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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/544/2009-CU[DB], C/545/2009-CU[DB], C/546/2009-CU[DB]

Dated: **29/06/2012**

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

**SH. OM SWAROOP CHANDNA,**
**PROPRIETOR OF**
M/S NATIONAL AUTO INDUSTRIES,
1/566 A/B, GALI BAIL SAHIB, GANDA
NALA BAZAR, KASHMERE GATE,
DELHI.

**SH. OM SWAROOP CHANDNA,**
**PROPRIETOR OF** (Appellant)

**VS**

**C.C.(PREVENTIVE)** (Respondent)

FO-C 189-191/12

I am directed to transmit herewith a certified copy of Final Order No. **C/A/189/2012-CU[DB]**, **06/06/2012** passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**Copy To,**
**1. Respondent**
**C.C.(PREVENTIVE)**
New Custom House, Near I.G.I. Airport,
new Delhi 110037.

**2. Advocate(s) / Consultant(s):**
Piyush Kumar,Adv
B-25,Lajpat Nagar-III,N.Delhi

**3. C.D.R**
4. Bar Association, CESTAT, New Delhi

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

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, 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, Above Star India Bazar, Satellite Road,

P.T.O.

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

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File

**Assistant Registrar**
**CUSTOMS Appeal Branch**

**SH. VIKAS MEHTANI PROPRIETOR OF**
M/S VIKAS INDUSTRIES, 1/566 A/B,
GALI BAIL SAHIB, GANDA NALA
BAZAR, KASHMERE GATE, DELHI.

**SH. VIKAS MEHTANI (HUF) PROPRIETOR OF**
M/S SANYUKTA INTERNATIONAL,
1/566 A/B, GALI BAIL SAHIB, GANDA
NALA BAZAR, KASHMERE GATE,
DELHI.

## IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

### PRINCIPAL BENCH, COURT NO. III

### Customs Appeal No.544-546 of 2009

[Arising out of Order-In-Appeal No.CC(A)/Prev/217-221/2009, dated 14.07.09 issued by CC, New Delhi]

**For approval and signature:**
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, 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? | No |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | No |
| 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 |

(1) Om Swaroop Chandana
Prop. Of National Auto Industries
(2) Vikas Methani
Prop. Of Vikas Industries
(3) Vikas Methani (HUF)
Prop. Of Sanyukta International — Appellants

Vs.

CC, New Delhi — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

**Appearance**:
Shri Piyush Kumar, Adv. for the Appellants
Shri K.P.Singh, AR for the Respondent

Date of Hearing/decision : 06.06.2012

Final **ORDER NO .** C/A/189-191/12-Cus

**Per Ms. Archana Wadhwa**:

All the three appeals are being disposed of by a common order as they arise out of the same facts and circumstances as also from the same impugned order in appeal.

2. After hearing Shri Piyush Kumar, ld. advocate appearing for appellants, we find that the appellants are engaged in the business of sale, purchase, trading of electronic goods and car accessories. Their business premises were visited by Customs Officers of (Preventive) on 7/8.03.08 and certain foreign origin goods were seized from the said premises.

3. Based upon above, proceedings were initiated against them by way of issuance of a Show Cause Notice (SCN) dtd. 04.09.08 proposing confiscation of seized goods as also for imposition of penalties. The said proceedings culminated into an order passed by Addl. Commissioner confiscating the goods, confirming the duties and imposition of penalties.

4. On appeal against the above order, Commissioner(Appeals) extended the benefit in respect of seized goods on the ground that the same are not specified u/s 123 of Customs Act, 1962 and as such there being no evidence to show smuggled nature of the same, confiscation, demand of duty etc. is not called for. However, ~~in respect of~~ as the goods were imported by M/s N.S.Enterprises and M/s SNS Enterprises from whom the appellants have purchased the same, he confiscated the goods on the ground of violation of Foreign Trade Policy. For better appreciation, we reproduce the para 11 of the impugned order of Commissioner(Appeals):-

> *"11. It is not disputed by any of the appellants that the impugned goods did not have the MRP stickers affixed on them as stipulated under Exim Policy 2004-09, Foreign Trade*

*Policy and the provisions of Standard Weights and Measures (Packaged Commodities) Rules, 1977. Thus, the said omission on the part of the importers namely, M/s SNS Enterprises and M/s NS Enterprises has made the impugned goods liable for confiscation under section 111(d) of the Customs Act, 1962. However, it is also not the case of department that the said goods were to be sold at higher MRP than declared at the time of the import. On the other hand, it is the contention of the appellants that all the goods after provisional release were sold in the market after affixation of the MRP stickers at the instance of the department. Therefore, it is observed that finally the provisions of Exim Policy 2004-09, Foreign Trade Policy and Standard Weights and Measures (Packaged Commodities) Rules, 1977 has been complied with by the concerned Appellants. Hence, there is a case for reduction in RF because it is also not disputed by the department that outer carton were affixed with the MRP stickers. As regards the imposition of penalty is concerned, the omission is on the part of the importers who had not complied with the relevant provisions requiring affixing of MRP stickers of the impugned goods at the time of clearance of goods. Hence they are liable for penalty under section 112 of the Customs Act, 1962. I extend the benefit of doubt to Shri Om Swarop Chandana, Prop. of M/s National Auto Industries, Shri Vikas Methani, Prop. Of M/s Vikas Industries and Vikas Methani (HUF), Prop. Of M/s Sanyukta International as they are not* *the importers and as already stated, the burden was on the importers to comply with the relevant provisions.*

After observing as above, the Commissioner(Appeals) has upheld the confiscation of the goods with an option to redeem the same on payment of redemption fine of Rs.1,00,000/-, Rs.40,000/- and Rs.50,000/- respectively.

5. Being aggrieved with the order, appellants have preferred the present appeal.

6. It is seen that the three appellants before us are not the importer of the goods. The appellate authority has observed that the contravention of the provisions of Exim Policy, Foreign Trade Policy and Standard Weights & Measures (Packaged Commodities) Rules, 1977 is on the part of the importer and not on the part of the present appellants. By observing so, he has set aside the penalty imposed upon the present appellants and the Revenue is not in appeal against the same.

7. Admittedly the goods stands seized from the premises of the present appellants who are the owners of the same. Option to redeem the goods also stands given to the present appellants. As such, it is the appellants who have to pay the redemption fine. There being no fault on the part of the appellant, payment of huge redemption fine may not be just and proper, though technically the goods are liable to confiscation for contravention of various provisions of law. As such by keeping into consideration, the above facts, we reduce

the redemption fine to Rs.10,000/-, Rs.4,000/- and Rs.5,000/- respectively for all the three appellants.

8. All the three appeals are disposed in above manner.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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