IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2017

Pronounced on : 15.12.2017

Coram

The Honourable Dr.Justice G.Jayachandran

Crl.A.Nos.248 and 238 of 2013

V.S.Sundararajan .. Appellant in Crl.A.No.248 of 2013

D.Ramani .. Appellant in Crl.A.No.238 of 2013

/versus/

Inspector of Police,
CBI/ACB/Chennai ..Respondent in Crl.A.No.248 of 2013

Inspector of Police,
SPE:CBI:ACB,
Chennai
(RC MAI 2010(A) 0001) .. Respondent in Crl.A.No.238 of 2013

Criminal Appeals filed under 374(2) of the Criminal Procedure Code praying to set aside judgment of the conviction and sentence made in C.C.No.33 of 2010 dated 12.03.2013 on the file of the XII Additional Special Judge for CBI cases at Chennai.

WEB COPY

For Appellant :Mr.A.Venkataramani, Sr.C. for
Mr.M.Palanivel
(in C.C.No.248 of 2013)
Mr.A.Ganesh
(in C.C.No.238 of 2013)
For Respondent :Mr.K.Srinivasan, Spl.PP for
CBI cases (in both appeals)
----

http://www.judis.nic.in

COMMON JUDGMENT

These two criminal appeals are against the judgment of the trial Court in C.C.No.33 of 2010 on the file of the XII Additional Special Judge for CBI cases, Chennai. The appellant in Crl.A.No.248 of 2013 is V.S.Sundararajan[A-1] and the appellant in Crl.A.No.238 of 2013 is D.Ramani[A-2]. Both of them on 06.01.2010 while they were serving as Deputy Commissioner of Customs and Apprising Officer respectively at Air Cargo Complex, Meenambakkam, Chennai, demanded and accepted of bribe Rs.1,000/- and Rs.1,500/- respectively from one Shri.V.Prakash, Proprietor of M/s V.P.Traders, Vridhachalam, Cuddalore District, to clear a consignment containing two numbers of Printed Circuit Board (in short "PCB") and found guilty of the said offence by the trial Court.

2. Since both appeals arise out of the same judgment and the points canvassed by the appellants are almost same, this Court finds fit to deliver common judgment. For the sake of convenience, the appellants are described as per their ranking in the trial Court.

3. Case of the prosecution in brief is as follows:

The complaint dated 05.01.2010 from V.Prakash [PW-3], Proprietor

WEB COPY
http://www.judis.nic.in

of M/s V.P.Traders, Vridhachalam, Cuddalore District, received by the Superintendent of Police, CBI, disclosed that the complainant had imported two Printed Circuit Board (PCB) from Colombo by courier through M/s Aramex India Private Limited, Chennai on 29.12.2009. When PW-3 enquired the courier company, he was informed by them that the parcel contains Used Printed Circuit Board (UPCB). So, only after adjudication the goods will be released from the Customs. They advised him to meet V.S.Sundararajan[A1], Deputy Commissioner of Customs personally and to explain about Printed Circuit Board, he has imported. Accordingly, on 30.12.2009, PW-3 met V.S. Sundararajan[A-1] and explained that the goods are used Printed Circuit Board, instead of sending it through Cargo, it has been inadvertently sent by Courier and therefore, without levying penalty, the goods may be cleared. After hearing the explanation, A-1[V.S.Sundararajan] asked him to meet A-2[D.Ramani] the Apprising Officer and A-2 will tell him what to do in this regard. On the same day, PW-3[Mr.V.Prakash] met A-2[D.Ramani] and asked him, what he should do for clearing his goods. A-2[D.Ramani] told him to come on 05.01.2010. When PW-3[Mr.V.Prakash] met A-2 on 5.01.2010, he demanded bribe of Rs.1,500/- for him and Rs.1,000/- to A-1[V.S.Sundararajan] and if bribe not given, he will adjudicate and there will delay in getting the goods cleared. A-2[D.Ramani] further told that the bribe money of Rs.1000/- for

WEB COPY

A-1[V.S.Sundararajan] shall be given directly to A-1 and the bribe money of rs.1500/- for him should be given to one Shri.Shahul Hameed(Approver examined as PW-6) staff of M/sAramex India Private Limited.

4. Mr.Murugan, Superintendent of Police, who received the above said complaint Ex.P-4, had instructed Mr.S.Sivasankaran[PW-10],Inspector of Police to proceed with the investigation and before registering the First Information Report, he summoned Mr.T.Sathyamoorthy, Inspector [PW-7], who was on leave to come over to CBI office to attend an urgent work. When PW-7 came to the office at 8.10 p.m., he was given the complaint of V.Prakash and instructed to verify and take necessary action. After interacting with PW-3[Mr.V.Prakash] in his cabin, he told PW-3[Mr.V.Prakash] to come on the next day i.e 06.01.2010 at 9.00 a.m. With Rs.2,500/- for the trap.

5. On 06.01.2010, Mr.T.Sathyamoorthy, Inspector registered First Information Report at 09.00 a.m., made all preparatory arrangement for trap like getting two shadow witnesses for the trap and mahazar (Ex.P-5) for the phenolphthalein test demonstration and entrustment of currencies smeared with phenolphthalein. The trap team along with the defacto complainant [PW-3] and shadow witnesses Mr.M.V.V.Sathyanarayana[PW-

सत्यमेव जयते
WEB COPY
http://www.judis.nic.in

4] and Mr.Senguttavan [not examined] went to Air Cargo Complex at about 12.45 p.m. PW-3 [Mr.V.Prakash] and PW-4 [Mr.M.V.V.Sathyanayarana] went to first floor of the courier building, where A-1 [V.S.Sundararajan] and A-2 [D.Ramani] were serving and came down after some time along with Sri.Shahul Hameed [PW-6]. The trap team saw PW-6 extending his right hand and PW-3 took out Rs.1,500/- from his shirt left side pocket and gave it to PW-6. On receiving the pre-arranged signal from PW-3, Shri.Shahul Hameed was intercepted and apprehended. Soon after the team went to first floor apprehended A-1[V.S.Sundararajan]. The hands of A-1 was dipped into sodium carbonate solution, which turned pink. Then, on personal search of A-1, PW-7[Mr.T.Sathyamoorthy] found Rs.1,000/- from the inner pant pocket of A-1, which tallied with the numbers recorded in the entrustment mahazaar Ex.P-5. Similarly, the tainted money of Rs.1,500/- from Shri.Shahul Hameed was recovered and on his information that the money was received by him on the directions of D.Ramani, A-2[D.Ramani] was arrested and his cabin was searched.

WEB COPY

6. The sample solution of the hand wash, pant wash of A-1[V.S.Sundararajan] and hand wash of Shri.Shahul Hameed were sent for chemical analysis and found positive for the presence of phenolphthalein.

http://www.judis.nic.in

Shri.Shahul Hameed was tendered pardon by PW-9[Mr.M.Gopalan],X Metropolitan Magistrate, Egmore. He was treated as Approver and examined as PW-6.

7. Accepting the above case of the prosecution, the trial Court has convicted A-1 and A-2 and sentenced them to undergo one year RI and to pay a fine of Rs.1000/- in default to undergo 3 months SI each for the offence under Sections 120-B IPC r/w Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988,; to undergo one year RI and to pay a fine of Rs.1000/- in default to undergo 3 months SI each for the offence under Section 7 of Prevention of Corruption Act, 1988 and to undergo one year RI and to pay a fine of Rs.1,000/- in default, to undergo SI for a period of 3 months each for the offence under Section 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The period of sentence for the substantial offence ordered to run concurrently.

WEB COPY

8. The judgment of the trial Court is challenged broadly on the following grounds by the appellants:

The defacto complainant[PW-3] to evade customs duty, mis-declared the goods imported by him as Circuit Board in the Bill of Entry and attempted to import two Used Printed Circuit Board. When the defacto

http://www.judis.nic.in

complainant[PW-3] met A-1[V.S.Sundararajan] with a request letter to clear the goods, without duty, he did not entertain his request, but directed A-2[D.Ramani] to inspect the goods and apprise, as per Customs Regulations. When the parcel received through Courier was inspected in the presence of the defacto complainant[PW-3], they found two Used Printed Circuit Board, which is dutiable. Accordingly, duty of Rs.4,490/- was levied. Since his attempt to evade duty did not materialised, the defacto complainant[PW-3] had given the false complaint at the instigation of the Courier cartels having grudge over A-1 for streamlining the improper detention of goods by the courier company. The Approver Shri.Shahul Hameed examined as PW-6 is an Employee of the Courier company by name M/s Aramex India Private Limited. Though there is no meeting of mind between him and the accused officials, the prosecution has invented theory of conspiracy between him and the accused officials, formally arrayed him as A-3[Shri.Shajul Hameed] and later, treated him as Approver and examined as PW-6. The statement recorded under Section 164 Cr.P.C and the deposition of PW-6[Shri.Shahul Hameed] does not indicate, he was privy to the alleged crime. Therefore, he does not fall within the definition of approver. While so relying his evidence, which is exculpatory in nature to convict the other accused, is improper and illegal.

WEB COPY

9. That apart, the prosecution case, right from receiving the alleged complaint from PW-3 till the recovery of tainted money, is packed with contradictions and unbelievable story. The invoice Ex.P-9 and the Airway Bill Ex.P10 are the documents produced by the defacto complainant[PW-3] to the Customs Department at the time of import. Later, after the trap and during the adjudication proceedings, he has furnished Ex.D-3 invoice for the goods imported and Air Bill Ex.D-2, which are not same, what he produced earlier. The difference, in detail and the print, which could be seen patently through naked eye, have not at all been taken note by the trial Court, while appreciating the evidence.

10. Regarding recovery of tainted money, it is contented by the learned counsel appearing for the second accused in Crl.A.No.238 of 2013 that the tainted money of Rs.1,500/- admittedly given to PW-6[Shri.Shahul Hameed] is not given on his demand, but voluntarily given by PW-3[Mr.V.Prakash]. The recovery of that money from PW-6[Shri.Shahul Hameed], no way link A-2[D.Ramani]. The approver evidence is that PW-3[Mr.V.Prakash] tapped his back and gave the tainted money to hand it over to A-2[D.Ramani] and he was not aware, what for that money was given. At the same time, he as well as other prosecution witnesses admit that when PW-3[Mr.V.Prakash] gave money to PW-6[Shri.Shahul Hameed],

WEB COPY

A-2[D.Ramani] was within their vicinity. Then, why should PW-6[Shri.Shahul Hameed] receive the money, instead of requesting PW-3[Mr.V.Prakash] to give the money directly to A-2, who was in their vicinity?.

11. Regarding recovery of Rs.1,000/- from A-1[V.SSundararajan], the learned counsel for the appellant in Crl.A.No.248 of 2013 contented that, according to PW-3[Mr.V.Prakash], he kept the tainted money inside the table drawer of A-1 as instructed by A-1 and came out from his room at first floor. The trap laying officer [PW-7]has deposed that after conducting phenolphthalein test, by dipping the hands of A-1[V.S.Sundararajan] in the sodium carbonate solution, he declared A-1 under arrested and asked him, where he kept the money. A-1 [V.S.Sundararajan] pointed his inner pant pocket. He conducted body search of A-1 and recovered the money. Thereafter, A-1 was provided with a lungi and then, was asked to remove his pant.

WEB COPY

12. Whereas PW-4[Mr.M.V.V.Sathyanarayana] the accompanying witness has deposed that, after conducting the phenolphthalein test by dipping the hands of A-1 in the sodium carbonate solution, PW-7[Mr.T.Sathyamoorthy] enquired A-1[V.S.Sundararajan] where he kept the

http://www.judis.nic.in

money. A-1 showed his inner pocket of his pant. Then, a lungi was given to A-1. After wearing the same, he removed and handed over his pant, then the Inspector found the money in the inner pocket of A-1's pant.

