, it is not feasible to open and examine each packet/post parcel and for this purpose, before sending the letter packets/post parcels to FPO for examination by Customs, an elimination/sorting operation is conducted by a Customs Inspector, who after going through the declarations pasted on the each letter packet/post parcel the type of parcel and also based on his experience decides which parcels are to be delivered to the addressees without any custom examination and free of customs duty and which parcels are to be sent to the FPO for opening and examination and assessment of duty, if any, chargeable. In the present case, the post parcels/letter packets coming from abroad were ~~was~~ being received at the speed post centre, Bhai Vir Singh Marg, New Delhi and at this place, the sorting process was being done, for which a Customs Inspector used to be deputed from the FPO. Shri Vishnu Kumar is Postal Assistant posted at this Speed Post Centre and Shri Kishori Lal, is a Postal Clerk posted at FPO. The allegation against these three persons is that they abetted the illicit import of the post parcels under seizure and also illicit import of similar parcels their clearance in past without payment of duty, in as much as per the arrangement between Vishnu Kumar and Kishori Lal, Vishnu Kumar was to inform

Kishori Lal about the arrival of the post parcels of certain parties including M/s B.T. ~~that~~ and thereafter Kishori Lal used to manage duty free clearance with the help of Customs Inspector Shri Rajesh Kumar and the Kishori Lal was getting an amount of Rs. 15,000/- per parcel from parties which used to shared mainly with Shri Rajesh Kumar. The evidence relied upon by the Department in support of this allegation is, in brief, as under :-

(a) Statement dated 21/1/03 of Shri Vishnu Kumar

(b) Statement dated 21/1/03 of Shri Kishori Lal

(c) Statement dated 22/1/03 of Shri Rajesh Kumar

(d) Statement dated 18/2/03 of Shri Sandeep Sehgal

(e) The record of telephone calls made from phone No. 9811095624 of M/s BT/ Shri Sandeep Sehgal, phone No. 9811512325 of Shri Kishori Lal and phone No. 9811017560 of Shri Rajesh Kumar, Customs Inspector.

All the above statements have been recorded under Section 108 of Customs Act, 1962 by a Gazetted Officer though Shri Rajesh Kumar and Shri Kishori Lal subsequently retracted their statement, these retractions have been made long after the recording of the statement have to be treated as mere after thoughts more so without their statements are corroborated by the other independent evidence. Hon'ble Supreme Court in case of **Vinod Solanki vs. UOI** reported in **2009 (233) E.L.T. 157 (S.C.)** has held that mere retraction of confession is not sufficient to make the confessional statement irrelevant for the purpose of proceeding in a criminal or quasi-criminal cases. We also find that these statements are corroborated by other independent evidence. Therefore, these statements have to be treated as admissible evidence. From these statements, it is seen that it is Shri Kishori Lal who is at the centre of this racket. Shri Kishori Lal on the request of some traders including Shri Sandeep Sehgal of M/s B.T. for duty free clearance of dutiable goods imported through post parcels, had requested Shri Vishnu Kumar, a Postal Assistant at the speed post centre, for informing him about the arrival of the post parcels of certain parties including M/s B.T. and Shri Vishnu Kumar complied with this request of Shri Kishori Lal. Shri Kishori Lal thereafter with the active assistance and the help of the

Customs Inspector. Shri Rajesh Kumar managed duty free clearance of the parcels of certain parties and those parcels were cleared for duty free delivery by Shri Rajesh Kumar at the sorting stage itself. As per the records of the Postal Department, prior to the seizure of four parcels by the DRI on 12/10/02, during the period from August 2002 to 11/10/02, a total of 74 parcels of M/s B.T. had been cleared in this manner duty free though according to Shri Sandeep Sehgal about 50% of these parcels contained dutiable goods computer parts, out of which nine parcels had been delivered to M/s B.T. on 11/10/02. The duty free delivery of nine parcels to M/s B.T. on 11/10/02 is also confirmed by Shri Kumesh Chauhan in his statement dated 28/11/02 posted at Lajpat Nagar Post Office. It is also clear that for illicit clearance of the post parcels containing dutiable goods Shri Kishori Lal was charging an amount of Rs. 15,000/- per parcels which was being shared by him mainly with Shri Rajesh Kumar. The details of the mobile phone No. 9811095864 of Shri Sandeep Sehgal/ M/s B.T., phone No. 9811512325 of Shri Kishori Lal and phone No. 9811017560 of Shri Rajesh Kumar also confirm that on or around the date of such illicit clearance of post parcels on 11/10/02, there were numerous calls between them. For example mobile phone No. 9811095624 of Sandeep Sehgal was in interaction with phone No. 3231281, the telephone No. of FPO where Shri Kishori Lal was posted at 1030 hrs., 1112 hrs., 1118 hrs., 1205 hrs., and 1238 hrs. on 10/10/02 and 1040 hrs., 1100 hrs., and 1137 hrs. on 11/10/02. Similarly, the mobile No. 9811095624 of Shri Sandeep Sehgal / M/s B.T. was in interaction with mobile phone No. 9811512325 of Shri Kishori Lal at 1323 hrs. on 10/10/02 and at 1016 hrs. and 1313 hrs. on 11/10/02, the date on which nine parcels of M/s B.T. containing dutiable goods had been delivered without charging any duty. Similarly, mobile No. 9811512325 of Shri Kishori Lal was in interaction with mobile No. 9811017560 of Shri Rajesh Kumar, Customs Inspector at 1114 hrs. on 10/10/02 and at 1238 hrs., 1107 hrs. and 1458 hrs. on 11/10/02 and mobile No. 9811017560 of Shri Rajesh Kumar, Customs Inspector was in interaction with telephone No. 3231281, the telephone phone number where Shri Kishori Lal was posted, at 1054 hrs., 1441 hrs., 1617 hrs.. 1741 hrs., 1742 hrs. on 11/10/02 and 1704 hrs. on 12/10/02. Neither Shri

Kishori Lal, a Postal Clerk in FPO has given any valid reason to interact so frequently with Shri Sandeep Sehgal of M/s B.T. nor Shri Kishori Lal and Shri Rajesh Kumar has given any valid reason to interact with each other so frequently. From the above evidence, it is clear that the racket of illicit clearance without payment of duty of the goods imported through post parcels was going on with the active connivance of Shri Kishori Lal and Rajesh Kumar and as such these persons have abetted in this illicit import. It has been pleaded that in spite of this, no penalty can be imposed as while in respect of the goods under seizure the same had been seized at a time prior to being sorted out and prior to being presented to Customs and in respect of the illicit clearances prior to 12/10/02, no Show Cause Notice has been issued. We do not accept this plea, as held above, the goods seized by the DRI on 12/10/02 having been imported into India in contravention of the prohibitions imposed under Section 11 of Customs Act 1962, are liable for confiscation and in this illicit import both Shri Rajesh Kumar and Kishori Lal have acted as active abettors and but for the intervention of the DRI, these goods would also have been illicitly cleared without payment of duty. Therefore, the penalty on Shri Rajesh Kumar and Kishori Lal is upheld.

6. As regards penalty on Shri Vishnu Kumar, the Postal Assistant, the Commissioner has dropped the proceedings against him and it is the Department which has come in appeal for imposition of penalty on him. On going through the Commissioner's order, we find that the Commissioner has not given any reasons for dropping penalty penal proceedings against Shri Vishnu Kumar. Though the role of Shri Vishnu Kumar in this racket, as compared to the role of Shri Kishori Lal and Rajesh Kumar is much less serious, from the statement of Shri Vishnu Kumar, which has not been retracted, it is clear that he had played a crucial role, as it is Shri Vishnu Kumar who, admittedly, on the request of Shri Kishori Lal, had informed him about the arrival of parcels in the name of certain traders including M/s B.T. and though he felt disgusted about informing Shri Kishori Lal about the arrival of certain parcels including M/s B.T., he used to do this because of his friendship with him. In his statement, he has also admitted that he knew that all the parcels about

which he informed Shri Kishori Lal were being sent directly to the parties for duty free delivery without being sent to the post office. From the statement of Shri Vishnu Kumar, it is clear that he has also abetted in this illicit import and clearance of dutiable goods without payment of duty and, therefore, the Commissioner's order dropping the penal proceedings against him is not correct and he would also be liable for penalty. Looking to the role played by him, we are of the view that the penalty of Rs. 10,000/- (Rupees Ten Thousand) on Shri Vishnu Kumar under Section 112 (a) of Customs Act, 1962 would meet the ends of justice.

7. In view of above discussion, while we set aside the penalty on Shri Joginder Gulati, the confiscation of the goods under seizure and also the penalty on Shri Sandeep Sehgal, Proprietor of M/s B.T., Shri Rajesh Kumar and Shri Kishori Lal is upheld. As discussed above, the Commisioner's order dropping the penal proceeding against Shri Vishnu Kumar is set aside and we impose penalty of Rs. 10,000/- (Rupees Ten Thousand) on Shri Vishnu Kumar under Section 112 (a) of the Customs Act, 1962 and thereby allow the Revenue's

appeal No. C/238/06. While the appeal No. C/762/05 of Shri Joginder Gulati is allowed, the appeal No. C/694, 761 and 763/05 of Shri Sandeep Sehgal / M/s B.T., Shri Rajesh Kumar and Shri Kishori Lal are dismissed.

(Pronounced in open court on 4/6/09)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK