IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75459 of 2014

(Arising out of Order-in-Original No. Kol/Cus/Port/07/2014 dated 17.01.2014 passed by the Commissioner of Customs(Port) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Saikat Konar, **: Appellant**
Radha Nagar South Road,
Burdwan, West Bengal

VERSUS

The Commissioner of Customs(Port), **: Respondent**
Custom House,
15/1, Strand Road, Kolkata-700001

AND

Customs Appeal No. 75460 of 2014

(Arising out of Order-in-Original No. Kol/Cus/Port/07/2014 dated 17.01.2014 passed by the Commissioner of Customs(Port) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Manoj Kumar Sarkar, **: Appellant**
129A, Manoharpukur Road,
Kolkata-700026

VERSUS

The Commissioner of Customs(Port), **: Respondent**
Custom House,
15/1, Strand Road, Kolkata-700001

APPEARANCE:

None for the Appellant
Shri R. Chakraborty, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs.76494-76495/ 2026

DATE OF HEARING: 29.09.2026
DATE OF PRONOUNCEMENT: 15.10.2026

ORDER: [PER SHRI R. MURALIDHAR]

In the instant case, Agarwal Graphic Machinery Pvt. Ltd, imported numbers of old and used offset printing machineries from Heidelberg, Germany. At the time of clearance of the goods, for the valuation of the second hand machineries, the services of the appellants Shri Saikat Konar and Shri Manoj Kumar Sarkar, as Chartered Engineers was taken in terms of the Boards Circular No. 493/124/86-Cus dated: 19.11.1987, for examination and re-valuation of the goods. As per procedure, valuation was done and goods were released on payment of duty. Subsequently, after clearance of the goods, pursuant to some information, the importers were intercepted by the investigating authorities. Investigation proceeded in the matter and the statement of the appellants Shri Saikat Konar and Shri Manoj Kumar Sarkar were also recorded in the investigation.

2. After completion of investigation, a Show cause notice bearing DRI F. No. 04/KOL/APP/2008/Pt- Agarwal-II/1858 dated: 04.05.2012, was issued alleging undervaluation of the secondhand machineries by the main importers and the related persons. But for no reason, the Chartered Engineers, being the present appellants were also implicated in the proceedings and also they were made party to the proceedings. Finally, the case was adjudicated and order was passed by Ld. Commissioner of Customs (port) vide Order-In-Original No. KOL/CUS/PORT/07/2014 dated: 17.01.2014, upholding under valuation and other charges made in the SCN. But separates penalties of

Rs. 5,00,000/- each was imposed on the Chartered Engineers on the allegation that, Shri Saikat Konar and Shri Manoj Kumar Sarkar had grossly omitted to ascertain the correct present value in an independent manner as per the Board's instructions. Their act of omission and commission rendered the machines liable for confiscation, hence they are liable to penalty.

3. Being aggrieved, the appellants have filed their appeals before the Tribunal.

4. The Ld. Consultant appearing for the appellants makes the following submissions:

5. The appellants are Chartered engineers and give their expert opinion on technical specifications of the machinaries including reasonable value of second hand machineries. Time to time they were engaged by the importers through their clearing agent to inspect imported second hand printing machinery and to give their report on the residual life and valuation of goods and re-conditioning, if any of the machine. At the time of the engagement, the import documents such as invoice, packing list, bill of entry and other import documents were made over to the them for the purpose of inspection of the goods and to give opinion on residual life, year of manufacture and value of the goods.

6. As provided in the Board's circular dated: 19.11.1987, the year of manufacture was ascertained by them from serial number of the machinery and/or the year so mentioned or

embossed on the machinery itself. In those cases, where serial number were there, but year of manufacture were not embossed, it was ascertained by the appellant on the basis of serial numbers of the machinery by visiting the website of manufacturers or with the dealers. As per customs procedure, the depreciated value needs to be arrived by applying depreciation from the new machine price in the year of manufacture. Due to non-availability of new price in the year of manufacture, they were compelled to apply reverse indexation described as below;

7. Reverse indexation is defined as process to find historical cost. This is determined as follows:

> Original new cost of the machine in the year of manufacture = Present day value of new machine x WPI of the machinery the year of manufacture/WPI of machinery on present day.

8. For the purpose of valuation and to estimate the new price in the year of manufacture the present day value of the new identical machinery was ascertained by the appellants from the internet sources or from the price bulletin mentioned in Trade Magazines such as PRINT WEEK etc., and thereafter the appellant used to determine the new price and the year of manufacture by applying reverse indexation in accordance with the RBI's wholesale

price index. Information of used machinery, details were gathered from importer also.

9. After ascertaining the price of the new machinery in the year of manufacture by reverse indexation on the basis of wholesale price index, the appellants used to provide depreciation as per guidelines of Customs House in terms of Board's Circular No. 493/124/86-CUS, VI dated 19.11.1987 to the maximum limit of 70% depreciation from the original value, to arrive the value of the goods imported.

10. So far as the Chartered Engineer's valuation is concerned, it is an estimated value and which is not done on basis of a transaction price. It has to be done on basis of valuation methodology prescribed by department and on basis of available evidence. It has no connection with any invoice value. Invoice value may be more or less but valuation done by the chartered engineers would be guided by reverse indexation to estimate original new value, depreciation as per board circular apart from other parameters.

11. The appellants being CEs were paid and appointed by the importers as per the instructions of the assessing officers of Customs. If there is any doubt in the value or lack of complete description of the second hand machinery, which are generally erased in the process of use, they had to consult with the importers also. But the investigating

authorities took this in a different view and brought the allegation that they have taken the suggestion of the importers for valuation of the goods, without any materials evidence but by way of only suspicion. It is well settled in law that, suspicion however grave cannot take the place of proof. In this regard reliance is placed upon, interalia the following case laws:-

i) HarchandVs Additional Collector of Customs, 1981(8)ELT699 (Cal) para30,

ii) Ashok Kumar Singh Vs Union of India, 2000(124) ELT33(All),

iii) Central Excise Vs Abhisek Commissioner of Enterprise, 2007(217) ELT 142 (trib-Kol).

12. The value arrived by the CEs in the process of valuation may be more or less or coincidentally around the invoice value, that does not presumed that their valuation is as per invoice. Besides, the CEs valuations is a proposal given to the Customs authorities and as a proper officer of Customs, they may accept the valuation proposed by the CEs and they are not bound by that valuation. Prima facie, the assessing authorities being the proper officers accepted their value and for that, if any undervaluation is resorted by the importers or not as alleged, has got no bearing to the valuation provided by them as per the procedure submitted in the foregoing paras. Since the valuation was done as per

the procedure and in compliance to the Board's circular, the allegation held against them, is not sustainable in law.

13. In view of the submissions made above, it is apparently clear that the charges have been brought on presumption and supposition only without any material evidence into record, hence the penalty imposed on them appears to be legally inconsistent.

14. Based on these submissions, it is prayed that the appeals may be allowed.

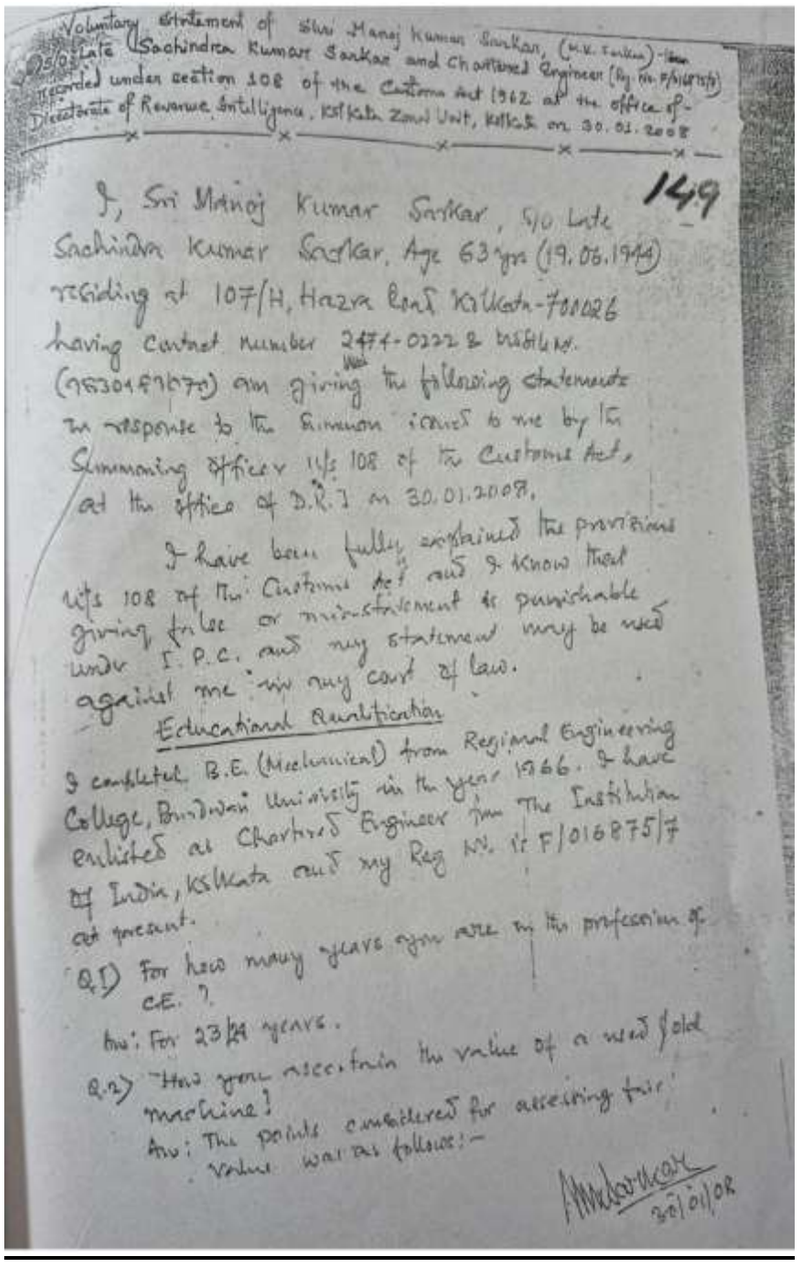
15. The Ld. A. R. appearing for the Revenue reiterates the findings of the Adjudicating authority. He submits that the CE's [appellants'] Certificate without proper verification and inspection process helped the importer to clear the goods at much undervalued way. The Revenue had to approach the experts from Institute of Printing Technology, Jadhavpur to arrive at the correct valuation of the machines. He justifies the penalties imposed.

16. Heard both the sides.

17. Incidentally, the main appeal filed by M/s Agarwal Graphics and other came to be heard and disposed off by us a few days back, vide Final Order No.76406-76408/2026 Dated 09.10.2026. The appeals were allowed. The relevant, to the extent concerning the present appellants is reproduced below:

> *The Recorded Statement of Saikat Konar is reproduced below:*

Sangeeta Bansal



Voluntary statement of Shri Manoj Kumar Sarkar, (M.K. Sarkar) - son of 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

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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 & 9836[illegible] (9830147670) 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 misstatement 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.

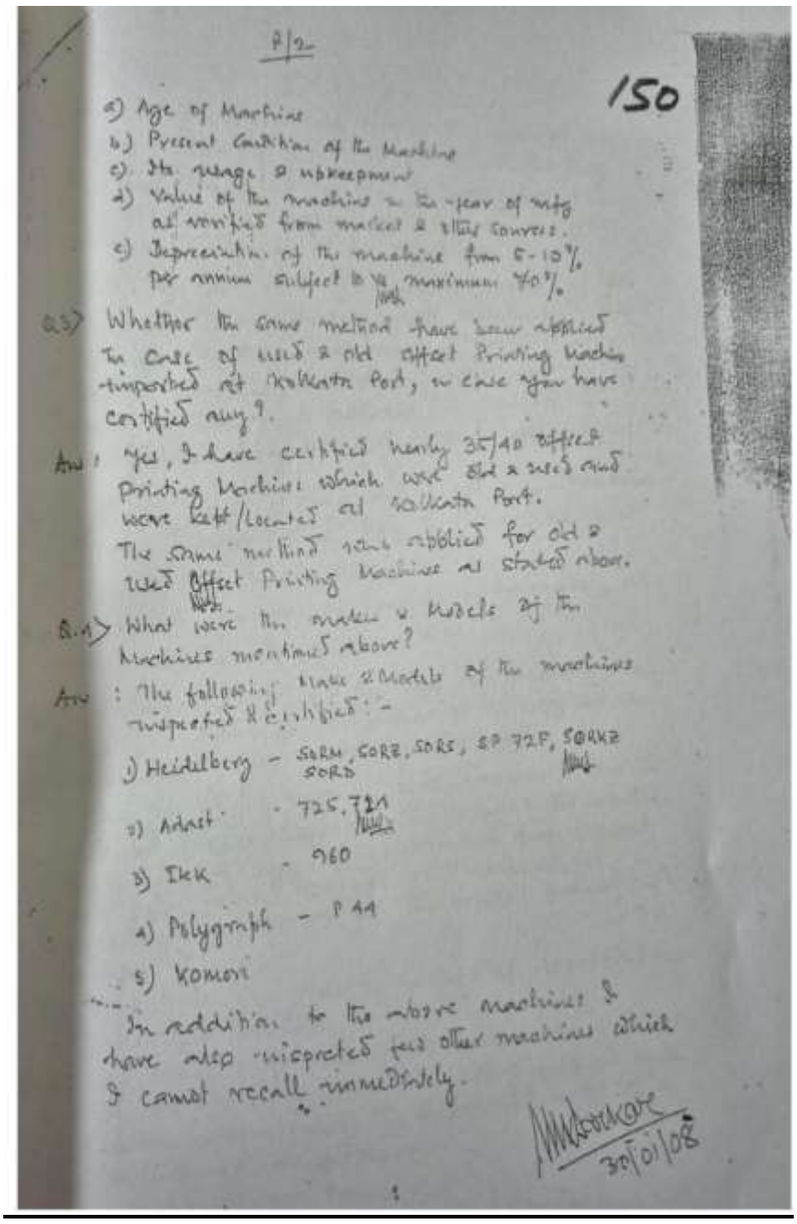
Q.1) For how many years you are in the profession of C.E. ?

Ans: For 23½ years.

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

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

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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.4) What were the makes & models of the machines mentioned above?

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

1) Heidelberg - SORM, SORZ, SORS, SP 72P, 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.

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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 Jadhavpur Expert'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.

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.

18. Since the confirmed demand, interest and penalties against the main appellants have been set aside as legally not sustainable, the penalties in

respect of the present two appellants also do not survive.

19. We set aside the penalties imposed on the appellants and allow their appeals. The appellants would be eligible for consequential relief, if any, as per law.

(Order Pronounced in Open court on 15.10.2026)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP