IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2

Customs Appeal No. 75406 of 2014

(Arising out of Order-in-original No.KOL/CUS/PORT/07/2014 dated 17.01.2014 passed by Commissioner of Customs (Port), Kolkata.)

Smt. Sangeeta Bansal, Director
M/s. Agarwal Graphic Machinery Pvt.Ltd.
(Patparganj Industrial Area, New Delhi-110092.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

WITH

Customs Appeal No. 75407 of 2014

(Arising out of Order-in-original No.KOL/CUS/PORT/07/2014 dated 17.01.2014 passed by Commissioner of Customs (Port), Kolkata.)

Shri Sanjay Bansal, Director
M/s. Agarwal Graphic Machinery Pvt.Ltd.
(D-138, 3rd Floor, Anand Vihar, New Delhi-110092.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

AND

Customs Appeal No. 75409 of 2014

(Arising out of Order-in-original No.KOL/CUS/PORT/07/2014 dated 17.01.2014 passed by Commissioner of Customs (Port), Kolkata.)

M/s. Agarwal Graphic Machinery Pvt. Ltd.
(Patparganj Industrial Area, New Delhi-110092.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri R.N.Bandyopadhyay & Ms. Rupsha Chatterjee, Advocates for the Appellant (s)

Shri S. Debnath & Shri R. Chakraborty, both Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76406-76408/2026

DATE OF HEARING : 21.09.2026
DATE OF DECISION : 09.10.2026

Per : R. MURALIDHAR :

The Appellant M/s. Agarwal Graphic Machinery Pvt Ltd [Agarwal for short] imported old and used offset printing machines through Kolkata Port under 28 Bills of Entry during the period March 2007 to November 2007. The invoice values were declared along with the relevant import documents. The Customs authorities examined the machines and obtained valuation reports from Chartered Engineers. The declared values were enhanced during assessment, and the machines were cleared for home consumption on payment of duty on the enhanced assessable values. On 17.01.2008, DRI conducted searches at the Appellant's premises in Delhi and seized 56 old and used printing machines on suspicion of undervaluation. In respect of 17 machineries in order to close the litigation, the appellant approached the Settlement Commission and closed the matter.

2. A Show Cause Notice was issued on 22.05.2012 in respect of 39 machines, comprising of 27 seized machines, 11 machines imported

and sold earlier, and one machine cleared under provisional assessment. The SCN alleged misdeclaration of value and proposing further enhancement, recovery of differential duty, confiscation and penalties. The Commissioner adjudicated the notice by the impugned Order-in-Original dated 17.01.2014, rejecting the earlier assessed values and redetermining the assessable values under the Customs Valuation Rules. He also imposed penalties on the two Directors [the present two appellants] and on the two Chartered Engineers. Being aggrieved the appellants have filed their appeals before the Tribunal.

3. The Ld. Counsel appearing for the appellants makes the following submissions

4. The details of the confirmed amounts as per the Order in Original are as under:

Particulars	Amount
Differential duty on 27 seized machines	₹31,68,988
Differential duty on 11 previously imported machines	₹57,88,802
Differential duty on one provisionally assessed machine	₹10,85,041
Total differential duty	₹1,00,42,831
Redemption fine	₹1,48,00,000
Penalty under Section 114A	₹89,57,790
Penalty under Section 112	₹10,85,041

5. The Appellant challenges the redetermination of value, consequential duty demands, confiscation, redemption fines, penalties and appropriation of deposits.

6. A. Reassessment of values already enhanced by Customs

6.1 The most important fact is that the declared invoice values were not accepted mechanically at the time of import. The machines

underwent examination and valuation by Chartered Engineers, and the proper Customs officers enhanced the values before permitting clearance.

6.2 The Appellant submits that a subsequent demand proposing yet another enhancement must be supported by reliable evidence establishing that the earlier assessments were erroneous. The mere existence of a higher subsequent valuation does not establish deliberate undervaluation or suppression.

7. B. Arbitrary redetermination of value

7.1 The subsequent valuation of the seized machines was principally based on reports obtained from representatives of the Regional Institute of Printing Technology, Kolkata. The Appellant disputes the reliability of these reports, particularly their treatment of the condition, age, depreciation and individual characteristics of the second-hand machines.

7.2 The Department was required to establish a legally sustainable basis for rejecting the previously assessed values and to follow the applicable Customs Valuation Rules. The Appellant submits that the valuation exercise does not satisfy those requirements.

8. C. Violation of principles of natural justice

8.1 The Appellant specifically requested cross-examination of the technical experts whose reports were relied upon, including Shri Simadri Biswas and Shri Rupak Das. The request was rejected.

8.2 The Appellant also raised objections concerning the non-supply of complete correspondence with foreign authorities and the inability to cross-examine the persons responsible for material relied upon by DRI. The impugned order is therefore challenged for denying an effective opportunity to rebut the evidence.

9. D. Demand barred by limitation

9.1 The imports took place during 2006–2007, whereas the Show Cause Notice was issued on 22.05.2012 and, according to the appeal memorandum, served on 31.05.2012.

9.2 The Appellant has specifically pleaded that the notice was served beyond five years in respect of 11 machines identified in the appeal. Independently, the extended period is challenged for all relevant imports because the machines had been examined and their assessable values enhanced by Customs at the time of clearance.

9.3 The Appellant submits that suppression or willful misstatement cannot be presumed merely from a subsequent difference in valuation.

9.4 The Appellant places particular reliance on **Suraj Impex v. Commissioner of Customs, decided along with Spark Lites v. Commissioner of Customs, CESTAT Chennai, Final Order Nos. 40718–40720/2026 dated 11.06.2026**.

9.5 In that case, the Tribunal considered imports that had been examined, assessed and, in several instances, subjected to value enhancement by Customs before clearance. Subsequently, DRI alleged undervaluation on the basis of electronic records and statements.

9.6 The Tribunal set aside the demands on merits and limitation. The following findings are particularly relevant to the present appeal:

- Earlier assessment and enhancement: Where Customs had examined the goods and enhanced their values, a subsequent rejection required convincing evidence demonstrating that the earlier assessment was erroneous.

- Burden of proving undervaluation: Suspicion, unverified price information and uncorroborated statements could not replace reliable evidence of the actual transaction value.

- Valuation methodology: Rejection and redetermination of value must comply with the prescribed Customs Valuation Rules.

- Cross-examination: Reliance on disputed evidence without granting the requested cross-examination was held to violate natural justice in the circumstances of that case.

- Extended limitation: The Tribunal held that, where material particulars were disclosed and Customs had examined and enhanced values, deliberate suppression could not be inferred merely from a subsequent allegation of undervaluation.

9.7 The Tribunal consequently set aside the differential duty demands, confiscation, redemption fines and penalties.

9.8 The Appellant submits that the principles laid down in Suraj Impex apply with particular force because, in the present case, the goods were second-hand machinery whose values had already been individually examined and enhanced by Customs-appointed technical experts.

10. The Department's allegations concerning overseas correspondence and additional payments must nevertheless be examined against the actual evidence in the present record; these documents were not made available to the appellant at any point of time.

11. The Appellant submits that, in the absence of legally established misdeclaration or undervaluation, confiscation under Section 111(m), redemption fines under Section 125 and penalties under Sections 112 and 114A cannot be sustained.

12. The demand concerning the provisionally assessed machine is also challenged because the Appellant disputes the technical basis of the further valuation and the denial of cross-examination.

13. The penalties have been imposed on the three Directors of the appellant company. However, since one of the Director has since expired, his appeal has been held as abated vide Final Order No.76196/2026 dated 21.09.2026. In respect of the other two Directors, it is submitted that no specific instance of their being involved in the alleged under-pricing of the Invoice has been brought in by the Revenue. Even otherwise, the main appellant has adduced his arguments to the effect that the demand, Redemption Fine and Penalties imposed on them is not legally sustainable. On the same ground, it is prayed that the penalties imposed on the appellant Directors also may be set aside.

14. In view of the facts and submissions above, the Appellant respectfully prays that this Hon'ble Tribunal may be pleased to:

a) Set aside Order-in-Original No. KOL/CUS/PORT/07/2014 dated 17.01.2014.

b) Set aside the differential duty demands, confiscation, redemption fines, interest and penalties imposed upon the Appellant.

c) Direct consequential relief, including the release or refund of amounts and securities, as admissible in law.

d) Pass such further orders as this Hon'ble Tribunal may deem fit and proper.

15. The Ld. AR reiterates the detailed findings of the Adjudicating authority. He has made written submissions, which have been taken on record. It is submitted that in view of conducting search operations of the premises of the appellant, the contraventions came to light. For arriving at the valuation, when the transaction value is discarded, in

respect of Second hand capital goods, it has been provided that direct recourse can be taken to Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007. The revaluation was done by the Technical Experts from the Regional Institute of Printing Technology, Jadhavpur University. The Chartered Engineers's Certificate provided by the appellant was not found to be proper and was doubted by the Revenue. Hence, this exercise was taken up. The Revenue has also initiated the verification of the supplier's actual price through COIN and they were shown to be underpriced in the Invoices. Only after such thorough verification the re-valuation has been completed. Therefore, the Ld AR justifies the confirmed demand , Redemption Fine and penalties imposed in the impugned order. Accordingly, it is prayed that the appeals may be dismissed.

16. Heard both the sides. Perused the appeal papers and submissions made by way of synopsis and other documents by both the sides.

17. Since the proper details of the issue dealt by the Revenue is not coming up from the submissions made by the appellant / Revenue, in the interest of justice as the last fact finding authority, we have taken upon us to go through the SCN, the Relied Upon Documents and OIO etc., to come to our conclusion.

18. The core issue admitted by both sides is as under:

(a) 27 Machines [Secondhand Capital goods], which were seized by the Revenue, have been taken up for re-valuation of the Assessable Value so as to quantify the differential Customs Duty. The differential Customs Duty demanded in respect of such machines is to the tune of Rs.31,68,988. They have been confiscated with an option

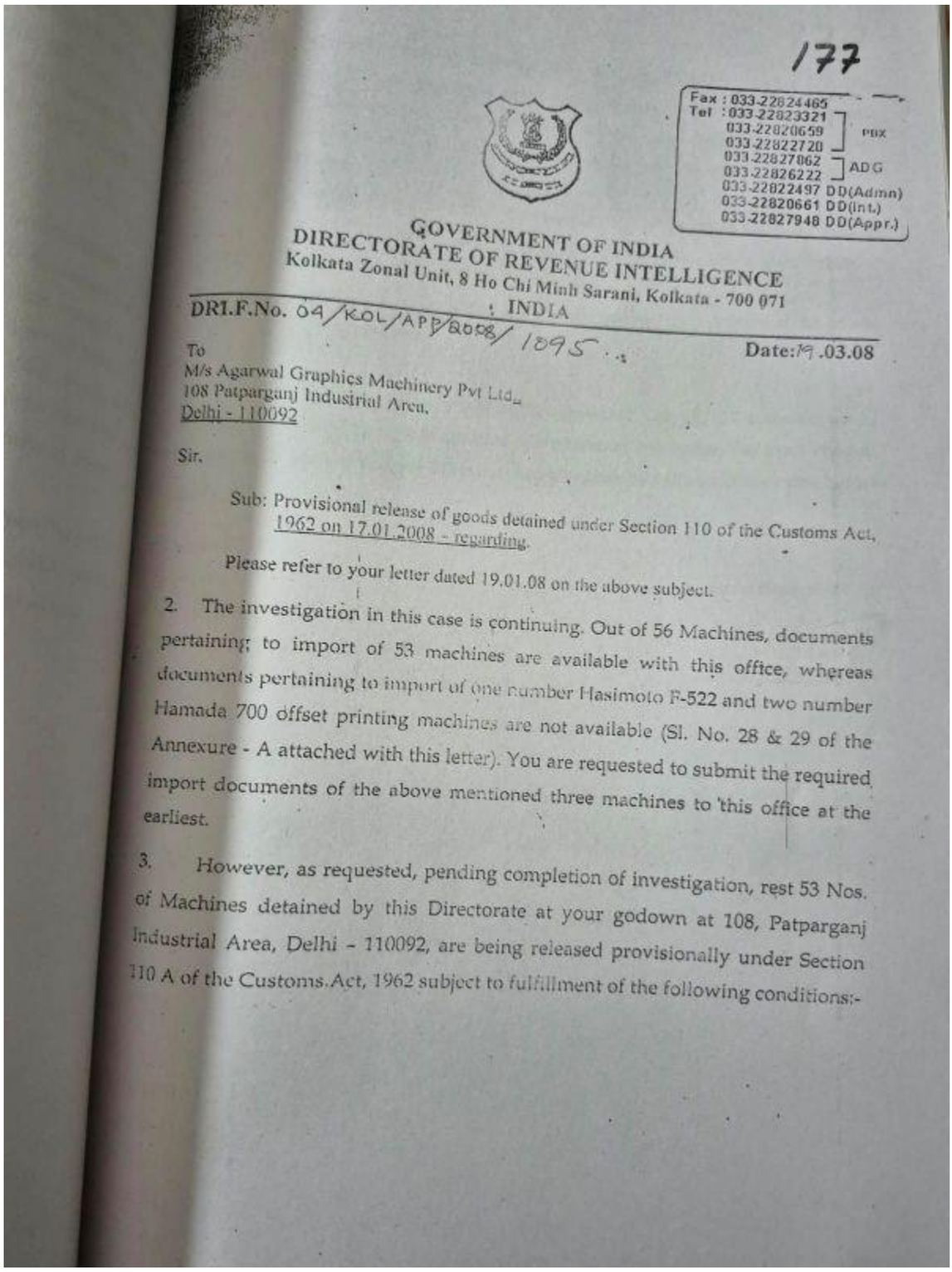
being given to redeem the same on payment of Redemption Fine of Rs.50,00,000.

(b) 11 Machines [Secondhand capital goods], were cleared during the earlier period and were not available for examination. But re-valuation of Assessable value has been taken up and differential Duty of Rs.57,88,802 has been demanded.They have been confiscated with an option being given to redeem the same on payment of Redemption Fine of Rs.80,00,000.

(c) One Secondhand machine was allowed to be cleared on Provisional Assessment basis. The same was taken up for re-valuation and differential Duty of Rs.10,85,041 has been demanded. The machine has been confiscated with an option being given to redeem the same on payment of Redemption Fine of Rs.18,00,000.

19. The corollary issues are about the penalties issued for the above consignments, penalties imposed on the present appellants and penalties imposed on the Chartered Engineers. For the present we will concentrate on the above three core issues.

20. We take up the issue of 27 secondhand machines. These were duly seized and were released on provisional basis, as can be seen from the following documents / paras of the SCN / OIO:



177

Fax : 033-22824465
Tel : 033-22823321
033-22820659 PBX
033-22822720
033-22827062 ADG
033-22826222
033-22822497 DD(Admn)
033-22820661 DD(Int.)
033-22827948 DD(Appr.)

GOVERNMENT OF INDIA
DIRECTORATE OF REVENUE INTELLIGENCE
Kolkata Zonal Unit, 8 Ho Chi Minh Sarani, Kolkata - 700 071
: INDIA

DRI.F.No. 04/KOL/APP/2008/1095

Date: 19.03.08

To
M/s Agarwal Graphics Machinery Pvt Ltd.,
108 Patparganj Industrial Area,
Delhi - 110092

Sir,

Sub: Provisional release of goods detained under Section 110 of the Customs Act, 1962 on 17.01.2008 - regarding.

Please refer to your letter dated 19.01.08 on the above subject.

2. The investigation in this case is continuing. Out of 56 Machines, documents pertaining to import of 53 machines are available with this office, whereas documents pertaining to import of one number Hasimoto F-522 and two number Hamada 700 offset printing machines are not available (Sl. No. 28 & 29 of the Annexure - A attached with this letter). You are requested to submit the required import documents of the above mentioned three machines to this office at the earliest.

3. However, as requested, pending completion of investigation, rest 53 Nos. of Machines detained by this Directorate at your godown at 108, Patparganj Industrial Area, Delhi - 110092, are being released provisionally under Section 110 A of the Customs Act, 1962 subject to fulfillment of the following conditions:-

47.10. As the importer, thereafter fulfilled the conditions of provisional release as offered by the DRI, provisional release of the seized/available machines were allowed on submission of requisite amount by demand draft/bank guarantee and bond. Since the said importer clandestinely

removed 26 seized machines in contravention of the provisions of Section 110 of the Customs Act, 1962 and conditions of Supardnama dated 17.01.08, the provisional release of those 26 machines were not allowed. The present Show Cause Notice deals with 30 out of 56 machines seized on 17.01.08. The rest 26 machines were the subject matter of another show cause notice dated 15.01.09, which, according to the submission filed by the noticee No: 1 to 4, has since been Settled by the Hon'ble Settlement Commission as per the Application filed by the importer.

21. When the goods are seized and have been released under Section 110A, then for confiscating the same, the provisions of Section 111 and Section 124 would be applicable. The relevant portions are extracted below:

111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:

(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3[in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];

124. Issue of show cause notice before confiscation of goods, etc.

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person

(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given a reasonable opportunity of being heard in the matter*
>
> *Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*
>
> *Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.*

22. In the present case, there is nothing to suggest that any SCN was issued in terms of Section 124 (a) seeking to confiscate the goods that have been provisionally released as per the letter dated 19.03.2008.The courts have been consistently holding that the proceedings under Section 124 (a) are different from provisions of Section 28. We have for reference the judgement of the **Hon'ble Madras High Court in the case of Hiseins Exim vs The Additional Commissioner judgement rendered on 20 February, 2026**, wherein the Court has held as under:

> *15. Customs Act contemplates issuance of show cause notice to the offender under two situations. One is under Section 28 and the other is under Section 124. Under Section 28, the show cause notice is issued to the offender for recovery of duties not levied or not paid or short levied or short paid or for recovery of the erroneously refunded customs duty. However, Section 124 of the Customs Act stipulates issuance of show cause notice by the Customs Department before confiscation of goods. Any importer of the goods is always interested in early clearance of the imported goods. The importer will never agree for confiscation of the imported goods*
>
> *22. Therefore, the show cause notices issued under Section 28 and Section 124 of the Customs Act serve distinct purposes. Section 28 of the Customs Act, governs the recovery of duties (short levy, non levy or erroneously refunded),*

whereas Section 124 of the Customs Act deals with confiscation of goods and imposition of penalties due to violations under the Customs Act. Therefore, the core purpose of Section 28 focuses on physical recovery, whereas, the core purpose of Section 124 focuses on penalty action (confiscation of goods and penalties for prohibited or improperly imported goods)

23. In the present case we find that the goods in question were seized and were allowed to be cleared on Provisional release basis vide letter dated 19.03.2008, but no SCN was issued under Section 124 at all. The SCN was issued on 22.05.2012, without invoking the provisions of Section 124. Hence, the legality of confiscation of the goods itself is under cloud.

24. Now we take up the main ground on which the Revenue claims that the goods are liable for confiscation. It is the case of the Revenue that the appellant had grossly undervalued the goods. The Chartered Engineer's Certificate issued by the two Chartered Engineer is not proper, they are erroneous and do not reflect the correct value of the imported secondhand goods.

25. The relevant portion of the Order in Original about the method adopted for re-valuation of the goods is reproduced below:

47.11. In order to ascertain the correctness of the declaration made by the importer regarding the value of the old and used imported printing machines, references were made to different COIN offices at New York, Brussels, London, Hong Kong etc. on 05.05.2008 with regard to the seized machines as well as other machines imported earlier and already sold out by the importer. Information in respect of a total of 18 machines intimating values declared at the load port by the foreign suppliers were received through respective COIN offices. Out of these 18 machines in respect of which value declared by the respective exporters have been obtained, 6 were out of the seizedmachines and the rest 11 were machines imported earlier and already sold by the importer. On comparison of the values declared at the load port by the exporter vis-à-vis the value declared by the importer, it has been found that the importer

had, in all the 18 (eighteen) cases declared much lesser value than what was declared by the foreign suppliers before the respective customs authorities. The detail of those 6 machines have been made out in Table 2 (Para 23) of the show cause notice.

47.12. The value of the 11 old and used offset machines, other than those seized as mentioned above, which were imported by M/s Agarwal Graphics Machinery Pvt. Ltd from different countries during 2007-08 and were sold out before initiation of investigation by DRI, have been obtained from the respective exporting countries through various COIN offices. Values declared at the load ports so obtained by DRI as shown in the pro-forma invoice and/or in the customs declaration at the load port have been made out in Table 3 (para 25) of the show cause notice. From the said Table, it is found that the values declared by the exporters of the subject goods at the load ports were much higher than the value declared by the importer before the customs authority in India at the time of import.

47.13. During investigation one live consignment of the importer covered by the bill of entry No: 383850 dtd. 28.12.2007 was examined by the officers of DRI with the technical help of the printing technology experts on 20.02.2008. The particulars of the said consignment has been spelt out at the Table 4 (Para 26) of the show cause notice. From the said report the declared value appeared to be grossly undervalued. The said consignment was also released provisionally against specific conditions.

47.14. As the goods in question were found to be grossly under valued, the declared value was rejected in terms of the provisions of Rule 10A of the Valuation Rules of 1988 or Rule 12(1) of the Valuation Rules of 2007 as the case may be, depending upon the period of the importation. As the imported goods were old and used, comparable price for the purpose of redetermination was not available. Thus, it appeared that value of the old and used machines cannot be determined as per the other provisions of the said Valuation Rules. Accordingly, value of all machines was redetermined in terms of Rule 8 of the Valuation Rules of 1988 and /or Rule 9 of the Valuation Rules of 2007, as the case may be (detail at para 29 of the show cause notice).

In this case, on request by DRI, two experts from The Regional Institute of Printing Technology, Jadavpur were deputed by the Directorate of Education and Training, Govt of West Bengal for the purpose of ascertaining the present

value of the imported machines. The experts had examined each and every machine and by identifying the make, model, no of colours, Year of manufacture and country of origin had suggested approximate value for the machines. The experts had technical knowledge, expertise and experience in this field and acted independently. The value suggested by the experts is also found to be more or less commensurate with the value declared at the port ofloading as received through overseas enquiry. Hence it appears that the value suggested by the experts in respect of the 27 seized machines may be considered as the value of those machines as per provisions of Rule 8 of the said Rules 1988 or Rule 9 of the said Rules 2007 read with Board's Circular No. F. No. 493/124/86-Cus dated 19.11.87, and the duty needs to be recalculated accordingly. The differential duty of Rs. 31,68,988.09 (Rupees Thirty One Lakh Sixty Eight Thousand Nine Hundred Eighty Eight point zero nine only)calculated on the above basis as shown in Annexure-A appears to be payable by the said importer as per proviso to Section 28 of the Customs Act, 1962.

26. To summarize the Revenue's efforts towards the redetermination of the value:

- References were made to different COIN offices at New York, Brussels, London, Hong Kong etc. on 05.05.2008 with regard to the seized machines as well as other machines imported earlier and already sold out by the importer

- In this case, on request by DRI, two experts from The Regional Institute of Printing Technology, Jadavpur were deputed by the Directorate of Education and Training, Govt of West Bengal for the purpose of ascertaining the present value of the imported machines. The experts had examined each and every machine and by identifying the make, model, no of colours, Year of manufacture and country of origin had suggested approximate value for the machines. The experts had technical knowledge, expertise and experience in this field and acted independently.

- The value suggested by the experts is also found to be more or less commensurate with the value declared at the port of

loading as received through overseas enquiry. Hence it appears that the value suggested by the experts in respect of the 27 seized machines may be considered as the value of those machines as per provisions of Rule 8 of the said Rules 1988

- As the imported goods were old and used, comparable price for the purpose of redetermination was not available. Thus, it appeared that value of the old and used machines cannot be determined as per the other provisions of the said Valuation Rules. Accordingly, value of all machines was redetermined in terms of Rule 8 of the Valuation Rules of 1988 and /or Rule 9 of the Valuation Rules of 2007.

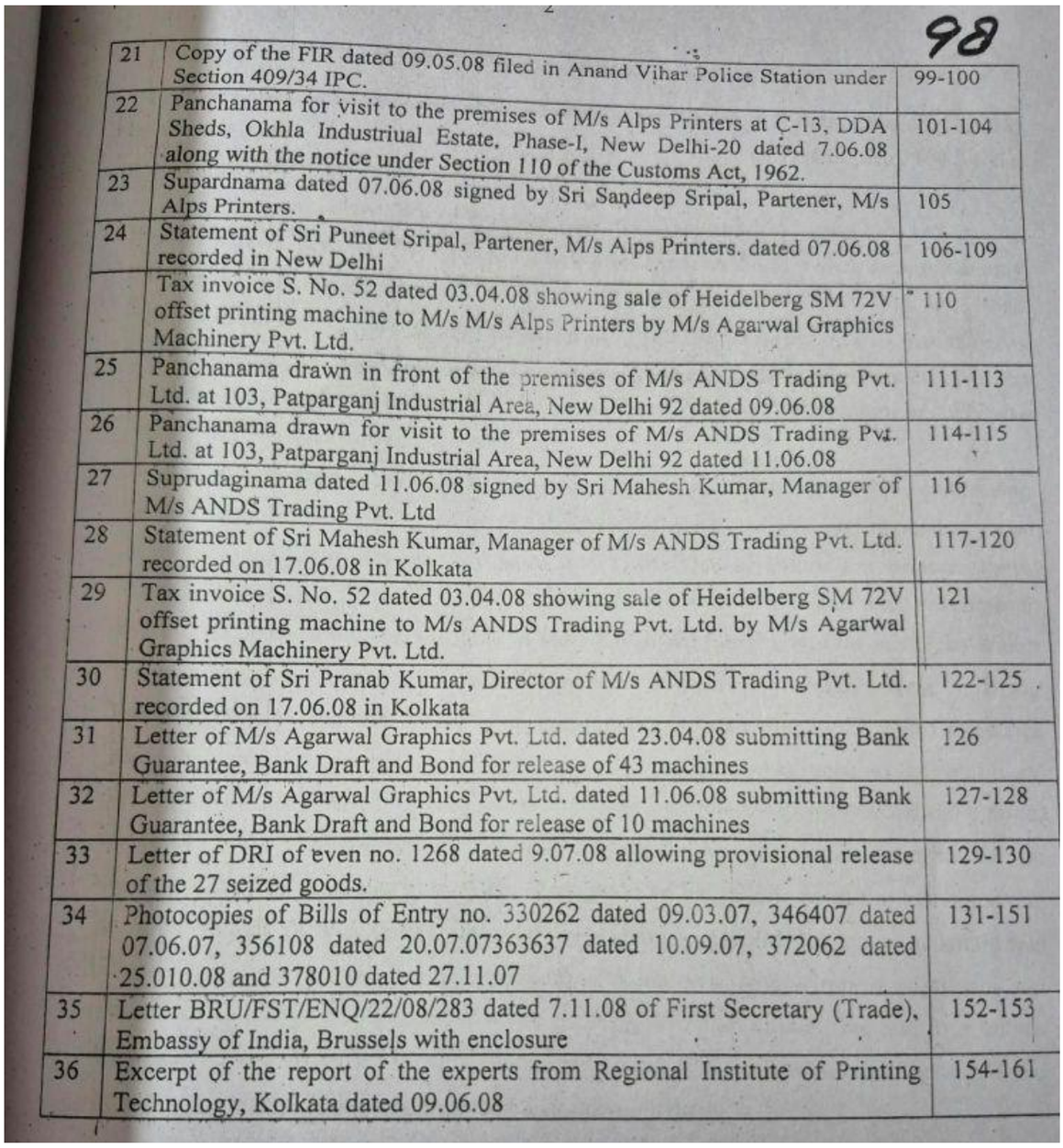
27. Towards the above submissions of the Revenue, we have done some fact-checking, which are reproduced below:

27.1 The Table below gives the list of Relied Upon Documents by the Revenue for issuing the SCN.

LIST OF RELIED UPON DOCUMENTS

97

Sl. No.	Description of the documents	Page No.
1	Statement of Sri Sanjay Bansal, Director of M/s Agarwal Graphic Machinery Pvt. Ltd. recorded in New Delhi on 17.01.0	1-2
2	Panchanama dated 17.01.08 with Annexure-I & II drawn at godown-cum-office premises of M/s Agarwal Graphic Machinery Pvt. Ltd. 108, Patparganj Industrial Area, New Delhi-92	3-9
3	Supradnama dated 13.01.09 signed by Smt Sangeeta Bansal, Director of M/s Agarwal Graphic Machinery Pvt. Ltd.	10
4	Statement of Shri Niraj Kumar Agarwal, Manager of M/s Agarwal Graphic Machinery Pvt. Ltd. recorded on 17.01.08	11-12
5	Statement of Sri Manoj Bansal, Director of M/s Agarwal Graphic Machinery Pvt. Ltd. recorded in New Delhi-92 on 17.01.08	13-18
6	**Photocopy of Page 54, 20 and 64 of Seizure File no. 38**	19-21
7	Letter of Sri Sanjay Bansal, Director of M/s Agarwal Graphic Machinery Pvt. Ltd. dated 18.01.08 submitting Rs.1 crore	22
8	Statement of Sri Sanjay Bansal, Director of M/s Agarwal Graphic Machinery Pvt. Ltd. recorded in Kolkata on 28.01.08	23-50
9	Statement of Shri Manoj Sarkar, Chartered Engineer, recorded on 30.01.08	51-57
10	Statement of Shri Saikat Konar, Chartered Engineer, recorded on 30.01.08	58-65
11	Letter dated 4.02.08 of the Director of Technical Education & Training, Govt. of West Bengal deputing two experts from the Institute of Printing Technology, Kolkata	66
12	Panchanama dated 16.02.08 with Annexure-I drawn at godown-cum-office premises of M/s Agarwal Graphic Machinery Pvt. Ltd. 108, Patparganj Industrial Area, New Delhi-92during inspection by the experts.	67-70
13	Letter dated 12.02.08 of M/s Agarwal Graphics Pvt. Ltd. seeking provisional release	71-72
14	Letter of M/s Agarwal Graphics Pvt. Ltd. received on 25.02.08	73-76
15	Letter of DRI of even no. 956 dated 11.03.08 in reply to above letter	77-78
16	Letter of DRI of even no. 1095 dated 19.03.08 offering provisional relese of the seized goods.	79-82
17	Panchanama dated 28.04.08 drawn at godown-cum-office premises of M/s Agarwal Graphic Machinery Pvt. Ltd. 108, Patparganj Industrial Area, New Delhi-92during verification of seized goods	83-85
18	Statement of Sri Sanjay Bansal, Director of M/s Agarwal Graphic Machinery Pvt. Ltd. recorded in New Delhi on 28.04.08	86-90
19	Panchanama dated 03.05.08 drawn at the premises of M/s Agarwal Graphic Machinery at 15-3-536/2, Gowliguda Chaman, APSRTC Workshop Road, Hyderabad-12 during verification of offset printing machines in Hyderabad	91-94
20	Statement of Sri Manju Sureka, Maneger of M/s Agarwal Graphic Machinery recorded in Hyderabad on 03.05.08	95-98

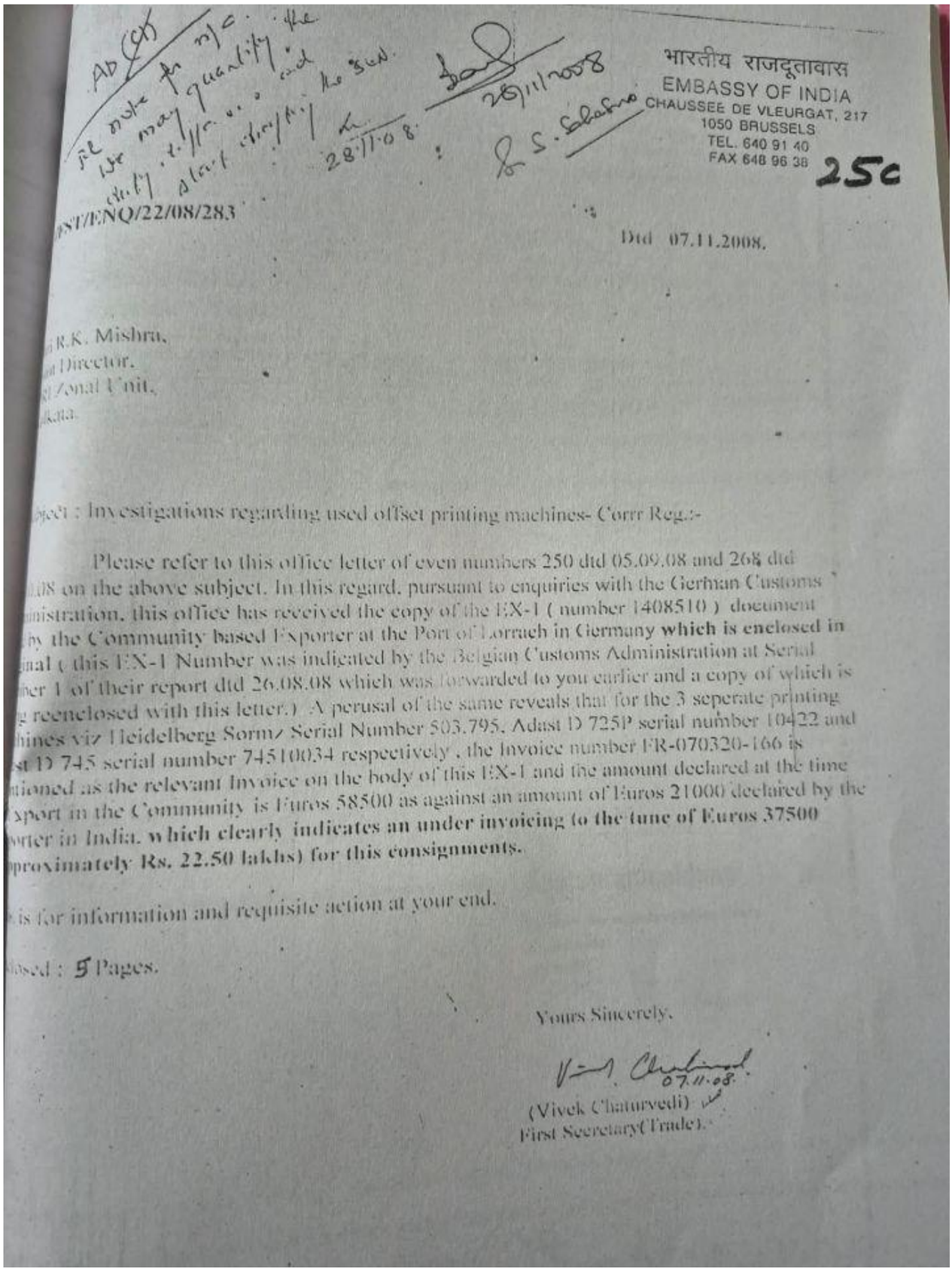


98

21	Copy of the FIR dated 09.05.08 filed in Anand Vihar Police Station under Section 409/34 IPC.	99-100
22	Panchanama for visit to the premises of M/s Alps Printers at C-13, DDA Sheds, Okhla Industriual Estate, Phase-I, New Delhi-20 dated 7.06.08 along with the notice under Section 110 of the Customs Act, 1962.	101-104
23	Supardnama dated 07.06.08 signed by Sri Sandeep Sripal, Partener, M/s Alps Printers.	105
24	Statement of Sri Puneet Sripal, Partener, M/s Alps Printers. dated 07.06.08 recorded in New Delhi	106-109
	Tax invoice S. No. 52 dated 03.04.08 showing sale of Heidelberg SM 72V offset printing machine to M/s M/s Alps Printers by M/s Agarwal Graphics Machinery Pvt. Ltd.	110
25	Panchanama drawn in front of the premises of M/s ANDS Trading Pvt. Ltd. at 103, Patparganj Industrial Area, New Delhi 92 dated 09.06.08	111-113
26	Panchanama drawn for visit to the premises of M/s ANDS Trading Pvt. Ltd. at 103, Patparganj Industrial Area, New Delhi 92 dated 11.06.08	114-115
27	Suprudaginama dated 11.06.08 signed by Sri Mahesh Kumar, Manager of M/s ANDS Trading Pvt. Ltd	116
28	Statement of Sri Mahesh Kumar, Manager of M/s ANDS Trading Pvt. Ltd. recorded on 17.06.08 in Kolkata	117-120
29	Tax invoice S. No. 52 dated 03.04.08 showing sale of Heidelberg SM 72V offset printing machine to M/s ANDS Trading Pvt. Ltd. by M/s Agarwal Graphics Machinery Pvt. Ltd.	121
30	Statement of Sri Pranab Kumar, Director of M/s ANDS Trading Pvt. Ltd. recorded on 17.06.08 in Kolkata	122-125
31	Letter of M/s Agarwal Graphics Pvt. Ltd. dated 23.04.08 submitting Bank Guarantee, Bank Draft and Bond for release of 43 machines	126
32	Letter of M/s Agarwal Graphics Pvt. Ltd. dated 11.06.08 submitting Bank Guarantee, Bank Draft and Bond for release of 10 machines	127-128
33	Letter of DRI of even no. 1268 dated 9.07.08 allowing provisional release of the 27 seized goods.	129-130
34	Photocopies of Bills of Entry no. 330262 dated 09.03.07, 346407 dated 07.06.07, 356108 dated 20.07.07363637 dated 10.09.07, 372062 dated 25.010.08 and 378010 dated 27.11.07	131-151
35	Letter BRU/FST/ENQ/22/08/283 dated 7.11.08 of First Secretary (Trade), Embassy of India, Brussels with enclosure	152-153
36	Excerpt of the report of the experts from Regional Institute of Printing Technology, Kolkata dated 09.06.08	154-161

27.2 While the Revenue claims that they have made enquiries from COIN offices at New York, Brussels, London, Hong Kong etc. the only RUD is that of Brussels. No other letters from New York, London, Hong Kong etc have been produced as evidence by the Revenue.

27.3 We have had a look at Bruselles letter, which is reproduced below:



भारतीय राजदूतावास
EMBASSY OF INDIA
CHAUSSEE DE VLEURGAT, 217
1050 BRUSSELS
TEL. 640 91 40
FAX 648 96 38

250

ST/ENQ/22/08/283

Dtd 07.11.2008.

R.K. Mishra,
Director,
Zonal Unit,
Kata.

ject : Investigations regarding used offset printing machines- Corrr Reg.:-

Please refer to this office letter of even numbers 250 dtd 05.09.08 and 268 dtd
08 on the above subject. In this regard, pursuant to enquiries with the German Customs
inistration, this office has received the copy of the EX-1 (number 1408510) document
by the Community based Exporter at the Port of Lorrach in Germany **which is enclosed in**
inal (this EX-1 Number was indicated by the Belgian Customs Administration at Serial
ber 1 of their report dtd 26.08.08 which was forwarded to you earlier and a copy of which is
g reenclosed with this letter.) A perusal of the same reveals that for the 3 seperate printing
hines viz Heidelberg Sorm/ Serial Number 503.795, Adast D 725P serial number 10422 and
st D 745 serial number 74510034 respectively , the Invoice number FR-070320-166 is
tioned as the relevant Invoice on the body of this EX-1 and the amount declared at the time
xport in the Community is Euros 58500 as against an amount of Euros 21000 declared by the
orter in India. **which clearly indicates an under invoicing to the tune of Euros 37500**
pproximately Rs. 22.50 lakhs) for this consignments.

is for information and requisite action at your end.

losed : 5 Pages.

Yours Sincerely,

07.11.08.

(Vivek Chaturvedi)
First Secretary(Trade).

27.4 This letter has no reference to the Bill of Entry, no reference towards the details of the machines for which the enquiry was made. No details have been given as to how the enquiry was conducted. This bland letter simply stating that the value is lower by about Rs.22.50 lakhs has no documentary back up towards this claim. Therefore, we are not in a position to ascertain the veracity of the claim of the Revenue towards the information received from the COIN unit. Therefore, the evidentiary value of the same would be NIL.

27.5 Now we turn to the claim of the Revenue that the value of the machines was determined by 'Two Experts' from The Regional Institute of Printing Technology. The first query raising in our mind is as to whether the Institute has the authority and expertise to examine the secondhand machine and also has the facility and expert knowledge to determine the price / value of the machinery itself. It is one thing to have expertise in the mechanical, electrical, electronic functioning of the machines, which any qualified person can do the evaluation to know about the possible life of the machine. It is altogether a different ball game to guess the price / depreciated value of the machinery based on this technical expertise. We do not find any documents have been produced by the Revenue to show that Regional Insititute of Printing Technology is capable for determining the price of secondhand machine. No qualification / experience etc. of the 'Two Experts' have been specified anywhere. We are producing below representative sample of two pages of this Expert Opinion:

276

Excerpts of report in respect of the Inspections/Examination of Offset Printing Machines, Other Printing machine & Accessories being conducted at various godown premises in Delhi along with the officers of Directorate of Revenue Intelligence, Kolkata Importer/ Importer's representative and Independent witnesses on 16.02.2008 and 17.02.2008.

Date : 09/06/08.

To
Assistant Director,
Directorate of Revenue Intelligence,
Kolkata Zonal Unit,
8 Ho Chi Minh Sarani,
Kolkata-700 071.

Sir,

Sub:- Our observations in relation to the Investigation into Import of Old & Used offset printing machines.

Enclosed please find herewith our observation report in Delhi on 16.02.2008, 17.02.2008, along with a CD of some photographs in connection with your letter DRI. F. No. 04/KOL/APP/2008/538 dated 14.02.2008.

Thanking you

Yours sincerely,

Sd/-
Simadri Biswas

Sd/-
Rupak Das

The Regional Institute of Printing Technology
Jadavpur, Kolkata-700 032.

Attested
15/01/09
SAIKAT SAHA
Senior Intelligence Officer
Directorate of Revenue Intelligence
Kolkata Zonal Unit, Kolkata

www.taxcode.in

277

EXAMINATION/ INSPECTION OF OFFSET PRINTING MACHINES/ OTHER MACHINES AT THE GODOWN PREMISES OF M/S. AGARWAL GRAPHIC MACHINERY PVT. LTD. AND M/S. BALAJI ART PRESS, 108 PATPRAGANJ INDUSTRIAL AREA, NEW DELHI-110 092 ON 16.02.2008 ALONGWITH THE OFFICERS OF DIRECTORATE OF REVENUE INTELLIGENCE, KOLKATA, IMPORTER/ IMPORTER'S REPRESENTATIVE AND INDEPENDENT WITNESSES.

Sl. No.	Make	Model	No of Col	Serial No	Year of Manufacture (Approx)	Country of Origin	Approx Value (In USD)	Date of Inspection
1	Heidelberg	HD 72V	4 Col	518976	1982	W.Germany	76,458/-	16.02.08

Remarks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.

2	Heidelberg	HD 72V	4 Col	531634	1991	W.Germany	1,73,239/-	16.02.08

Remarks:- Old but still in good condition. Machine can be run after some necessary maintenance.

3	--	--	--	--	--	--	--	--

Remarks:- -----.

4	--	--	--	--	--	--	--	--

Remarks:- -----.

5	--	--	--	--	--	--	--	--

Remarks:- -----.

6	--	--	--	--	--	--	--	--

Remarks:- -----.

[Signature of 1st Expert]

[Signature of 2nd Expert]

Attested

SAIKAT SAHA
Intelligence Officer
Directorate of Revenue Intelligence
Kolkata Zonal Unit, Kolkata

279

S. No.	Make	Model	No of Col	Serial No	Year of Manufacture (Approx)	Country of Origin	Approx Value (In USD)	Date of Inspection
17	Ryobi	2800 CD	1 Col	8238	xxxxx	Japan	1,000	16.02.08
	Remarks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.							
18	Ryobi	2800 CD	1 Col	6958	xxxxx	Japan	1,000	16.02.08
	Remarks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.							
19	Ryobi	2800 CD	1 Col	9198	xxxxx	Japan	1,000	16.02.08
	marks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.							
20	Ryobi	2800 CD	1 Col	8358	xxxxx	Japan	1,000	16.02.08
	Remarks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.							
21	Ryobi	2800 CD	1 Col	12,195	xxxxx	Japan	1,000	16.02.08
	Remarks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.							
22	Ryobi	2800 CD	1 Col	12,926	xxxxx	Japan	1,000	16.02.08
	Remarks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.							
23	Ryobi/Itek	111105A	1 Col	10,136	xxxxx	Japan	985	16.02.08
	emarks:- Old & Used- Condition shows that the machine can be brought into working condition after through break-down maintenance.							

Sd/-
[Signature of 1st Expert]

Accepted
SAIKAT SAHA
Intelligence Officer
Directorate of Revenue Intelligence
Kolkata Zonal Unit, Kolkata

Sd/-
[Signature of 2nd Expert]

www.taxcode.in

27.6 Our observations are as under:

27.7 Neither the Designation of Simdri Biswas and Rupak Das has been given, nor is their Educational / Technical qualification has been shown. This is a very serious lapse on the part of the Revenue. When they claim the persons are experts in the field, it is required to come out clearly from the Certificate itself, which is not forthcoming here.

27.8 Secondly, it is stated that the Inspection / Examination has been conducted in the presence of the officials of DRI and representatives of the importer. In the entire bunch of Certificate, nowhere is there any mention of the name and designation of the officials of DRI, name of the representative of the appellant. None of these persons have signed the documents. Even the signature of Simadri Biswas and Rupak Das is not shown, but the same is given as 'Sd/-'. This gives raise to the doubt about the veracity of the Inspection Report itself.

27.9 On a close look of the Report, it is seen it speaks of "Make", 'Model", "Column", "Sl. No.", "Year of Manufacture", "Country of Origin", "Approximate Value". At the end, in the Remarks column it is mentioned " *Old and Used – Condition shows that the machine can be brought into working condition after thorough breakdown maintenance".*

27.10 There is absolutely no reference as to what was the original value, how many years usage has taken place, what would be present value etc. Directly, the approximate value has been arrived at. No details have been given as to the method adopted by them to arrive at the approximate value.

28. In our many years of sitting in the Bench, we are yet to come across a more hollow examination / inspection report, devoid of any technicality whatsoever, quite bland, without conveying anything

whatsoever towards the end result being relied upon by the Revenue to enhance the value of the secondhand machineries.

29. We have seen that noting such shortcomings, the appellant has sought for cross-examination of these persons, as can be observed from the reply to SCN:

> *"9.3 Moreover, the valuation of the 27 machines enlisted in Annexure-A and 1 machine enlisted in Annexure-C has been proposed exclusively on the basis of the report of the representatives of the Regional Institute of Printing Technology, Kolkata who had given their reports solely on the basis of physical appearance of the machines. Noticee therefore most respectfully prays the Hon'ble Commissioner to allow the cross examination of the said representatives of the Regional Institute of Printing Technology, Kolkata, Shri Simadri Biswas and Shri Rupak Das for bringing to the fore the true and correct facts for conscionable adjudication of the Show Cause Notice.*
>
> *9.4 Noticee submits that the right to cross examination of the persons whose testimonials have been relied for leveling the charge of undervaluation is a justiciable right as propounded by the Hon'ble Supreme Court in the matters of Laxman Exports Vs. CCE – 2002(143) ELT 21 (SC); Sounds N. Images vs. CC – 2000(117) ELT 538(S.C.) and by the Hon'ble Tribunal in a plethora of judgments inter alia including the judgments rendered in the matters of Milton Polyplast vs. CCE. Thane-II 2006(201) ELT 372(Tri. Mumbai); M/s Rakhi Ispat Ltd. Vs. CCE – 2001(129) ELT 701 (Tri.); Kedia Overseas Vs. CC – 2005 (179) ELT 156 (Tri Bang); Daisu Auto Parts Company vs. CC, ICD, TKD (Unpublished);"*

30. No doubt, when the appellant has sought to cross-examine these persons, the Adjudicating Authority fully being aware of the pitfalls, has simply ignored the request. He did not bother to record their request, so that he is not burdened to justify his refusal for this request. This is blatant disrespect of the principles of natural justice.

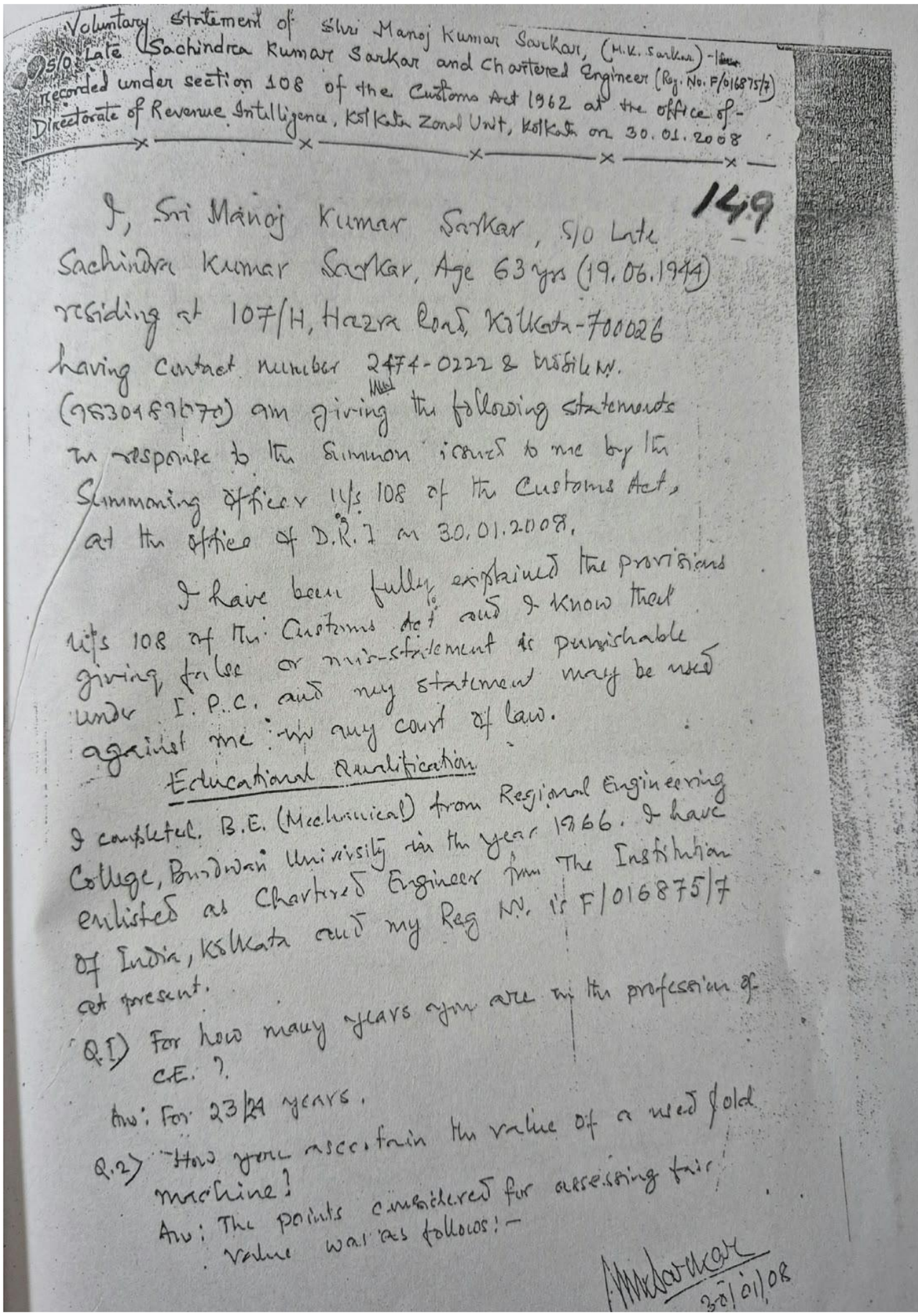
31. We have for reference the decision of **G-Tech Industries Vs. Union of India-2016 (339) E.L.T. 209 (P&H)**, wherein the High Court, analyzing the procedure under Section 9D of the CEA 1944 [*para materia* to Section 138B of Customs Act 1962], has held as under:

> ***7.*** *There can, therefore, be no doubt about the legal position that the procedure prescribed in sub-section (1) of Section 9D is required to be scrupulously followed, as much in adjudication proceedings as in criminal proceedings relating to prosecution.*
>
> ***8.*** *As already noticed herein above, sub-section (1) of Section 9D sets out the circumstances in which a statement, made and signed before a Gazetted Central Excise Officer, shall be relevant for the purpose of proving the truth of the facts contained therein. If these circumstances are absent, the statement, which has been made during inquiry/investigation, before a Gazetted Central Excise Officer, cannot be treated as relevant for the purpose of proving the facts contained therein. In other words, in the absence of the circumstances specified in Section 9D(1), the truth of the facts contained in any statement, recorded before a Gazetted Central Excise Officer, has to be proved by evidence other than the statement itself. The evidentiary value of the statement, insofar as proving the truth of the contents thereof is concerned, is, therefore, completely lost, unless and until the case falls within the parameters of Section 9D(1).*

32. In view of our above observations, we have no hesitation to discard the valuations arrived at by the so called 'Two Experts' from The Regional Institute of Printing Technology, Jadhavpur.

33. Thus, we find that both the claims of the Revenue in respect of the details about COIN investigation as well as the expert opinion of Regional Institute of Printing Technology are without any basis whatsoever. Therefore, we hold that the re-valuation of the 27 machinery and consequent demand of Rs.31,68,988 is legally not sustainable. Hence, the same stands set aside. Since the confiscation [without proper demand notice under Section 124], is based on the assumption that the re-valuation is required to be done based on the so-called evidence produced by the Revenue, which we have discarded, the question of Confiscation would not arise. Hence, the Redemption Fine of Rs.50,00,000 imposed on 27 machines stands set aside.

34. Now we take up the issue of 11 machines, imported earlier and which were sold in the market. In this case, we find that first of all the goods were not available for confiscation. They were cleared in the normal course, under normal assessment by the Customs after examination of the same, duly certified by the Chartered Engineers. Here, the Revenue has found fault with the CE's Certificates and has relied on the Report of Experts from the Regional Institute of Printing Technology, Jadhavpur, for which we have given our observations above. Hence, it would be relevant to go through the CE's statement recorded by the DRI. The relevant extracts are given below:



Voluntary Statement of Shri Manoj Kumar Sarkar, (M.K. Sarkar) - I
S/o Late Sachindra Kumar Sarkar and Chartered Engineer (Reg. No. F/016875/7)
recorded under section 108 of the Customs Act 1962 at the office of -
Directorate of Revenue Intelligence, Kolkata Zonal Unit, Kolkata on 30.01.2008

×——×——×——×——×

149

I, Sri Manoj Kumar Sarkar, S/o Late Sachindra Kumar Sarkar, Age 63 yrs (19.06.1944) residing at 107/H, Hazra Road, Kolkata-700026 having Contact number 2474-0222 & Mobile No. (9830169070) am giving the following statements in response to the Summon issued to me by the Summoning Officer U/s 108 of the Customs Act, at the office of D.R.I on 30.01.2008.

I have been fully explained the provisions U/s 108 of the Customs Act and I know that giving false or mis-statement is punishable under I.P.C. and my statement may be used against me in any court of law.

Educational Qualification

I completed B.E. (Mechanical) from Regional Engineering College, Burdwan University in the year 1966. I have enlisted as Chartered Engineer from The Institution of India, Kolkata and my Reg No. is F/016875/7 at present.

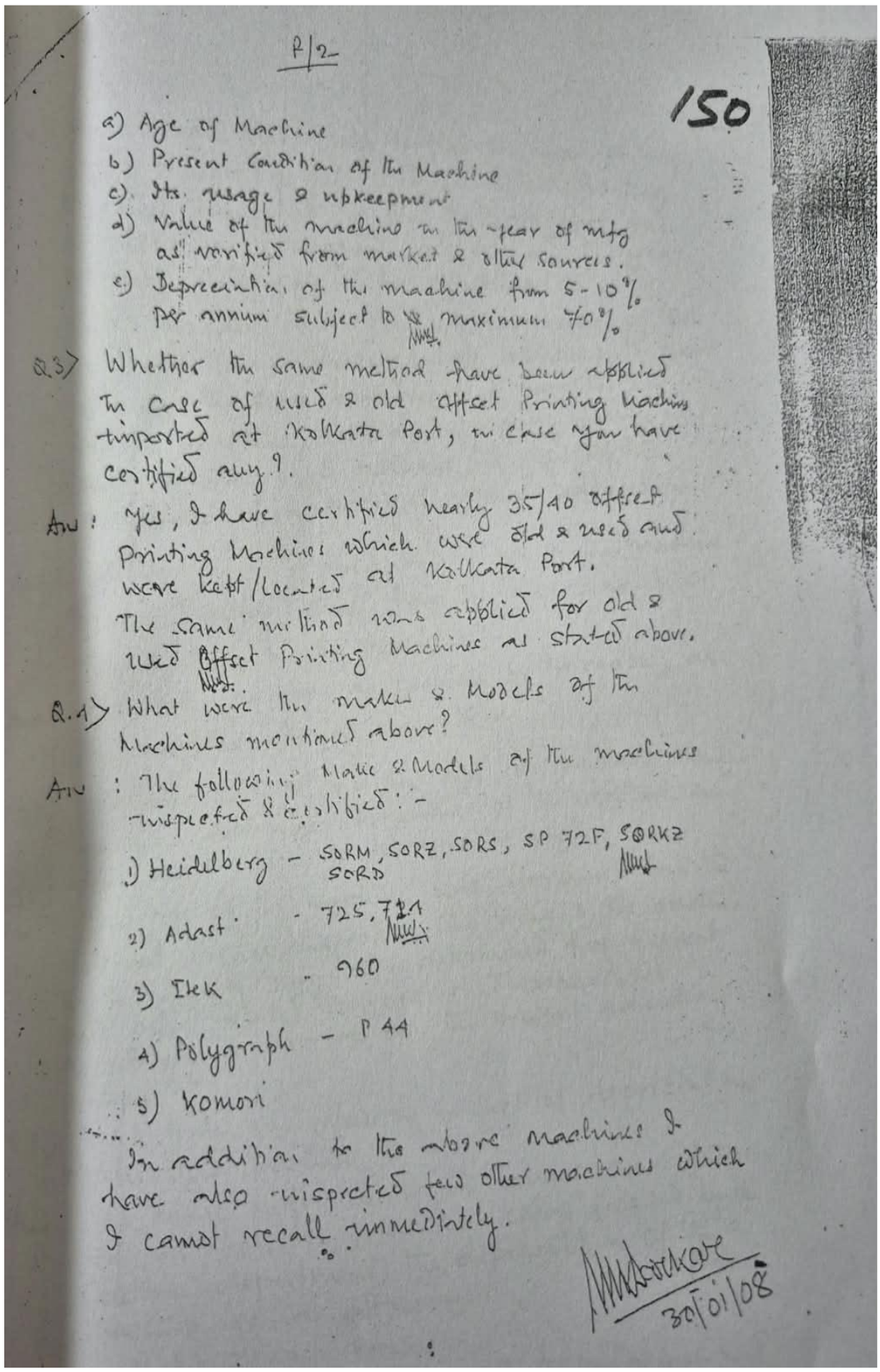
Q.1) For how many years you are in the profession of C.E. ?

Ans: For 23/24 years.

Q.2) How you ascertain the value of a used fold machine?

Ans: The points considered for assessing fair value was as follows:-

M.Sarkar 30/01/08



R/2

150

a) Age of Machine
b) Present Condition of the Machine
c) Its usage & upkeepment
d) Value of the machine in the year of mfg as verified from market & other sources.
e) Depreciation of the machine from 5-10% per annum subject to a maximum 70%

Q.3) Whether the same method have been applied in case of used & old offset Printing Machine imported at Kolkata Port, in case you have certified any?

Ans: Yes, I have certified nearly 35/40 offset Printing Machines which were old & used and were kept/located at Kolkata Port. The same method was applied for old & used Offset Printing Machines as stated above.

Q.1) What were the make & models of the Machines mentioned above?

Ans: The following Make & Models of the machines inspected & certified:-

1) Heidelberg - SORM, SORZ, SORS, SP 72F, SORKZ SORD
2) Adast - 725, 721
3) Ikk - 960
4) Polygraph - P 44
5) Komori

In addition to the above machines I have also inspected few other machines which I cannot recall immediately.

30/01/08

35. This is in complete contrast with the hollow Inspection taken up by the so- called Experts from Jadhavpur. Here, this Chartered Engineer is from REC Burdwan University, having passed out in 1966. He carries experience of 23/24 years. On being asked as to how he ascertains the Value, he has given the parameters at (a) to (e), which logically speaking, would be the correct method to ascertain the value. After this he has given the details of the machines inspected / examined by him. When his way of ascertaining is compared with that of the Experts of the Printing Institute, the real shortcoming of the JadhavpurExpert's certificate comes to light. It is very unfortunate that in order to prove their case somehow or the other the Revenue has not only relied on the so-called Expert's valuation and discarded the logical and scientific method adopted by the Chartered Engineer, but they have implicated the Chartered Engineers [two other appellants in this case], fastening them with Penalties.

36. Therefore, once again discarding the values adopted by the Jadhavpur experts, we set aside the revaluation arrived at by Revenue for the 11 Machines with a confirmed demand of Rs.57,88,802. On this ground the Confiscation and consequent Redemption Fine of Rs.80,00,000 stands set aside.

37. For setting aside the confiscation, we have one more reason. The goods are not available for confiscation in the first place. There is nothing to indicate that they were cleared under Bond. The **Larger Bench in Shiv Kripa Ispat Pvt Ltd [2009 (235) ELT 623 (T-LB)],** it has been held as under:

> "9. We have given careful consideration to the submissions. As rightly pointed by the learned counsel, the Hon'ble High Court of Punjab & Haryana, in Raja Impex case (supra), has rendered decision on identical issue. <u>One of the substantial questions of law placed before the High Court by the department was whether redemption fine under Section 125 of the Customs Act could be imposed where the goods were neither available for confiscation nor cleared under bond/undertaking. The Hon'ble High Court followed the ratio of the Apex Court's</u>

judgment in Weston Components case and held that, as the goods in question had been allowed to be cleared without execution of any bond/undertaking by the importer, no redemption fine could be imposed under Section 125 of the Customs Act in lieu of confiscation.

38. Finally, we take up the case of One machine, which was cleared on Provisional Assessment basis. If the goods are cleared on Provisional Assessment basis, the Revenue should follow the procedure to finalize the assessment. Only after the assessment is finalized, the demand under Section 28 can be raised. Here, as has been the practice in the entire present proceedings to discard the statutory provisions time and again, this provision was also not followed. However, as we have already held that the method to arrive at the Value by way of the so-called Expert's opinion from Jadhavpur and the non-existent COIN details is flawed, even in respect of this One machine, we do not find that any case has been made out towards enhancement of value. Accordingly, we set aside the differential duty of Rs.10,85,041. Since we hold that no under-valuation has taken place, the Confiscation stands aside along with the Redemption Fine of Rs.18,00,000 imposed thereon.

39. We have also taken up the issue of time bar raised by the appellant. In respect of the 11 consignments, we find that the SCN has been issued on 22.05.2012. The consignments were cleared under the following Bills of Entry:

DRI Sl.	Machine / model	Bill of Entry	B/E date	Differential duty INR
1	Komori L426 four-colour	345726	04.06.07	627934.14
2	Komori L225 BP two-colour	344997	30.05.07	634673.34
3	Akiyama BT428 four-colour	344997	30.05.07	

4	Heidelberg Speedmaster 72F (1989)	372062	30.05.07	1992206.68
5	**Heidelberg two-colour (1972)**	**332939**	**24.03.07**	**179446.30**
6	Muller Martini 221	342323	16.05.08	144514.16
7	Heidelberg two-colour SORSZ	358352	10.08.07	635042.62
8	Heidelberg single-colour SORS	350352	10.08.07	0.00
9	**Heidelberg two-colour SORSZ**	**335443**	**09.04.07**	**481254.57**
10	Heidelberg two-colour SORSZ	342885	19.05.07	459877.12
11	Akiyama BT428 four-colour	364152	11.09.07	633853.09
		TOTAL:		**5788802.02**

40. The goods in question were released for home consumption after the Bills of Entry were assessed by the Customs Officials. The appellant has provided the Chartered Engineer's Certificates, which were taken on record and considered. Hence, no suppression can be alleged against the appellant in these cases. Even the under-valuation allegation of the Revenue has gone uncorroborated. Therefore, we find that they are precluded from alleging suppression the value. Further we find in respect of two Bills of Entry at SlNo.5 and 9 [**Demand:Rs.6,60,700**] the SCN has been issued after the expiry of extended period of 5 years.

41. In respect of 27 Machines imported, the details of Bills of Entry and SCN issued is as under:

Machine / model	Bill of Entry	B/E date	Differential duty INR
Heidelberg SORM Single Colour	377695	26.11.07	69171.14
Heidelberg SORSZ Two Colour	376374	17.11.07	153988.73
Heidelberg SORMZ Two Colour	370693	17.10.07	365082.68
Heidelberg SORMZ Two Colour	**342323**	**16.05.07**	**201470.16**
Heidelberg SORMZ Two Colour	353073	12.07.07	52101.32
Heidelberg SORSZ Two Colour	372908	29.10.07	92583.58

Heidelberg SORMZ Two Colour	**343081**	**21.05.07**	**176855.82**
Heidelberg SORSZ Two Colour	371252	23.10.07	185178.28
Heidelberg SORSZ Two Colour	351709	05.07.07	175363.02
Heidelberg Speedmaster 102 F Five Colour	133842	20.11.07	1334973.47
Komori LITHRONE 40 (L440)	303440	18.09.07	181827.25
Komori EXCEL L-232	**284838**	**18.05.07**	**91840.72**
Toko 4750 CD Single Colour	378010	27.11.07	7838.28
Hamada 611	378010	27.11.07	239.82
Heidelberg TOK	378010	27.11.07	36982.55
Polar Papercutter	363637	10.09.07	667.14
Toko 4750 CD Single Colour	356108	28.07.07	4810.78
A B Dick	**330262**	**09.03.07**	**38013**
			3168987.74

42. The SCN has been issued by invoking the extended period in respect of 27 machines. We find that the under-valuation alleged by the Revenue is not corroborated with proper evidence as held in the earlier paragraphs. In respect of 4 Bills of Entry [**Demand : Rs.5,08,180**], the SCN has been issued beyondthe 5 years period.

43. We have for reference the case decided by the Chennai Bench, in Customs **Appeal No. 40037 of 2021 M/s. Suraj Impex Vs Commissioner of Customs, vide Final Order No.40178-40180 dated 11.06.2026**, wherein the Bench has held as under:

> *47. The Appellants have further submitted that it is on record that all imports were effected through proper Bills of Entry, and the goods were examined and assessed by Customs authorities at the time of clearance, with values being enhanced wherever considered necessary. This factual position is of decisive significance, as it demonstrates that the Department was fully aware of the transactions and had applied its mind to the issue of valuation contemporaneously. In such circumstances, the allegation of suppression is legally untenable, as suppression necessarily implies a deliberate act of withholding information not otherwise available to the Department. Where all*

material particulars are disclosed and are within the knowledge of the assessing authority, the extended period cannot be invoked.

51. It is observed the extended period is an exception to the normal rule and must be invoked strictly in accordance with statutory conditions. It cannot be used as a tool to compensate for delay or inefficiency on the part of the Department. Once the Department is in possession of all relevant facts, the limitation clock begins to run, and any delay in issuance of the notice must be properly explained. In the present case, the Department has failed to discharge this burden, and the invocation of extended period appears to be mechanical and not based on any independent analysis of suppression or intent.

54. The cumulative effect of the above analysis, we find that the Department has failed to establish the existence of any of the statutory conditions required for invoking the extended period under Section 28. The demand has been raised beyond the normal period, is based on inadmissible and uncorroborated evidence, and is further vitiated by unexplained delay attributable to administrative inaction. Accordingly, it is held that the invocation of extended period is unsustainable, and the demand is barred by limitation.

44. In view of the foregoing and finding that the ratio of cited case law is applicable, we hold that all the confirmed demands under extended period are liable to be set aside on account of time bar also. We do so.

45. As we have held that in respect of all the three issues raised by the Revenue, the confirmed demands and confiscation are not sustainable, the question of imposing penalty under Section 114A and under Section 112 on the importer appellant would not arise. We set aside these penalties.

46. Since we have held that the case against the importer does not survive, even the penalties imposed on the two other appellants (the

Directors) herein under Section 112(a) and (b), also would not survive. We set aside the same.

47. To summarize :

(a) The under-valuation allegation based on the overseas details provided by COIN team, is not corroborated with proper documentary evidence.

(b) The under-valuation allegation based on the Expert Opinion issued by the Officials of the The Regional Institute of Printing Technology, Jadhavpur is full of discrepancies and no basis has been given by the Experts for having arrived at the Approximate Value. Hence, the Examination / Inspection Report cannot be used as an evidence to enhance the value of the secondhand machineries in question.

(c) No SCN has been issued in terms of Section 124 for the seized and provisionally released 27 secondhand machineries, seeking to confiscate the same. SCN issued in terms of Section 28(1) cannot be substituting the provisions of Section 124 of the CA 1962.

(d) In respect of 27 machines, their re-valuation is found to be arbitrary, without any corroborative and cogent documentary evidence. Hence, the confirmed demand thereon, penalty and confiscation stands set aside

(e) In respect of 11 Machines, the same have been cleared in the normal course after examination by the Customs Officials. Their re-valuation is arbitrary and not based any proper cogent evidence. Hence, the confirmed demand, penalty and confiscation are all set aside.

(f) In respect of One machine, which has been released on Provisional Assessment basis, no action has been initiated to Finalize the assessment. Hence, resorting the demand directly invoking Section 28 is not legal. Even otherwise, it is found that the allegation of under-valuation has not been proved by way of any corroborative evidence. Hence, the demand, penalty and Confiscation of this machine stands set aside.

(g) We find that the entire demand in respect of all the consignments to be time barred. In respect of 11 machines, they were cleared after final assessment. In respect of the balance 27 machines and 1 machine, there being no corroborative evidence to fasten the re-valuation and enhancement of the Duty, no case of suppression has been made out. Hence, we hold that the proceedings are time-barred.

(h) Since the confirmed demand, penalty and confiscation in respect of all the three consignments have been set aside, the penalties imposed on the two Directors, two appellants herein also stands set aside.

48. We set aside the impugned Order. The Appeals stand allowed. The appellants would be eligible for consequential relief, if any, as per law.

(Order pronounced in the open court on 09.10.2026.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm