

भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय MINISTRY OF FINANCE
राजस्व विभाग DEPARTMENT OF REVENUE
केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
सीमा शुल्क आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS
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F. No. S66/20/2007 CCU Cus

DIN- 20240658MB0000999D57

आदेश सं. Order-in-Original No. COC-CUSTOM-000-03/2024-25 dated 10.06.2024

Shri Rajesh Jain, S/o Ugamchand Jain, 3A, Ankoor Manor, 271, Poonamallee High Road, Chennai-10

आदेश की तारीख Date of Order: 10.06.2024

जारी तारीख Date of Issue : 10.06.2024

द्वारा जारी: गुरकरण सिंह बैस, भासे.रा.,
सीमा शुल्क आयुक्त, सीमाशुल्क गृह,
कोचिन - 682009

Passed by: GURKARAN SINGH BAINS, IRS

Commissioner of Customs,
Custom House, Cochin- 682009

आदेश (मूल) ORDER-in-ORIGINAL

1. यह आदेश जिसके नाम जारी किया गया है, उस व्यक्ति के निजी उपयोग के लिए यह प्रति मुफ्त में दी जाती है।

This copy is granted free of charge for the private use of the person to whom it is issued.

2. यदि कोई व्यक्ति इस आदेश से व्यथित महसूस करते हैं तो वे सीमाशुल्क, उत्पाद शुल्क तथा सेवा कर अपील प्राधिकरण, दक्षिण क्षेत्रीय पीठ, पहली मंजिल, डब्ल्यू.टी.सी. बिल्डिंग, एफ.के.सी.सी.आई. कॉम्प्लेक्स, के.जी. रोड, बेंगलूरु-560009 से इसके विरुद्ध अपील कर सकते हैं।

Any person deeming himself aggrieved by this order may appeal to the Customs, Excise & Service Tax, Appellate Tribunal, South Zonal Bench, 1st Floor, WTC Building, FKCCI Complex, K.G. Road, Bengaluru 560009 within 3(three) months from the communication of this order.

3. अपील प्राधिकरण के समक्ष अपील सीमाशुल्क अधिनियम की धारा 129(ए) (1) के अंतर्गत फार्म सी.ए-3 में किया जाना चाहिए।

An appeal to the Appellate tribunal under Section 129 A(1) of the Customs Act, 1962 shall be made in form CA-3.

- i. अपील का ज्ञापन पर हस्ताक्षर और उसका सत्यापन सीमाशुल्क, उत्पाद शुल्क और सेवा कर (प्रक्रिया) नियमावली, 1982 के नियम 8 के अनुसार अपील करने वाले व्यक्ति को करना होगा।

The memorandum of appeal shall be signed and verified by the appellant as per Rule 8 of Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- ii. अपील के ज्ञापन चार प्रतियों में होने चाहिए और उसके साथ उतनी ही संख्या में निर्णय की प्रतियां भी होनी चाहिए, जिसके विरुद्ध अपील की जा रही हो। उसमें कम से कम एक प्रति आदेश की प्रमाणित प्रति होनी चाहिए।

The memorandum of appeal shall be in quadruplicate and shall be accompanied by an equal number of copies of the decision or order appealed against; at least one of which shall be a certified copy of order.

4. सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अंतर्गत अपील प्राधिकरण के समक्ष अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए:

Under Section 129 A (6) of the Customs Act, 1962, Appeal to the Appellate Tribunal shall be accompanied by a fee of:

- a. अपील किए जा रहे मामले में जहां सीमाशुल्क के अधिकारी द्वारा लगाया गया शुल्क और मांगा गया ब्याज और लगाया गया अर्थ दंड 5(पांच) लाख रुपये या इससे कम हो तो 1(एक) हजार रुपए।

Where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is 5 (five) lakh rupees or less, 1(one) thousand rupees.

- b. अपील किए जा रहे मामले में जहां सीमाशुल्क के अधिकारी द्वारा लगाया गया शुल्क और मांगा गया ब्याज और लगाया गया अर्थ दंड 5 (पांच) लाख रुपए से अधिक हो, लेकिन 50 (पचास) लाख रुपये से कम हो, तो 5 (पांच) हजार रुपए।

Where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than 5(five) lakh rupees but not exceeding 50(fifty) lakh rupees, 5(five) thousand rupees.

- c. अपील किए जा रहे मामले में जहां सीमाशुल्क अधिकारी द्वारा लगाया गया शुल्क और मांगा गया ब्याज और लगाया गया अर्थ दंड 50(पचास) लाख रुपए से अधिक हो, तो 10 (दस) हजार रुपए।

Where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than 50(fifty) lakh rupees, 10(ten) thousand rupees.

5. उपर्युक्त शुल्क बेंगलूरू स्थित किसी राष्ट्रीयकृत बैंक में भुगतान योग्य एक रेखित मांग ड्राफ्ट के रूप में सहायक सीमाशुल्क रजिस्ट्रार, सीमाशुल्क, उत्पादशुल्क तथा सेवा कर अपील प्राधिकरण, दक्षिण क्षेत्रीय पीठ, पहली मंजिल, डब्ल्यू.टी.सी. बिल्डिंग, एफ.के.सी.सी.आई. कांप्लेक्स, के.जी. रोड, बेंगलूरू-560009 के पक्ष में लेकर उसे अपील के ज्ञापन के साथ संलग्न करें।

The fee as afore mentioned shall be paid through a crossed bank draft drawn in favour of The Assistant Registrar of Customs, Customs, Central Excise & Service Tax Appellate Tribunal, South Zonal Bench, 1st Floor, W.T.C. Building, F.K.C.C.I. Complex, K.G. Road, Bangalore-560009 payable at any nationalized bank located at Bengaluru and the demand draft shall be accompanied by the memorandum of appeal.

6. जो व्यक्ति इस आदेश या निर्णय के विरुद्ध अपील करना चाहता है, उसे अपील होने तक, इसे अनुसार मांगा गया शुल्क या लगाया गया दंड (निर्दिष्ट अंश) सीमा शुल्क अधिनियम की धारा 129 E(ii) के अनुसार जमा करना चाहिए और उस भुगतान का प्रमाण अपील के साथ भेजना चाहिए। ऐसा न करने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 ई के उपबंधों का पालन न करने की वजह से अपील अस्वीकार की जा सकती है।

Any person desirous of appealing against this decision or order, shall pending the appeal deposit the portion of duty/penalty imposed herein and produce proof of such payment along with the appeal, as specified in Section 129 E(ii) of the Customs Act, 1962, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 E of the Customs Act, 1962.

7. अपील की प्रत्येक प्रतिलिपि अपील के आधारभूत अनुबंधों के साथ पूर्ण होने चाहिए और अपील के प्रति के साथ अपील के अधीन आदेश की एक प्रति भी होनी चाहिए। अपील के अधीन आदेश की एक प्रति में निर्धारित चार रुपए का न्यायालय शुल्क टिकट लगाया जाना चाहिए।

Each copy of the appeal shall be complete with all annexure relied upon in the appeal and each copy of the appeal must be accompanied by a copy of the order appealed against. The prescribed Court Fee Stamp for Rs. 4.00 shall also be affixed.

1. This proceeding has arisen out of Order No. A/20146/2022 dated 29/03/2022 passed by the Hon'ble Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore under Section 129-A(4) of the Customs Act, 1962. Vide the above order the Hon'ble CESTAT had remanded back the Order in Original No. 26/2008 dated 11/11/2008 passed by the Commissioner of Customs, Cochin in the case of imports by M/s Indomas Trades 'N' Trans Pvt. Ltd for reconsidering the matter in case of Shri Rajesh Jain, only after conducting cross examination of the witnesses. Shri Rajesh Jain, one of the noticees on whom a penalty under Section 112 of the Customs Act, 1962 was imposed, had moved to CESTAT Bangalore, challenging imposition of penalty on him vide the order in original.

2. M/s Indomass Trades 'N' Trans Pvt. Ltd. having their registered office at 39/5889 A, Parambithara Cross Road, Panampilly Nagar, Cochin- 36 (herein after referred to as M/s Indomass) were engaged in the business of import and export and trading of imported goods. M/s. Indomass was registered as a company on 27.01.2000 by the Registrar of Companies, Kerala under No.09-13633 of 2000. They obtained an Import-Export Code No 1000000991 from JDGFT, Cochin. They also obtained a Certificate of Registration bearing No. 23231701 of the Central Sales Tax and also got a Certificate of Registration No. 23236701 of the Kerala State Sales Tax and had an Income Tax PAN No. AAAC16407N. The Managing Director of the said company was Shri. Bethusamy Bethuraj and the other directors were Shri. K.Aravindakshan Nair, Mrs. Subhalakshmi Bethuraj and Shri. P.Prabhakaran. Presently the activities of this company are wound up in Cochin.

3. M/s. Cafco Freight Systems Pvt. Ltd. (hereinafter referred to as Cafco) was a company engaged in the business of clearing, forwarding agents, transporting by sea, Road, rail, Air Cargo consolidation agents and registered under the Company's Act, 1956 before the Registrar of Companies, Kerala under Registration No. U63090KL2001PTC014631. The directors of the said company were B.Bethuraj S/o M.S.Bethusamy and five others. This company held a CHA license No. 127 issued by Cochin Custom House.

4. M/s. Indam Recycling Co. Pvt. Ltd., having registered office at 39/5889A, Parambithara Cross Road, Panampilly Nagar, Cochin (hereinafter referred to as M/s. Indam Recycling) were engaged in the business of reprocessing of old, worn and used clothes and also in the import and trading of imported goods. Indam Recycling Company Pvt. Ltd. was registered as a company on 11.01.2002 by the Registrar of Companies, Kerala under

No.U37200KL2002PTC015173. They obtained an Import Export Code No 1001009401 from JDGFT, Cochin. They also obtained a certificate of Registration bearing No. 23236612 dated. 12.04.2002 of the Central Sales Tax and also got a Certificate of Registration No. 23231612 dated. 12.04.2003 of the Kerala State Sales Tax and had Income Tax PAN No. AAAC16407N. The directors of the said company were B. Bethuraj, S/o M.S. Bethusamy and G. Kumar, S/o late Shri Govindasami. The premises of this company at Panambally Nagar, Cochin was sold by Shri B. Bethuraj after the investigations on the imports of computer parts by them were initiated by D.R.I.

5. Intelligence was gathered by the Directorate of Revenue Intelligence, Regional Unit, Cochin that substantial amounts of Customs duty was evaded on Computer parts imported by certain traders through Air Cargo Complex, Nedumbasserry. The modus operandi was to declare vague/generic descriptions without disclosing any brand, make, identification / part numbers in the Bills of Entry, invoices, packing lists and purchase orders and also to mis-declare the value to approximately one tenth or less of the actual value.

6. Working on the basis of the said intelligence, the officers of D.R.I., Cochin located one such consignment imported by M/s. Indam Recycling vide B/E No. 1809 dated. 27.08.2003 for goods declared as 'Mother Boards' 245 pcs. under heading 84733020 with unit price of US \$ 9 and total assessable value of Rs. 103224/-, and 'Microprocessor' 120 pcs. under heading 84703010 with unit price of US \$ 17 and total assessable value of Rs. 95,500/-. The total duty assessed by the Appraiser/ Dy. Commissioner, Air Cargo Complex, Nedumbasserry, Cochin amounting to Rs. 59,696/- was paid vide cash No. 206 dated. 27.08.2003. On examination of these goods by DRI in presence of Customs, the goods were found to be 120 pieces of Intel Pentium — 4 Processor 2.4 C GHz in box packing BX 80532 PG 2400DSL6WF System Bus-800 MHz, 512 KBL2-Cache, 180 pieces of Intel Desktop Mother Board D 865 GBF in box packing BOX D 865 GBF and 65 pieces of Intel Desktop Mother Board D. 845 GEBV2 in box packing BOX D 845 GEBV2. It was found that the subject consignment was out of charged and released for home consumption by the concerned Customs officers, since as per their practice, similar type of goods were assessed and cleared at similar prices as declared. As the unit prices / values of the 'Intel' Microprocessors and 'Intel' Mother Boards were misdeclared on the basis of vague and generic description of the goods without indicating the brand, make or country of origin, with an intention to defraud the Revenue, the D.R.I. officers seized the consignment under Mahazar dated 28.08.2003 on the reasonable belief that these were liable for confiscation under the

provisions of the Customs Act, 1962.

7. As there was intelligence to the effect that one more consignment was imported by the same importer and that the documents were kept in the Air Cargo Office at M/s Cafco Freight Systems P Ltd situated at National Tower, Nedumbasserry, Cochin, the said office was searched on 29.08.2003 by the officers of D.R.I. under Mahazar dated 29.08.2003. Documents relating to import of another consignment of computer parts vide B/E No.1848 dated 29.08.03 for goods declared as 183 pieces of 'Mother Board' with unit price US \$ 9.00, 240 pieces of 'Microprocessor Unit' with Unit price US \$ 17.00, 500 pieces of Hard Disc Drive with Unit price US \$ 7.00 supported by the two invoices from M/s High Choice Computers LLC of Dubai and two packing lists from the two Singapore suppliers of the goods viz., M/s Vist International Pvt Ltd. and M/s Simal International Pvt Ltd. who shipped the goods directly to Cochin from Singapore were recovered. This B/E No. 1848 was located from the Custom Clerk of the CHA M/s Cafco Freight Systems Pvt. Ltd. at ACC, Nedumbasserry, Cochin. The cargo was also located and on examination under Mahazar these were found to be 200 pcs. of Intel Pentium — 4 Processor 2.0 A GHz in box packing BX 80532 PC 2000DSL5ZT System Bus-400 MHz 512 KBL2-Cache, 40 pcs. of Intel Pentium — 4 Processor 2.4 C GHz in box packing BX 80532 PG 2400DSL6WF System Bus-800 MHz, 512 KBL2-Cache , 143 pieces of Intel Desktop Mother Board D 845 GVAD 2 in box packing BOX D 845 GVAD 2, 40 pcs. of Intel Desktop Mother Board D 865 GBF in box packing BOX D865 GBF and 500 pcs. of Seagate Barracuda 7200.7 Hard Disc Drive Model No. ST 3400 14A. As the unit prices / values of the Intel Microprocessors and Mother Boards and Seagate Hard Disc Drives were found to be mis-declared by declaring vague and generic description of the goods and without indicating their brand, make or country of origin, with an intention to defraud the Revenue, the D.R.I. officers seized the consignment under Mahazar dated 29.08.2003 on the reasonable belief that these were liable for confiscation under the provisions of the Customs Act, 1962, particularly since the Customs at Air Cargo Complex used to assess and clear similar goods without examining the valuation aspect, as they have done in the case of goods covered by B/E No. 1809 dated 27.08.03.

8. Detailed investigations carried out by DRI revealed the gross under invoicing of the goods seized on dates 28.08.2003 and 29.08.2003. Though the importer of the two seized consignments, M/s Indam Recycling, initially requested for the provisional release of the seized goods on 24.09.2003, subsequently, vide their letter dated 28.01.04 addressed to the Commissioner

of Customs requested to permit them to abandon the goods seized by DRI on dates 28.08.03 and 29.08.03.

9. The case was adjudicated by the Commissioner of Customs, Cochin vide Order No. 19/2005 in F.No.SIB/6/04/Cus dated 09.03.05 confiscating the goods totally valued at Rs: 58,19,656/- (CIF), under Section 111(m) and 111(d) of the Customs Act,1962 and imposing penalties of Rs. 12 Lakhs on the importers M/s Indam Recycling, Rs.5 Lakhs on Shri. Bethusamy Bethuraj and also Rs. Two Lakhs on Shri. B.Rafiq Ahmed under Section 112 of the Customs Act, 1962.

10. In the meantime, D.R.I. obtained Bills of Entry of the previous 96 consignments, imported under the same modus operandi, including 10 originals and 8 duplicate Bills of Entry in respect of the 11 consignments imported and cleared by M/s. Indomass Trades 'N' Trans Pvt. Ltd., Cochin through Air Cargo Complex, from the MCD of Cochin Custom House. The duplicate Bills of Entry covering the three consignments and originals of Bills of Entry covering one consignment imported by this company could not be traced from the MCD or the Air Cargo Complex. The original Bill of Entry in respect of the consignments cleared vide Bs/E No. 1335/21.07.03 and the duplicate Bs/E in respect of the consignments cleared vide B/E No.676/30.05.03, 781/09.06.03 and 1041/28.06.03 could not be traced. On scrutiny of the import documents procured from Customs, it was observed that all the consignments were supplied by a Singapore based supplier, viz. M/s. Peac Electronics Singapore Pvt. Ltd., 61, Kaki Bukit Avenue, 1, # 04-04, Shun Li Industrial Park, Singapore -417943 and as per the invoices presented to Customs, all the Mother Boards in the consignments were priced at a declared unit price of US\$ 9 per piece (CIF) and the Microprocessors were priced at declared unit price of US\$ 14.80 (CIF) and US\$ 6 (CIF) even though the declared description of these goods were 'Microprocessors'. It was also seen that the declared unit price of US\$ 6 (CIF) was loaded to US\$7 (CIF) per piece by Customs. The Customs at Air Cargo did not indicate any reason for accepting the unit price of US\$ 14.80 or US\$ 7 (both CIF), even though the minimum unit price accepted for clearance of goods declared as 'Microprocessors' by other companies was US\$ 17 per piece. All the 11 consignments imported by M/s. Indomass Trades N Trans Pvt. Ltd. were cleared by the CHA, M/s. Cafco Freight Systems Pvt. Ltd, owned and controlled by Shri. B. Bethuraj, the Director of the importing company. The details of the 11 consignments, incorporating the Bs/E Nos. and date, declared description / unit price, quantity, total declared CIF value, the details of the Invoice No. of

the Singapore supplier M/s Peac Electronics Singapore Pvt. Ltd., Airway Bill No., Flight No. & date, R.No./IGM No., Duty paid with Cash No. and date, availability of the copy of the B/E and the description (i.e the brand) of the goods wherever recorded in the examination report on duplicate Bills of Entry, prepared after detailed scrutiny of these 11 Bills of Entry and supporting documents was appended as Annexure-I to the Show Cause Notice.

11. D.R.I. also learnt that the Customs at Air Cargo Complex seized a consignment imported by M/s. Indomass Trades N Trans Pvt. Ltd. consisting of 48 pieces of IBM Laptops, 100 units of 'Intel' Box D865 GBF Mother Boards, '100 pieces of 'Intel' Box Pentium 4 2.4 Microprocessors with 800 MHz. FSB, and 775 pieces of SD RAMs on 21.08.2003 on account of non-declaration of the second hand Laptops in the manifest. It was also learnt that the Customs at Air Cargo Complex did not initiate any action on the mis-declaration of the value of the 'Intel' Mother Boards and Microprocessors imported by this company, (as the local market values for the Intel microprocessors and Intel motherboards were taken as Rs. 2500 and Rs.2000 respectively in the Mahazar dated 21.08.03, which were much lower than the CIF values of these goods).

12. On 13.09.2003, D.R.I., Chennai Zonal Unit carried out search of the premises of M/s. Arihant IT Solutions, Pvt. Ltd. at 50/1 (Old No. 842/5) Mount Road, Chennai -2 on the basis of the intelligence received by Cochin D.R.I., that the imports effected in the name of M/s. Indomass Trades N Trans Pvt. Ltd. through ACC, Cochin were meant for this Chennai company. However, no incriminating documents were recovered from the said premises as per the Mahazar dated 13.09.2003. Shri Rakesh Jain of M/s. Arihant IT Solutions told the D.R.I. officers that they do not have any business activities with any Cochin company and that his younger brother, Rajesh Jain, manages the affairs of the company.

13. A statement of Shri R. Jayachandran, S/o Shri N.R. Pillai, Krishnavilasam, Koduvila P.O., East Kallada, Kollam, working as office -in -charge of M/s. Cafco Freight Systems, Air Port office was recorded under Section 108 of the Customs Act, 1962 on 28.08.2003. In his statement, Shri R. Jayachandran, *inter-alia*, stated that he joined the clearing agency M/s. Cafco Freight Systems Pvt. Ltd., which was owned by Mr. Bethuraj belonging to Tamilnadu, in the month of March, 2003 and that the entire work done by him for the Customs clearance at Air Cargo Complex, Nedumbasserry, Cochin was as per the directions of Shri Bethuraj. He also stated that the company M/s. Indam Recycling, situated at Parambithara Cross Road of Panampilly Nagar

also belongs to Mr. Bethuraj who is the Managing Director of this company; that after his joining the clearing agency company in March, 2003, he used to present the consignments of Microprocessor and Mother Board before the Customs at Air Cargo for examination and assessment; that he used to attend to the Customs work in connection with the assessment of the import goods. He added that the Customs authorities routinely passed the Bills of Entry on the basis of the delivery order, Airway Bill, Invoice, Packing List, Purchase Order presented by the importers and that no documents were presented on the value evidence or on the detailed description, brand, etc., to the Customs officers. He also clarified that the unit prices declared in the Bills of Entry were US \$ 17 for Intel Pentium 4 processors and about US \$ 14 for Intel Celeron and US \$ 9 for Intel desktop motherboards.

14. A statement of Shri Bethusamy Bethuraj (hereinafter referred to as Bethuraj); Managing Director of M/s. Indam Recycling Co. Pvt. Ltd. was recorded under Section 108 of the Customs Act, 1962 on 29.08.2003. In his statement, Shri Bethuraj inter-alia stated that he was the Managing Director of the importing company, M/s. Indam Recycling Co. Pvt. Ltd.; that he was also the Managing Director of the CHA firm M/s. Cafco Freight Systems (P) Ltd.; that he also made imports of computer parts in the name of his other company M/s. Indomass Trades N Trans P. Ltd.; that the suppliers of the goods imported for M/s. Indomass Trades N Trans P. Ltd. is M/s. Peac Electronics Singapore Pvt Ltd.; that he had not made any personal visits to the Suppliers for arranging the imports even though he made trips to Nepal, Singapore and Maldives (in the year 1997), Dubai in 2001 & 2002 and South Korea in 2002. He also clarified that the suppliers M/s. Peac Electronics Singapore Pvt Ltd. were not known to him personally; that the items imported in the name of his two companies were mainly Mother Board and Microprocessor and that sometimes he also imported some Hard Disk Drives. When shown the samples of goods imported vide B/E No. 1809 dated 27.08.2003 he confirmed that the Micro Processors were Intel Pentium 4 Processors 2.4 GHz, 800MHz System Bus, 512KBL2 and the Mother Boards were Intel Desktop Mother Board D865GBF and Intel Desktop Mother Board D845GEBV2. He confirmed that the unit price of Mother Boards were declared as US\$9 per piece; that all the prices were in CIF terms; that in the case of all these imports, the make, the brand or specifications were not declared in either the Bs/E or in the Invoices or Packing list. To a specific question as to what were the reasons for not declaring the brand, make or specifications of these computer parts imported in their Company's name, he answered that by doing so they got the benefit in the duty payable and also added that the Customs department never insisted to declare these brand, make and specifications in the B/E. To another query as

to whether any remittance has been made to the overseas suppliers in respect of the imports made in the name of their company he answered in the negative and clarified that this was because the imports were made in credit terms for three months period.

15. Pursuant to certain intelligence gathered, the officers of D.R.I., Chennai carried out another search in the office of M/s. Arihant IT Solutions Pvt. Ltd., No. 50/1, (Old No. 84²/5) Mount Road, Chennai — 2 in association with the officers of D.R.I., Cochin on 19.12.2003. Certain incriminating documents were recovered by the officers under Mahazar, including the files containing the telephone bills of the two numbers, 32032034 & 32032035. A scrutiny of these documents indicated that several telephone calls were made from these numbers to the offices of Mr. Bethuraj, viz. 0484-2611284 and his mobile numbers 9447155651, 9447155653 and 9447155654, to telephone number 0484-2611418 of M/s Excel India Ltd, Cochin, and also to telephone number 0484-2364753 of KPN Travels India Ltd on dates of arrival of the consignments imported in the names of M/s Indomass and other near dates.

16. A further statement of Shri Bethusamy Bethuraj, Director of M/s. Indomass Trades N Trans Pvt. Ltd. was recorded under Section 108 of the Customs Act 1962 in D.R.I. on 17.11.2003. Shri Bethuraj, *inter-alia*, stated that he was one of the Directors of the company, M/s. Indomass Trades N Trans Pvt. Ltd. and the other directors of the company were Shri Aravindakshan Nair (MD), Shri Prabhakaran and Smt. Subbalekshmi Bethuraj; that though the company was registered in the year 2000 for the purpose of import activities and transportation, they could not import any item till May, 2003; that somewhere in the mid of May, 2003, Shri Rajesh Jain from Chennai approached him and discussed the import of computer parts imported by him (Bethuraj) for Rafiq of Compumatrix; Shri Rajesh Jain along with his friend Sripal, who met him in a Chennai hotel convinced him about their genuineness in the Computer field and requested for facilitating their import of computer parts in the name of Bethuraj's company, M/s. Indomass Trades N Trans Pvt. Ltd.; that he was offered a profit margin of $\frac{1}{2}$ % of the sale Invoice value for facilitating the imports in the name of his company, Indomass Trades N Trans Pvt. Ltd.; that Shri Rajesh Jain told him that the invoices of sale of the items imported in the name of his company, M/s. Indomass Trades N Trans Pvt. Ltd. may be raised in the names of M/s. Vikas Computers, 30/1, Athipattam Street, Chennai - 2 and in name of the other company, M/s. Ashvin Computers, 12, Athipattam Street, Chennai. However, during an occasion, he had a talk with one Mr. Murali, an employee of Shri Rajesh Jain about the address of Rajesh Jain's company in Chennai, he was told that the address of Rajesh Jain's

company was M/s. Arihant IT Solutions (P) Ltd., 50/1 (Old No. 842/5) Mount Road (Opp. Anna Statue), Chennai- 2; that the telephone No. of Shri Rajesh given during his first meeting with him was 9884180416 which was later changed to Reliance No. 044-32032034; that after the case of valuation was booked by D.R.I. in Cochin, he was not getting calls from Rajesh Jain on his Mobile; that after the D.R.I. case Shri Rajesh Jain contacted on his office number and at that time he was told that the call was made from public telephone booth; that the decision for importing computer parts for Rajesh Jain in the name of his company, M/s. Indomass Trades N Trans Pvt. Ltd. was taken by himself (Bethuraj) alone and no other director or MD was aware of these imports and he alone was responsible for all the import activities carried out in the name of Indomass Trades N Trans Pvt. Ltd. He also tendered the photocopies of the eleven Bills of Entry and 12 import invoices covering the import of computer parts effected in the name of his company, M/s. Indomass Trades N Trans Pvt. Ltd and also the sale/dispatch invoices of the computer parts imported by M/s Indomass and transferred to Chennai. On the basis of these documents tendered by him he was asked specifically to state how the unit prices of US\$ 6 (CIF) (loaded to US\$ 7 by Customs) and US\$ 14.80 (CIF) were accepted for assessment from Customs in respect of the imports of Microprocessors effected in the name of M/s. Indomass when the unit prices taken for assessment for Microprocessors by his other companies were US\$ 17 (CIF). To this, he replied that he was told by Rajesh Jain that the goods imported by him were in Tray Packing even though this aspect was not declared, on account of the practice (of declaring generic description) in the Air Cargo Complex, Nedumbasserry. When asked whether he agrees that in respect of all the consignments imported in his two companies M/s. Indomass Trades N Trans Pvt. Ltd. and M/s. Indam Recycling were imported by under invoicing of very high magnitude, he stated that he was not aware at the time of imports, till D.R.I. intervened and booked the cases, he agreed that there was under invoicing of very high magnitude, on the basis of the manufacturer's invoice and prices shown by D.R.I., when compared to the prices declared in the Invoices of two consignments seized by D.R.I. on dates, 28.08.2003 and 29.08.2003. He was also asked whether he was aware that another consignment imported in the name of his company, M/s. Indomass from the same suppliers, M/s. Peac Electronics Singapore Pvt. Ltd. containing Mother Boards, Microprocessors and Laptops were under seizure by Customs at Air Cargo Complex. To this he clarified that he was told by Rajesh Jain that a consignment consisting of computer parts along with old and used Laptops was going on board and were likely to arrive in Cochin, which were to be cleared on adjudication paying fine and penalty. He therefore declined to clear these consignments in the name of his company and also gave letters to this effect to

Customs and also to the Freight forwarders and added that he did not make any effort for ascertaining the contents of the seized consignment.

17. On perusal of the import documents of M/s. Indomass Trades N Trans Pvt. Ltd., it was noticed that majority of the consignments were imported in Silk Air Flights and the shipments were routed through Excel India Pvt. Ltd. Shri K.N. Venugopal, Manager, Kerala of Excel India Pvt. Ltd. was summoned to the Cochin D.R.I. office and his statement was recorded under Section 108 of the Customs Act, 1962 on 21.11.2003. He stated *inter alia* that he was the Manager, Kerala for Excel India Pvt. Ltd.; that the business of his company in respect of the imports of the consignments of M/s. Indomass Trades N Trans Pvt. Ltd. belonging to Bethuraj was initialized at Singapore and was given lead to their Chennai office who in turn passed the information to the Cochin office; that Mr. Bethuraj of Indomass had contacted him for their imports and the business started with them on 17.06.2003; that they have done total eight shipments for Indomass Trades N Trans Pvt. Ltd. from Peac Electronics, Singapore during the period 17.06.2003 to 10.08.2003; that he vividly remember the operations of Mr. Bethuraj and Indomass Trades N Trans Pvt. Ltd. as they were always in undue hurry to obtain the delivery order for the imports they had through Excel; that in case of any delay, one Mr. Rajesh @ Raju of Indomass Trades N Trans Pvt. Ltd. used to call him from Chennai asking him to hurry up the process; that one consignment of this importer was detained with the Air Cargo Customs from 02.08.2003 which had come through their service under HAWB # SIN 04409246 dated. 01.08.2003; that this shipment was booked with Excel Singapore on 01.08.2003 and on the same day the consignee Indomass asked Excel, Cochin by about 2.30 Hrs. to stop the shipment at Singapore since the shipment which has been handed over to Excel at Singapore was a wrong one and was not as per the order with Shipper, Peac Electronics; that on going through this message they contacted their Singapore office. But, the shipment could not be stopped as the consignment was already handed over the Airline and had been loaded on to the pallet to Cochin; that this matter was informed to M/s. Indomass Trades N Trans Pvt. Ltd. who gave directions to inform the Airline and Customs to re-export the shipment on arrival and accordingly Excel, Cochin informed Airline and Customs of the wrong arrival on 02.08.2003 itself along with letter dated. 02.08.03 of the shipper, Peac Electronics. Shri Venugopal tendered the photocopies of the letters from Peac Electronics, Singapore Pvt. Ltd. dated. 02.08.2003, 21.08.2003 and 22.09.2003 addressed to DC, Customs, Air Cargo, Cochin. He also tendered the photocopies / printed copies of the eight House Airway Bills of the consignments imported by M/s. Indomass Trades N Trans Pvt. Ltd. through Excel. He was asked to clarify on the entry in the House Airway Bills for handling information: where it was written that the commercial invoice was

attached and asked him to provide those invoices. To this he clarified that as per the feedback got by him from the Singapore office, the shipper takes back the invoice after the shipment gets cleared at Singapore. He admitted that in respect of the other consignments, the normal practice was that the shipping invoice, the packing list and the related documents like certificate of origin in a cover and handed over to the Airline and were attached with the Airway Bill and added that in this case in spite of them asking their Singapore office, the documents like Invoices were not coming from Singapore. He also clarified that even though in the case of the other consignments which were cleared by M/s. Indomass, the invoices were not forwarded from Singapore, in respect of the consignments detained by the Customs authorities at ACC, the invoice from the Singapore shipper was obtained for furnishing to the Customs so that the Customs could allow the re-export of the detained consignment. He also undertook to provide all the documents in respect of the shipments handled by Excel for the consignee, Indomass Trades N Trans Pvt. Ltd.

18. A statement of Shri Ugam Chand Jain, Managing Director of M/s Arihant IT Solutions Pvt. Ltd., Chennai was recorded under section 108 of the Customs Act, 1962 on 14/06/2004 in DRI, Cochin. He stated, *inter-alia*, that he was the Managing Director of the company and the other directors of the company were Mr. Rakesh Jain, his son and Mrs. Chandrakanta Ugam Chand Jain, his wife, till August, 2003; that his younger son, Rajesh Jain was managing the affairs of computer hardware business in his company, M/s. Arihant IT Solutions; that from 1999 to 2003 this company was engaged in the trading of the Hardware products, namely 'Intel', Samsung, LG, Philips, Satyam Internet, UPS, Cabinet, etc.; that they had procured 'Intel' products from M/s. Redington, SES, Ingram Micro, Tech Pacific, etc. after 2003 and also procured 'Intel' products from local dealers such as Supreme, Ashvin Computers, etc.; that though they got an IEC code issued by JDGFT, Chennai in the year 2000, no imports or exports were made by them in the name of Arihant IT Solutions; that M/s. Arihant IT Solutions was a Genuine 'Intel' Dealer (GID) since 1999 up to 2003; that for becoming GID one should have a minimum quantity limit for the sales of 'Intel' products. He could not furnish the procurement invoices of the "Intel" products traded. He was also shown the file containing correspondence/bills of Reliance Mobile Phones (044-32032033, 32032034, 32032035) seized by D.R.I. from the office of Arihant IT Solutions, Chennai on 19.12.2003. He stated that he surrendered these telephones and these were in the names of M/s. Arihant IT Solutions Pvt. Ltd. He put his dated signature on the bills showing the details of the calls made in token of confirming that these bills were recovered from their company. He further clarified that the No. 32032033 was used by himself, 32032034 was used by Rajesh Jain and 32032035 was used by any other person in his office including Rajesh. He was

also shown a telephone Bill of telephone No. 31068082 of Reliance India Mobile in the name of P. Murali lying in the Reliance file seized by D.R.I. from his Company on 19.12.2003.

19. A statement of Shri Rajesh Jain, son of Ugam Chand Jain, 3A, Ankoor Manor, 271, Kunamalle High Road, Chennai was recorded u/s 108 of the Customs Act, 1962 on 15.06.2004 in D.R.I., Cochin. Shri Rajesh Jain, *inter-alia*, stated that he knew Bethuraj for the past one year from February 2003 and also Shri Rafiq Ahmed (of Compumatrix Marketing Pvt. Ltd.) and Shri Susil of Kanya Electronics. To a specific question about what are his business relations with Mr. Bethuraj or Indomass Trades N Trans Pvt. Ltd., he stated that got no relation with the business of Mr. Bethuraj. He was shown the invoices of M/s. Peac Electronics, Singapore, covering the 11 consignments imported by Indomass Trades N Trans Pvt. Ltd., Cochin. He stated that he had not imported these goods. He undertook to furnish the copy of his passport to D.R.I. in a week's time. When asked whether he went abroad and the names of the countries visited by him he stated that he had been to Malaysia and Singapore only once in his life time.

20. A further statement of Shri K.N. Venugopal, Manager, Excel India Pvt. Ltd. was recorded under Section 108 of the Customs Act, 1962 on 23.06.2004 in D.R.I., Cochin. He was asked to specifically state the details of the persons who collected the delivery order and other related documents from his office in respect of the 8 shipments imported by M/s. Indomass. To this, he clarified that whenever these shipments came, a person by name Raju (as per the self introduction made by him) called up from Chennai giving advance intimation of the arrival of the Cargo and also conveyed that his representative would come and collect the DO and related documents and simultaneously he and his colleague Mr. Jain would receive Auto Pre Alert from their Singapore office by e-mail regarding the execution of the shipment; that thereafter the next day on arrival of the Air Craft, a Tamilian introducing himself as representative of Raju from Chennai used to come and collect the DO and other documents; that on five occasions Mr. Raju also came along with the Tamilian; that the documents were handed over to Mr. Raju or his Tamilian representative and not to the CHA. On a specific question whether Mr. Raju or his Tamilian representative came to his office in connection with the consignment that arrived against HAWB No. SIN 04409296 dated. 01.08.2003, detained by Customs, he clarified that Mr. Raju had come to his office about five times in connection with this detained consignment from M/s. Peac Electronics and that these visits were in addition to the visits made by him for the collection of the import documents

relating to the other previous consignments cleared for M/s. Indomass Trades N Trans Pvt. Ltd. He further clarified that on earlier five occasions Mr. Raju came to his office as a representative of the importer M/s. Indomass Trades N Trans Pvt. Ltd. in connection with a clearance of the cargo imported by this company. He further clarified that during another occasion when he was asked to accompany Raju to the office of the Addl. Commissioner of Customs in connection with the detained consignment, he noticed that Mr. Raju gave a visiting card with his name as Rajesh Jain and company as M/s. Peac Electronics Singapore Pvt. Ltd.; that Mr. Raju gave a similar visiting card to him also at that time; that on being asked as to why he is representing the suppliers, M/s. Peac Electronics, when he used to represent the importers, M/s. Indomass during the earlier occasions, it was clarified by Raju that it would be better for representing the case of the detained consignment as a representative of the foreign supplier. He also clarified that Raju had come to his office on 14.06.2004 at about 9 A.M. even before his arrival in the office at 9.30 A.M. when he was told by Raju that he was summoned by D.R.I. to appear by 11.30 A.M. on that day and there was a likelihood that he would be taken to his office for identification; that it was requested by Raju that in such an event, he should not disclose the previous visits of Raju and also to tell D.R.I. officers that Shri Raju was not known to him; that he refused to abide by this request of Raju; he also undertook to provide the visiting card of Mr. Raju indicating the name as Rajesh Jain and representing Peac Electronics, if traced and also the acknowledgements on the DO book in respect of the consignments imported by M/s. Indomass Trades N Trans Pvt. Ltd. He was also shown the photograph of Shri Rajesh Jain of M/s. IT Solutions Chennai, taken while he came to D.R.I. for giving the statement on 15.06.2004. He identified the photograph as that of Mr. Raju who used to come to his office for collection of DO and other documents of M/s. Indomass Trades N Trans Pvt. Ltd. and also as a person representing Peac Electronics Singapore Pvt. Ltd. before the Addl. Commissioner of Customs, Cochin and put his dated signature on the reverse of the photograph after confirming this fact.

21. Subsequent to the statement given before D.R.I. on 23.06.2004, Shri Venugopal tendered the re-prints / photocopies of the House Airway Bills, the DO Book No. 99 containing DO Nos. starting from 9801 to 9900 and also photocopy of the Mahazar dated. 21.08.2003 in respect of the seizure of consignment of computer parts and Laptops affected by Air Cargo Customs. He also tendered copy of his company's letter dated. 24.09.2003 addressed to Dy. Commissioner of Customs, Nedumbasserry enclosing the printed copy of the scanned Invoice No. INV/2003/1258 dated. 31.07.2003 in respect of the consignment seized by Customs and also the letter dated. 21.08.2003 from Peac

Electronics Singapore Pvt. Ltd. enclosing copy of invoice No. INV/2003/1257 of the consignment ordered by M/s. Indomass Trades N Trans Pvt. Ltd. and stated to be lying in Singapore. He also tendered copies of letter dated. 24.11.2003 of Excel India Ltd. enclosing copy of letter dated. 22.11.2003 received from M/s. Peac Electronics and also the commercial invoice No. INV/2003/1258 in respect of the consignment seized by ACC, Customs on 21.08.2003. A perusal of the copies of the two invoices INV/2003/1258 of the consignment seized by ACC, Customs on 21.08.2003 and Invoice No. INV/2003/1257 dated. 31.07.2003 in respect of the goods which was stated to be booked by M/s. Indomass Trades N Trans Pvt. Ltd. revealed the following aspects:

- i. The specification, brand and type of the Mother Board is INTEL-BOX D865 GBF, Intel Box 865 GBF P 4 Mother Boards (in box packing) and the unit price indicating US\$ 97.08 for the Mother Boards stated to be ordered by M/s. Indomass Trades N Trans Pvt. Ltd. as reflected in Invoice No. INV/2003/1257.
- ii. The specification, brand and type of the Mother Board is INTEL-BOX D865 GBF, Intel Box 865 GBF P 4 Mother Boards (in box packing) and the unit price indicating US\$ 97.00 for the Mother Boards stated to be wrongly shipped to M/s. Indomass Trades N Trans Pvt. Ltd. and seized by ACC, Customs on 21.08.2003 as reflected in Invoice No. INV/2003/1258.
- iii. The specification, brand and type of the Microprocessor is INTEL-BX 80532 PG 2400D Intel Box P 4, 2.4 with 800 MHz FSB (in box packing) and the unit price indicating US\$ 172.50 for the Microprocessors stated to be ordered by M/s. Indomass Trades N Trans Pvt. Ltd. as reflected in Invoice No. INV/2003/1257.
- iv. The specification, brand and type of the Microprocessor is INTEL-BX 80532 PG 2400D Intel Box P 4, 2.4 with 800 MHz FSB (in box packing) and the unit price indicating US\$ 172.50 for the Microprocessors stated to be wrongly shipped to M/s. Indomass Trades N Trans Pvt. Ltd. and seized by ACC, Customs on 21.08.2003 as reflected in Invoice No. INV/2003/1258.

22. As per Shri Venugopal's statement, the invoices presented to the Dy. Commissioner of Customs, ACC on 24.09.03 were procured by Excel India through their counterpart in Singapore to submit to the Customs at Cochin Air Cargo for the purpose of release of the seized consignment for re-shipment to Singapore Shipper.

23. A perusal of the DO Book tendered by Shri K. N. Venugopal on

09/0/2004 indicated the following facts:

(a) DO No. 9813 dt 28-06-03 in respect of the consignment arrived vide MI 468 DT 27-06-03 AWB No. 629 1064 6020 (BE No. 1041 dt 28-06-03 received by Raju on 28-06-03

(b) DO No. 9827 dt 14-07-03 in respect of the consignment arrived vide MI 468 dt11-07-03 AWB No. 629 1Q64 6322 (BE No. 1226. dt 14-07-03) received by P Murali on 14-07-03

(c) DO No. 9831 dt 17-07-03 in respect of the consignment arrived vide MI 468 dt16-07-03 AWB No. 629 1064 6580 (BE No. 1267 dt 17-07-03) received by P Murali on 17-07-03

(d) DO No. 9834 dt 21-07-03 in respect of the consignment arrived vide MI 468 dt 20-07-03 AWB No. 629 1064 6602 (BE No. 1335 dt 21-07-03) received by P Murali on 21-07-03

24. DRI, Cochin also obtained clarification dated 26.12.2003 from M/s KPN Parcel Services, Ernakulam to the effect that on different dates in the months of June and July 2003, computer peripherals were booked along with the passenger tickets of Mr. Murali and Mr. Rajesh from Chennai on behalf of M/s Ashwin Computers and M/s Vikas Computers of Chennai.

25. A statement of Shri Susil Adam Seelan, Proprietor of M/s. Ashwin Computers, Chennai recorded under Section 108 of the Customs Act, 1962 on 27.01.2004, since the sales/transfer invoices of the goods imported in the name of M/s Indomass indicated that these are transferred to M/s. Ashwin Computers/Vikas Computers in Chennai. He stated that he procured the computer parts locally from Chennai and also he purchased goods from M/s. Compumatrix Marketing Pvt. Ltd. and M/s. Alhan Distributors Pvt. Ltd. from their Chennai office; that the goods purchased by him were microprocessors (Intel/ AMD) mother board (Intel) RAM Chips, Hard Disc Drives (Seagate, Maxtor); that he did not have the purchase documents with him; He was also shown the invoice Nos. 001/24.05.2003, 002/30.05.2003, 003/10.06.2003, 004/16.06.2003, 005/21.06.2003 and 006/28.06.2003 of M/s. Indomass Trades N Trans Ltd., Cochin against which the computer parts imported by this Cochin company were shown to be sold to his company and asked to clarify on that. After going through those documents he stated that he was not aware of any such purchases shown in the invoices by his company even though this CST No. and TNGST No. shown in the invoices belong to his company. He added that some persons might have misused the name of his firm for transfer of the goods from Cochin to Chennai.

26. A statement of Shri K.A. Nayar, Appraiser posted in Air Cargo Complex,

who assessed the goods covered by 34 Bills of Entry filed by Compumatrix Marketing Pvt. Ltd., 41 Bills of Entry filed by Alhan Distributors Pvt. Ltd., 12 Bills of Entry filed by M/s. Indomass Trades N Trans P. Ltd. and 11 Bills of Entry filed by M/s. Indam Recycling Pvt. Ltd. including B/E No. 1809 dated. 27.08.2003 seized by D.R.I. and also who supervised the examination of these goods was recorded under Section 108 of the Customs Act, 1962 on 03.11.2003. He identified the bunch of Bills of Entry of the previous consignments imported by M/s. Indam Recycling Pvt. Ltd., Indomass Trades N Trans P. Ltd., Compumatrix Marketing P. Ltd. and M/s. Alhan Distributors P. Ltd., which he assessed, and also whose examination he supervised. He confirmed that these documents were relating to the assessments made by him.

27. A statement of Shri G. Anil Kumar, Examiner who was posted in Air Cargo Complex, Nedumbasserry during the period January, 2003 to September, 2003 was recorded in Cochin u/s 108 of the Customs Act, 1962 on 19.04.2004. He was shown the bunch of 7 duplicate Bills of entry and one original Bill of Entry bearing first check examination reports in respect of the import of computer parts made by M/s. Indomass Trades N Trans Pvt. Ltd. through ACC, Nedumbasserry in 2003. After going carefully through these import documents he confirmed that the five duplicate Bills of Entry bearing Nos. 594/24.05.03, 945/21.06.03, 1226/14.07.03, 1267/17.07.03 and 1335/21.07.03 and one original B/E No. 865/16.06.03 bear the examination reports written by him. He confirmed that these consignments imported by M/s. Indomass Trades N Trans Pvt. Ltd. were examined by him.

28. A statement of Smt. Lijji Joseph, Examiner posted in ACC, Nedumbasserry from June, 2003 onwards was recorded under Section 108 of the Customs Act, 1962 in D.R.I, Cochin on 09.06.2004. She was shown the bunch of duplicate Bills of Entry filed by M/s Indomass Trades N Trans Pvt. Ltd. in respect of the computer parts imported by them through ACC Nedumbasserry. She identified the two Bills of Entry bearing Nos. 1407/26.07.2003 and 164/12.08.2003 from that bund where she examined the goods and she confirmed the same by putting her dated signature below her examination reports.

29. A statement of Shri R. Jayachandran, officer in clarge, M/s. Cafco Freight Systems Pvt. Ltd., Cochin was recorded u/s 108 of the Customs Act, 1962 on 07.10.2004. He identified the Bills of Entry of the 11 consignments imported by M/s. Indomass Trades N Trans Pvt. Ltd., received by D.R.I. from Custom House, for having handled these Bills of Entry and respective

consignments for import clearance from Customs, as a CHA's representative. He was specifically asked whether he was aware that the importing company also belonged to Shri Bethuraj who was the Managing Director of his CHA Company. To this, he told that he was never told of this fact either by Shri Bethuraj or any other person. When asked about the details of the persons who used to come to the Air Cargo Complex or his CHA office in connection with the import clearance of the consignments, he stated that a person by name Mr. Raju along with his assistant, Murali used to come to the CHA office along with the copies of the Airway Bill and Invoices and that after the clearance from Customs, the cargo along with quadruplicate copies of the Bills of Entry were handed over to Mr. Murali. He was shown the statement dated. 19.04.2004 of Shri G. Anil Kumar, Examiner whose examination report was found on the 6 Bills of Entry of the consignments imported by M/s. Indomass Trades N Trans Pvt. Ltd., wherein he stated that the Mother Boards imported by the said company and examined by him were original 'Intel' Mother Boards and not Mother Boards assembled / made out of 'Intel' chips by other manufacturers and also that the Microprocessors found in these consignments were of 'Intel' brand. After going through this statement of Shri G. Anil Kumar, Shri Jayachandran, who was present during the examination of all the consignments as a CHA's representative, confirmed that he was present during the examination of these goods and agreed with the statement dated. 19.04.2004 of Shri G. Anil Kumar. He was also shown the statement dated. 09.06.2004 of Smt. Lijji Joseph, Examiner, whose examination report was found on two of the Bills of Entry of Indomass Trades N Trans Pvt. Ltd. wherein she stated that the brand of the Mother Boards and Microprocessors imported by M/s. Indomass was 'Intel'. After going through the statement dated. 09.06.2004 of Smt. Lijji Joseph, Shri Jayachandran confirmed that he was present during the examination of the goods carried out by Lijji Joseph and agreed with the details of the goods as stated by Lijji Joseph. He was also shown the photograph of Shri Rajesh Jain taken during his visit to D.R.I. on 15.06.2004. He identified this photograph to be that of Mr. Raju who used to come to his office along with the Airway Bill, DO and Invoices of the consignments imported by M/s. Indomass Trades N Trans Pvt. Ltd. for the clearance of these goods. He also affixed his signature on the reverse of the photograph of Shri Rajesh Jain in token of confirming this fact.

30. Another statement of Shri R. Jayachandran, officer in charge of the CHA, M/s. Cafco Freight Systems P. Ltd. was recorded under Section 108 of the Customs Act, 1962 on 11.10.2004. He stated that he was handling the clearance work of all the cargo imported and cleared through Air Cargo Complex through the CHA, M/s. Cafco Freight Systems Pvt. Ltd. He also

confirmed that the Customs officers, for the assessment of these consignments, did not call for the invoices from the manufacturers. He further confirmed that the Customs never drew any samples from the consignments imported by M/s. Alhan Distributors Pvt. Ltd. or other parties like M/s. Compumatrix Marketing Pvt. Ltd., Indam Recycling Pvt. Ltd. and Indomass Trades N Trans Pvt. Ltd. for the purpose of carrying out any market enquiry/price verification.

31. The brand, specification, capacity and type of the Mother Boards, Microprocessors, in these 11 consignments arrived at on the basis of the statements of the concerned customs examiners, CHA executive and also based on the following facts:

- a. The Customs at Air Cargo Complex detained/seized a consignment imported by the same company M/s Indomass Trades N Trans owned by Bethusamy Bethuraj consisting of 48 old and used IBM Laptops, 100 Intel motherboards D 865 GBF in box packing, 100 Intel Pentium 4 2.4 Microprocessors with 800 MHz FSB in box packing and also 775 SD RAMS on account of their not manifesting the Laptops.
- b. D.R.I, Cochin seized two consignments of computer parts on dates 28.08.03 and 29.08.03, imported by M/s Indam Recycling Pvt. Ltd., a company floated and controlled by the same person Bethusamy Bethuraj, where the Mother Boards were of 'Intel' 865 GBF in box packing with actual unit price of US \$ 100 (declared price US \$ 9) and 'Intel' 845 GEBV2 in box packing of unit price US \$ 90-99 (declared price US \$ 9), and the Microprocessors were of 'Intel' Pentim_4 of 2.4 GHz with FSB 800 MHz or of 2.0 GHz with 400 MHz FSB (declared value for both microprocessors US \$ 17).
- c. After having realized that DRI Cochin is looking into the valuation aspect of the computer parts imported through Air Cargo Complex, Nedumbasserry, Cochin, the person who arranged the imports of computer parts from M/s Peac Electronics Singapore Pvt. Ltd, Singapore through ACC, himself arranged. the furnishing of the correct value of the goods imported vide HAWB No. S1NO 4409246 dated 31.07.03 stating the correct value of the goods (Intel mother boards and microprocessors) under their letter dated 22.09.03 & 24.09.03 showing the value of US \$ 97.08 for the one Intel Box D 865 GBF P4 mother board and US \$ 172.50 for one piece of Intel box P4, 2.4 with 800 MHz FSB microprocessor.
- d. The Indian office of M/s Intel Technology India Pvt. Ltd. at Bangalore certified that the samples of the Intel Mother Boards - D865GBF in box packing, D845GEBV2 in box packing, D845 GVAD2 in box packing,

Intel microprocessors-Pentium 4 2.4 GHz in box packing and Pentium 4 2 GHz in box packing drawn at the time of seizure of the computer parts imported by M/s Indam Recycling Pvt. Ltd and seized on dates 28.08.03 and 29.08.03 by DRI at Nedumbasserry ACC were genuine Intel products.

- e. The examining officer in his report dated 24.05.03 had specified the brand of the microprocessor and motherboard imported vide the B.E. No. 594 dated 24.05.03 (of the first consignment imported by M/s Indomass) to be of 'Intel', though this practice of mentioning the brand in the examination report of the Bill of Entry was discontinued by Customs.

32. The brand, specification, capacity and type of the Mother Boards, Microprocessors, in those 11 consignments, thus arrived were as below:

- a. The 2050 micro processing units with declared value of US \$ 14.80 imported vide Bills of Entry Nos. 594/24.05.2003, 676/30.05.2003, 781/09.06.2003, and 865/16.06.2003 were Intel Celeron 1.2/1.3/1.4/1.7 GHz microprocessors in box packing.
- b. The 5458 microprocessor units with declared unit prices of US \$ 6 (loaded to US \$ 7 by the Customs), imported vide Bills of Entry Nos. 1041/28.06.2003, 1226/14.07.2003, 1267/17.07.2003, 1335/21.07.03, 1407/26.07.2003 and 1614/12.08.03 were Intel Pentium 4, 1.9 to 2.4 GHz microprocessors in tray (OEM) packing, without the cooling fans.
- c. All the 3400 motherboards vide the Bills of Entry No. 594/24.05.2003, 676/30.05.2003, 781/09.06.2003, and 945/21.06.2003, 1226/14.07.2003, 1335/21.07.03, 1407/26.07.2003 and 1614/12.08.03 filed by M/s Indomass were Intel motherboards D865GBF in box packing, similar to the Intel motherboards seized by Customs at ACC on 21.08.03.

33. The values declared in the invoice presented for assessment of the goods bear no comparison to the value of identical goods imported into India at or about the same time. The importer, in his statement had accepted that the declared price was under-invoiced and bore no resemblance to the actual value of the goods. The value declared could not therefore be accepted as the transaction value under Rule 4 of the Valuation Rules, 1988 in as much as it bore no resemblance to the actual value of the goods. Therefore, the declared value required to be rejected and the value re-determined by sequentially proceeding from Rules 5 to 8 of the CVR, 1988.

34. Rule 5 (of the CVR, 1988) deals with identical goods and Rule 6 (of the

CVR, 1988) dealt with similar goods. The goods under importation were (1) Intel Pentium 4 microprocessor 1.9 to 2.4 GHz with FSB 400-533 MHz in OEM packing, (2) Intel Celeron microprocessor 1.2 GHz to 1.7 GHz, lowest configuration of the Celeron processors imported at the relevant time, in box packing (3) Intel Desktop Mother Board D 865 GBF in box packing. The subject goods were imported from Singapore. Their country of origin was however not exactly known, but for, and with the exception of a self declaration in the Bill of Entry and also in the few examination reports on available duplicate Bills of Entry. No country of origin certificate was presented. In fact the goods were declared with vague and generic descriptions in the invoices, which appeared to be locally forged. Hence it was difficult for the exact one to one comparison of the goods imported by M/s Indomass with the import data available on National Import Data Base. Such comparison was otiose. No import of identical or similar goods of the same description, at the same commercial level and the quantity level were therefore available. Therefore Rule 5 and 6 (of the CVR, 1988) could not be applied straight away. In view of the fact there were no identical or similar imports (in the absence of documents indicating the exact specification of the imported goods) and also as there was no objective or quantifiable data regarding their sale in their greatest aggregate quantities in the domestic market deductive valuation as contemplated under Rule 7 was rendered redundant. Also the computed valuation of the goods under Rule 7 A (of the CVR, 1988) could not be applied. Therefore the only alternative was to examine the applicability of Rule 8 (of the CVR, 1988) read with Section 14 of the Customs Act, 1962 in its totality considering the available material on this issue, on the basis of the statements of Shri. R. Jayachandran, CHA executive, Shri. B. Bethuraj, CHA and the Customs Examiners Shri. Anil Kumar and Smt. Lijji Joseph and the two invoices presented by the Air Console operators, M/s Excel India to DC, Customs for the release of the consignment seized by the Customs at ACC, Cochin on 21.08.03.

35. A study of the NIDB data of the import of various computer parts through various ports of India revealed that the minimum unit prices of those items as noticed in the contemporaneous imports were as below:

- a. Intel Pentium 4 microprocessor 1.9 to 2.4 GHz with FSB 400 MHz to 533 MHz in OEM packing — US \$ 162.
- b. Intel Celeron microprocessor 1.2 to 1.7 GHz, lowest configuration of the Celeron processors imported at the relevant time, in box packing — US \$ 53.
- c. Intel Desktop Mother Board D 865 GBF in box packing — US \$ 100

36. M/s Intel technology Private limited, Bangalore, were requested on 20-

5-2004 to provide the price of their products for sale to India. They, on 24-5-2004 provided the price list Intel products of M/s Intel Semiconductor Ltd., 32/F, 2 Pacific Place, 88 Queensway, Hong Kong, who supplied the price list of Intel products for the Asia Pacific region. As per the price list the FOB price of the above-mentioned products were as given below:

- (a) Intel Pentium 4 microprocessor 1.9 to 2.4 GHz with FSB 400 MHz to 533 MHz in OEM packing — US \$ 159
- (b) Intel Celeron microprocessor 1.2 to 1.7 GHz, lowest configuration of the Celeron processors imported at the relevant time, in box packing — UD \$ 53

37. The CIF value of the microprocessors available in the NIDB database therefore approximated with the FOB value of the same goods in the price list provided by the manufacturer.
38. A consolidated statement of the 11 consignments imported by M/s Indomass Trades N Trans Pvt. Ltd. along with the details of the description of the goods as per the investigation findings, the actual valuation and the actual difference of duty payable by them based on the said investigation was appended as Annexure —II to the Show Cause Notice.
39. From the investigations carried out the following facts emerged:
- (i) M/s Indomass Trades 'N' Trans Pvt. Ltd, Cochin was a firm floated by Shri. B. Bethuraj, who also had a CHA firm in the name and style of M/s Cafco Freight Systems Pvt. Ltd. Shri. Bethuraj in collusion with Shri. Rajesh Jain of M/s Arihant IT Solutions of Chennai misdeclared the value of computer parts to evade payment of customs duty.
 - (ii) M/s Indomass had imported 11 consignments of computer parts covered by 11Bs/E filed during the period from 24.05.03 to 12.08.03 from M/s. Peac Electronics Singapore Pvt. Ltd. covering the following goods:
 - a. 2050 Intel Celeron microprocessors in box packing with declared unit price of US \$ 14.80 was imported vide Bills of Entry Nos. 594/24.05.2003, 676/30.05.2003, 781/99.06.2003, and 865/16.06.2003 whereas actual unit price of these goods is US \$ 53.
 - b. 5458 Intel Pentium 4, .9 to 2.4 GHz n4croprocessors in tray (OEM) packing, without the cooling fans with declared unit price as US \$ 6 (loaded to US \$ 7 by the Customs), was imported vide Bills of Entry Nos. 1041/28.06.2003, 1226/14.07.2003, 1267/17.07.2003, 1335/21.07.03,1407/26.07.2003 and

1614/12.08.03 whereas the actual unit price of these goods is US \$162.

- c. 3400 Intel motherboards D865GBF in box packing with declared the unit price as US \$ 9 was imported vide Bills of Entry No. 594/24.05.2003, 676/30.05.2003, 781/09.06.2003, and 945/21.06.2003, 1226/14.07.2003, 1335/21.07.03, 407/26.07.2003 and 1614/12.08.03 whereas the actual unit price of these goods is US \$ 100.
- (iii) The invoices and the packing lists of the aforesaid goods imported in all the 11 consignments imported by M/s Indomass indicated vague descriptions /incomplete details of the goods as per the plan jointly conspired by Shri. B.Bethuraj and Shri. Rajesh Jain and also their Singapore suppliers.
- (iv) No remittances through the banking channels were made to the suppliers in Singapore for any of the 11 consignments imported and cleared in the name of M/s Indomass even for the values declared in the Bs/E.
- (vi) One consignment consisting of 48 pieces of old and used IBM Laptops, 100 pieces of Intel motherboards D 865 GBF in box packing, 100 pieces of Intel Pentium 4 2.4 Microprocessors with 800 MHz FSB in box packing and also 775 pieces of SD RAM'S, was also sought to be imported and cleared through Air Cargo Complex, Nedumbasserry. This consignment was detained, as the laptops were not manifested. The actual prices of these detained goods were declared in the two invoices furnished to the Customs by the Air consol operators M/s Excel India Pvt. Ltd. vide their letters dated 24.09.2003. The invoices showed that the FOB value of Intel Pentium 4 2.4 Microprocessors with 800 MHzFSB in box packing is US\$ 172.50 and that of Intel motherboard D 865 GBF in box packing is US \$ 97.08. These prices reflected the actual FOB value of these goods supplied to M/s Indomass in earlier consignments also.
- (vii) Shri. B.Bethuraj, as MD of the CHA firm as well as the director of the importing firm M/s Indomass controlled the affairs of both these companies, and signed/caused to be signed the declaration as a CHA/ importer, knowing fully well that these declarations were wrong declarations and would cause evasion of Customs duty.
- (viii) The invoices presented to the Customs with the 11 Bills of Entry were incorrect and values mentioned therein were not acceptable in view of the willful suppression of facts about the make, model, brand, type, specifications, capacity of the goods imported as explained in the earlier paras.
- (ix) Though not admitted by Shri. Rajesh Jain in his voluntary statement u/s 108 recorded on date 15.06.04, the evidences gathered by DRI during the course of investigations and the statements of Shri. K.V.Venugopal of M/s

Excel India Pvt. Ltd., Shri. R. Jayachandran, Officer in charge of CHA M/s Cafco Freight Systems Pvt. Ltd., the signatures found on the dispatch invoices of M/s Indomass and also those found on the D.O. book of M/s Excel India and the clarifications from KPN Travels dated 24.12.2003 revealed that Shri. Rajesh Jain s/o Ugam Chand Jain was the main person who arranged the imports of the items cleared in the aforesaid items.

40. In view of the above, the declared values of the goods could not be accepted as true transaction value and were to be rejected. For the reasons stated earlier, the value could be re-determined only under Rule 8 of CVR, 1988. On this basis, the actual value needed to be re-determined at Rs. 6,25,86,873/- (CIF) under Rule 8 of the Customs Valuation Rules, 1988. The total duty liability on these re-determined values worked out to Rs. 1,59,71,543/- as indicated in Annexure-II of the Show Cause Notice.

41. On account of willful misstatement of the actual value of the goods and also on account of suppression of facts about the make, brand, specification/capacity and type of the Intel motherboards and microprocessors imported, the short levied duty of Rs.1,47,31,887/- was recoverable from the importers M/s Indomass Trades N Trans Pvt Ltd. in terms of proviso to Section 28(1) of the Customs Act, 1962. along with interest under Section 28 AB of the Customs Act, 1962.

42. In as much as the aforesaid goods were mis-declared and under-valued by M/s. Indomass Trades N Trans Pvt Ltd, it appeared that the goods totally valued at Rs. 6,25,86,873/- (CIF) were liable to confiscation under Section 111(m) of the Customs Act, 1962.

43. In view of the acts of omission and commission which rendered the imported goods liable to confiscation as aforesaid, the importers M/s Indomass Trades N Trans Pvt Ltd appeared liable to penalty under Section 114 A and / or 112(a) of the Customs Act, 1962.

44. Shri. Bethusamy Bethuraj, Director and the main operator of the affairs of M/s Indomass Trades N Trans Pvt Ltd and MD of M/s Cafco Freight Systems (CHA) appeared privy to each and every act of omission and commission which led to mis-declaration of material particulars including value, generation of invoices and consequent duty evasion. These acts rendered the goods liable to confiscation. Therefore Shri. Bethuraj and his CHA firm M/s Cafco Freight Systems appeared to have individually rendered themselves liable for penalty under Section 112(a) of the Customs Act, 1962.

45. Shri. Rajesh Jain of Arihant IT Solutions, son of Ugamchand Jain resident of 3A, Ankoor Manor, 271, Poonamallee High Road, Chennai - 10 was a beneficiary of the entire operation. His acts of omissions and commissions right from the stage of generating import invoices for the clearance, to the stage of dealing with the offending goods imported and cleared in the name of M/s, Indomass Trades N Trans Pvt Ltd rendered the goods liable to confiscation under the Customs Act, 1962. Therefore, Shri. Rajesh Jain appeared liable to penalty under Section 112(a) of the Customs Act, 1962.

46. Therefore M/s. Indomass Trades N Trans Pvt Ltd, Cochin were called upon to show cause as to why:

- (a) the declared unit prices of US \$ 9 per piece, US \$14.8 per piece and US \$ 6 per piece, for Intel motherboard 865 GBF (in box packing), Intel Celeron Microprocessor 1.2/1.3/1.4/1.7 GHz (in box packing) and Intel Pentium 4 Microprocessor 1.9 to 2.4 GHz (in OEM Packing) imported under the subject 11 Bills of Entry as indicated in the Annexure-II to the Show Cause Notice, should not be rejected and re-determined at US \$ 100 , US \$ 53 and US \$ 162 respectively, under Rule 8 of the Customs Valuation Rules, 1988 read with Section 14 of the Customs Act, 1962;
- (b) differential duty of Rs. 1,47,31,887/- should not be demanded under proviso to Section 28(1) of the Customs Act, 1962 along with interest under Section 28 AB ibid;
- (c) the goods imported under the subject 11 Bills of Entry, totally valued at Rs. 6,25,86,873/-(CIF) should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (d) penalty should not be imposed on them under Section 114 A and/or 112(a) of the Customs Act, 1962.

47. Shri Bethusamy Bethuraj, Managing Director of M/s Indomass Trades N Trans Pvt. Ltd. Cochin was called upon the show cause as to why penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962; M/s Cafco Freight Systems Pvt. Ltd., Cochin was called upon to show cause as to why penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962; Shri Rajesh Jain, son of Ugamchand Jain, resident of 3A, Ankoor Manor, 271, Poonamallee High Road, Chennai-10 was called upon to show cause as to why penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.

48. Shri. Rajesh Jain submitted written reply to the Show Cause Notice through his counsel Adv A K Jayaraj vide letter dated 19.01.2008. Since the other noticees did not respond to the Show Cause Notice reminder was sent

on 18.02.2008. Out of these, the reminders addressed to Shri Bethusamy Bethuraj at his Indomass & Cafco addresses at Willington Island, Kochi was delivered and reminder addressed to M/s Indomass, Panambilly Nagar, Kochi was returned undelivered. However, no reply was received from them. An opportunity for Personal Hearing was granted on 07.05.2008 and the same was communicated to the noticees vide letter dated 22.04.2008. Adv AK Jayaraj, vide his letter dated 06.05.2008 requested for adjournment by 8 weeks. Mr Bethusamy Bethuraj also requested adjournment by a month on behalf of himself as well as for M/s Indomass and M/s Cafco vide letters dated 06.05.2008: Accordingly, Personal Hearing was fixed on 07.07.2008 and communicated to the noticees vide letter dated 19.05.2008. The letters addressed to Mr Bethusamy Bethuraj at his Kochi as well as Madurai address (which was mentioned in the letter seeking adjournment), to M/s Indomass and M/s Cafco were returned undelivered.

49. Adv A K Jayaraj appeared for Personal Hearing on behalf of Shri Rajesh Jain on 07.07.08. He reiterated his submissions in the written reply and stated that his client was no way connected with the import nor connected with the importer. Even in the Show Cause Notice M/s Indomass Trades 'N' Trans Pvt Ltd was the importer. He submitted copies of judgments to emphasise that;

- i. "in order to constitute abetment, the abetter must be shown to have intentionally aided to the commission of crime"
- ii. "penal proceedings under Customs Act are quasi criminal and there should be positive and tangible evidence produced by revenue before penalty could be imposed".
- iii. "no penalty should be imposed for technical or venial breach of legal provisions"

50. Mr. Bethusamy Bethuraj, represented on behalf of M/s Indo Mass and M/s Cafco vide letter dated 17.07.08 seeking one more chance for personal hearing. Accordingly personal hearing was fixed on 11.08.08. Adv George Poonthotam, counsel for M/s Cafco, vide letter dated 11.08.08 requested for adjournment of personal hearing which was accepted and fresh date for personal hearing was fixed on 03.09.2008. Mr Bethusamy Bethuraj appeared on behalf of M/s Indomass and M/s Cafco on 05.09.2008 and submitted that the subject consignment was a regular consignment, that he had no malafide intention, that description, value etc were clearly declared, the case was barred by limitation and he would file a reply with additional points within 2 days. However, he did not filed additional written reply as submitted during personal hearing even 1 month thereafter.

51. The matter was adjudicated by the Commissioner of Customs, Custom

House, Cochin and Order in Original No. 26/2008 dated 11.11.2008 was passed, wherein the adjudicating authority passed the following order:

- (a) The value of goods in respect of the **11** Bills of Entry listed in Annexure to the Show Cause Notice was re-determined at Rs. Rs. 6,25,86,873/- (CIF). The demand of differential duty amounting to Rs. 1,47,31,887/- together with applicable interest was confirmed.
- (b) The goods covered under the Bills of Entry above, totally valued at 6,25,86,873/- (revised value) were held liable for confiscation under section 111(m) of the Customs Act, 1962.
- (c) A penalty of Rs: 1,47,31,887/- together with applicable interest from the date of payment of short levied duty to the date of payment of final duty was imposed on M/s. Indomass Trades N Trans Pvt Ltd, Cochin under section 114A of the Customs Act, 1962.
- (d) A penalty of Rs. 50,00,000/- (Rs. Fifty Lakh only) each was imposed on Shri Bethusamy Bethuraj, Shri Rajesh Jain and M/s Cafco Freight Systems under Section 112 of the Customs Act, 1962.

52. Aggrieved by the Order in Original No. 26/2008 dated 11/11/2009 passed by the Commissioner of Customs, Cochin, Shri Rajesh Jain moved to Customs, Excise & Service Tax Appellate Tribunal, Bangalore vide Customs Appeal No. 239 of 2009.

53. In his appeal Shri Rajesh Jain had submitted that the entire allegation against him was made on the basis of some statements of Shri K.V.Venugopal of M/s Excel India Pvt. Ltd. and Shri R. Jayachandran of M/s Cafco Freight Systems Pvt. Ltd, who had narrated his involvement in the imports and also had identified his photographs. As per his submissions, since the entire case was made out on the basis of statements made by 3rd parties, he had asked for cross examination of the concerned persons. He further submitted that there was no admission on his part.

54. Agreeing to the submissions made by Shri Rajesh Jain, the Hon'ble CESTAT, Bangalore set aside the Order in Original No. 26/2008 dated 11/11/2008 and remanded back the matter with direction to give the appellant sufficient opportunity and to reconsider the entire case only after conducting cross examination of the witnesses whose statements were used against the appellant for imposition of penalty. The final order No.

A/20146/2022 dated 29/03/2022 passed by the Hon'ble Tribunal was accepted by the Commissioner of Customs, Cochin.

55. In pursuance of the final order of Hon'ble CESTAT, efforts were made to locate the whereabouts of the witnesses. Letters dated 01.11.2023 sent to witnesses seeking convenient date of cross examination were returned by the postal authorities undelivered. Subsequent summons sent to witnesses as well as letter to the appellant Shri Rajesh Jain, S/o Ugamchand Jain to appear for cross examination on 15.02.2024 and 25.03.2024 were also returned undelivered by the postal authorities.

56. Since delivery of the letters for cross examination through postal mode did not materialize, as provided in Section 153 of the Customs Act, 1962, Summons to the witnesses to appear before the adjudicating authority for cross examination on 15/02/2024 was served by way of publishing on departmental website <https://www.cochincustoms.gov.in> (under public notice section) and on notice board of Custom House, Cochin, sufficiently in advance. Since, neither the witnesses nor Shri Rajesh Jain turned up for cross examination on 15.02.2024, another date, 25/03/2024, was fixed for cross examination. All the summons addressed to all the witnesses were again published on the departmental website as well as the notice board of Custom House, Cochin as per provisions of Section 153 of the Customs Act, 1962. Exercising due diligence to implement the order of Hon'ble CESTAT, letter intimating the cross examination date was also sent to Advocate A.K.Jayaraj, who had appeared on behalf of Shri Rajesh Jain before the Hon'ble CESTAT, by registered post at his address mentioned in letter F.No. C/239/2009 dated 01/04/2022 issued by Deputy Registrar, Customs Appeal Branch, CESTAT, Bangalore. However, on 25.03.2024, the date of cross examination, neither the witnesses nor Shri Rajesh Jain or his representative appeared. No communication was also received either from Shri Rajesh Jain or his Advocate before the Hon'ble CESTAT A.K.Jayaraj.

57. Discussion and Findings: It is evident that despite all efforts, cross examination could not be held and there has been no response from the appellant Shri Rajesh Jain or his representative also. Therefore, it appears that Shri Rajesh Jain, who had appealed before Hon'ble CESTAT leading to Hon'ble CESTAT Final Order No. 20146/2022 dated 29/03/2022 is no longer interested in agitating his case. Rather, his inaction in the matter point towards his adopting delaying tactics in this very old import matter pertaining to the year 2003. Under these circumstances, since no new fact has emerged in the case through cross examination, I reach the conclusion that the order

No. 26/2008 dated 11.11.2008 passed by the then adjudicating authority merits no interference at this stage and find that the order No. 26/2008 dated 11.11.2008 passed by Commissioner of Customs, Cochin and addressed to M/s Indomass Trades 'N' Trans Pvt. Ltd. (39/5889 A, Parambithara Cross Road, Panampilly Nagar, Cochin-36), Shri Bethusamy Bethuraj (Director, M/s Indomass Trades 'N' Trans Pvt. Ltd, IInd Floor, Jerri Kareem Building, Marar Road, Willingdon Island, Cochin-3), M/s Cafco Freight Systems Pvt. Ltd. (CHA No. 127, IInd Floor, Jerri Kareem Building, Marar Road, Wellington Island, Cochin-3) and Shri Bethusamy Bethuraj (Managing Director, M/s Cafco Freight Systems Pvt. Ltd., CHA No. 127, IInd Floor, Jerri Kareem Building, Marar Road, Wellington Island, Cochin-3) is proper in all respects. With respect to the role of Shri Rajesh Jain (S/o Ugamchand Jain, 3A, Ankoor Manor, 271, Poonamallee High Road, Chennai-10), I pass the following order:

ORDER

I impose a penalty of Rs. 50,00,000/- (Rs. Fifty Lakhs only) on Shri Rajesh Jain, S/o Ugamchand Jain, 3A, Ankoor Manor, 271, Poonamallee High Road, Chennai-10 under Section 112 of the Customs Act, 1962.



गुरकरण सिंह बैस

GURKARAN SINGH BAINS

आयुक्त COMMISSIONER

This Order in Original is passed without prejudice to any other action that may be initiated against the noticees under any other law for the time being in force in the Republic of India



Issued to:

Shri Rajesh Jain,
S/o Ugamchand Jain,
3A, Ankoor Manor,
271, Poonamallee High Road,
Chennai-10

Copy Submitted to:

The Chief Commissioner of Central Tax, Central Excise & Customs,
Thiruvananthapuram Zone. C.R. Building, I.S.Press Road, Cochin-18

Copy to:

1. Master File,
2. Commissioner's File
3. The Assistant Commissioner of Customs, Prosecution Cell, Custom House, Cochin
4. The Assistant Commissioner of Customs, Legal Unit, Custom House, Cochin
5. The Asst. Commissioner of Customs, Review Cell, Custom House, Cochin.
6. The Asst. Commissioner of Customs, Revenue Recovery Cell
7. The Asst. Commissioner of Customs, SIIB, Custom House, Cochin.
8. Notice Board, Custom House, Cochin

