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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/448 /2008 – SM[BR] Date 13/04/2010

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

To :
SANDEEP SEHGAL

S/O SH.V.M.SEHGAL, PROPRIETOR OF M/S BEAM TECHNOLOGY B-60,DAYANAND COLONY,LAJPAT NAGAR, NEW DELHI
R

SANDEEP SEHGAL Appellant

Vs

C.C. (EXPORT) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 421 / 2010 –SM[BR] dated 7.4.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C. (EXPORT) NEW DELHI
   AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037
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.~~
~~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)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 7.4.2010

Customs Appeal No.448 of 2008-SM

Arising out of the order in appeal No.CC(A)/Cus/Prev./D-II/85-86/08 dated 20.2.2008 passed by the Commissioner of Customs (Appeals), New Delhi.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Sandeep Sehgal ... Appellant

Vs.

C.C., New Delhi ... Respondent

Appearance:

Shri Nitendra Kumar, Advocate for the appellant
Shri V.K. Saxena, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 421/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. CC(A)/Cus/Prev./D-II/85-86/08 dated 20.2.2008 by which the penalty of Rs.1,50,000/- imposed on the appellant by the original authority has been upheld.

2. Heard both sides.

3. The officers of DRI seized computer parts of foreign origin on 18.2.2003 from a go-down under the control of Shri Sandeep Sehgal, the present appellant. He ,during investigation, submitted that earlier he was

getting consignments through speed post and subsequent to seizure of consignment by DRI, he has chosen to bring goods from Nepal through carriers arranged by one Shri Joginder Gulati. In reply to the show cause notice, however, he denied that the goods were brought from Nepal through carriers but submitted that the same were procured locally. It was also claimed that the goods were not notified under Section 123 of the Customs Act and therefore, the burden of proving that the goods were of foreign origin was ~~tying~~ on the Department. The original authority besides confiscating the seized goods imposed penalty of Rs.1.50 lakhs on the present appellant and the said penalty has been upheld by the Commissioner (Appeals).

4. Learned Advocate reiterates the grounds of appeal. He also submits that M/s Beam Technology is not private limited company but a proprietary concern of Shri Sandeep Sehgal. However, from the appeal records, it is noticed that the appellant has sent a communication dated nil addressed to the Commissioner , Customs, Air Cargo, Customs House, New Delhi wherein he has described himself as Managing Director of M/s Beam Technology. The show cause notice has specifically referred Shri Sandeep Sehgal as Director and Shri Joginder Gulati as other Director. It has not been shown that they contested the version of the Departmetn that he was Director of Beam Technology in his reply to the show cause notice. However, in the facts of the present case, it may not be materially relevant as to whether the appellant was Director of Beam Technology or proprietor of M/s Beam Technology. The issue involved is whether by his own action or omission he has rendered the goods liable for confiscation under Section 111 of the Customs Act. Considering the initial statement by him and considering the fact that he has not produced any evidence about the his claim on the procurement of the goods locally, the finding of the authorities below that the appellant was involved in procurement of foreign goods through carriers from Nepal cannot be assailed. It is not being disputed that the goods of foreign origin worth of Rs.7,34,000/- was seized from the premises of the appellant. Under these circumstances, the imposition of penalty was warranted. However,

considering the value of the goods involved, some leniency is justified in the quantum of penalty imposed.

5. Accordingly, I reduce the penalty from Rs.1,50,000/- to Rs.75,000/- (rupees seventy five thousand only).

6. Appeal is partly allowed as above.

(M. Veeraiyan)
Member (Technical)

scd/