13. The learned counsel for the appellant contented that the trial Court erred in not considering the material contradiction between PW-4[Mr.M.V.V.Sathyanarayana] and PW-7[Mr.T.Sathyamoorthy], coupled with the the failure of conducting search of the table drawer of A-1 and failure to sent the pant of A-1 for chemical analysis and also the explanation given by A-1 that when he returned to his seat, after lunch, he found money inside his drawer, so he took it and was wondering, then, the trap team entered his room and held him. Had the trial Court properly and cumulatively considered these facts in a holistic manner, the Court would have not arrived at the wrong decision.

सत्यमेव जयते
WEB COPY

14. Per contra the Special Public Prosecutor appearing for CBI cases contented that, PW-3[Mr.V.Prakash] imported two numbers of Printed Circuit Boards from Colombo. It was sent to repair and return through M/s Aramex India Private Limited through Airway bill dated 29.12.2009. When PW-3[Mr.V.Prakash] came to know from M/s Aramex India Private Limited that he has to meet A-1 for clearing the goods, when he met A-1 on

http://www.judis.nic.in

30.12.2009. A-1 called A-2 and had discussion. Later, A-2 came out from A-1 chamber and told PW-3[Mr.V.Prakash] to come on 05.01.2010 and he will tell, what should be done to get the goods cleared. On 05.01.2010, A-2 demanded bribe of Rs.1,500/- for him and Rs.1,000/-for A-1. PW-3[Mr.V.Prakash] brought this to the knowledge of CBI by way of complaint and after verifying the truth in the complaint, the trap was laid and the tainted money was recovered from PW-6 and A-1. The evidence of defacto complainant[PW-3], accompanying witness [PW-4] and the accused turned approver [PW-6] cogently prove the sequence of event starting from meeting of [PW-3] and the accused on 30.01.2009, demand of bribe by A-2 on 05.01.2010, recovery of tainted money from A-1 and from PW-6 on behalf of A-2. The documents relating to the subject import and the evidence of PW-11 establish that used Printed Circuit Board are prohibited from import and liable for confiscation and penalty. To avoid duty PW-3[Mr.V.Prakash] has approached A-1 and A-2, to clear the prohibited goods, without penalty, which may come around Rs.7,000/-. A-2 had demanded bribe Rs.2,500/- out of which his share is Rs.1,500/- and the share of A-1 is Rs.1,000/-. Through trap, the accused were caught with tainted money. Shri Shahul Hameed[PW-6] who acted as agent of A-2 was tendered pardon after considering his confession statement given to the Magistrate.

WEB COPY

http://www.judis.nic.in

15. The cogent evidence let in by the prosecution has been rightly accepted by the trial Court and the accused were held guilty. The accused persons were not able to give any plausible explanation for receipt of the tainted money. Contrarily inconsistent plea had been taken by A-1 regarding the possession and recovery of the money from him. Therefore, there is no substance in the appeal. Hence, these appeals are liable to be dismissed.

16. Fulcrum of the prosecution case is the import of two Used Printed Circuit Board by PW-3 [Mr.V.Prakash] from SriLanka. The arrival of the goods at Air Cargo Complex, Meenambakkam on 30.12.2009 is not disputed by the prosecution or the defence. According to the defacto complainant[Pw-3], he went to the courier company to collect the parcel, but he was instructed to meet A1[V.S.Sundararajan], since there was some problem in clearing the parcel. PW-3[Mr.V.Prakash], in his evidence, admits that he went to Cargo Complex on 30.12.2009 with a letter requesting to the Customs Officials to clear the consignment without levying any fine, admitting that he has wrongly imported them through Courier and not properly declared its description. The said letter of the defacto complainant[PW-3] is marked as Ex.D4 through PW-3, during his cross examination.

WEB COPY

17. This letter of PW-3[defacto complainant] dated 29.12.2009 indicates that he has requested the Deputy Commissioner of Customs that he had imported the consignment containing Printed Circuit Board through M/s Aramex India Private Limited and it was booked by his agent in Colombo. The supplier had provided him warranty and there is no commercial value involved. Hence, he requested to clearing the consignment with exemption from duty.

18. Ex.P8 is the Courier Bill of Entry for Dutiable Goods submitted by M/s Aramex India Private Limited to the Customs Department on 30.12.2009 wherein the consignment of the defacto complainant describing it as two pieces of Circuit Board with invoice value of 750 US Dollar, assessed value of Rs.35,000/- in Indian currency and Duty has been estimated as Rs.4,490/-. This exhibit indicates that this was prepared on 30.12.2009 and received by the Custom Department on the same day. The invoice for the said Cargo is marked as Ex.P9 wherein the goods has been described as two pieces of Printed Circuit Board. Nowhere the defacto complainant[PW-3] has disclosed the truth either in the Courier bill marked as Ex.P10 or in the invoice Ex.P9 or in the 'Bill of Entry' Ex.P8 that what he has imported is Used Printed Circuit Board. In this regard, the

WEB COPY

http://www.judis.nic.in

adjudication proceeding relied on by the prosecution which has been marked as Ex.P24, the adjudicating authority had found that from the examination report based on the proceedings conducted at Common user Courier Terminal[Ex.P23] and the acceptance made by the consignee himself in his letter dated 15.04.2010 the nature of the item (Printed Circuit Board) is an used item.

19. However, the importer has not declared so in his Bill of Entry and Airway bill. In terms of para 2.17 of Foreign Trade Policy 2004-2009, the used goods shall be restricted for imports and such goods may be imported only in accordance with the Provisions of FTP, ITC (HS), HBP-Vol I, Public Notice or an authorisation issued in this regard. In the absence of any such authorisation for the import of the said Used Printed Circuit Board, the violation of import policy is thereby attracted. Such violations caused due to the restriction on account of policy could be deemed as prohibition for import and hence, covered under Sec.111(d)(f)(o) of Customs Act, 1962, rendering the consignment liable for confiscation and therefore, the consignee, Shri.V.Prakash of V.P.Traders, is liable for penalty under Section 112 of Customs Act, 1962. In view of the said finding, the assessment made by the Department on 05.01.2010, charging duty of Rs.4,490/- is confirmed. In lieu of confiscation of the goods under

WEB COPY
http://www.judis.nic.in

Section 111(d)(f)(o) of the Customs Act, 1962 the importer was permitted to redeem the goods on payment of fine of Rs.1,000/- and penalty of Rs.5,000/- for policy violation. Thus, from the very fact placed by the prosecution, it is clear that neither A1[V.S.Sundararajan] nor A2[D.Ramani] were inclined to entertain the request of the defacto complainant to clear the goods without levying the duty. That is why they have not accepted the request letter Ex.P4.

20. It is the specific case of the defacto complainant[PW-3] is that on 05.01.2010, the defacto complainant met A2[D.Ramani] and he demanded Rs.1,500/- for him and Rs.1,000/- for A1[V.S.Sundararajan] and also instructed him to give bribe money to one Shri Shahul Hameed Agent of M/s Aramex India Private Limited. Since the defacto complainant[PW-3] was not inclined to give bribe, he went to the CBI office and gave his written complaint. PW-3[Mr.V.Prakash], in his evidence, has stated that he went to the CBI office in the evening on 05.01.2010 and met the Superintendent of Police and gave his complaint Ex.P4. The Superintendent of Police, after receiving his complaint, asked him to wait. After one hour, Mr.Sathyamoorthy[PW-7], Inspector came and enquired him.

WEB COPY

http://www.judis.nic.in

21. As far as PW7 is concerned, in his evidence, he has deposed that, on 05.01.2010 he was on leave. He received a message from his office to attend an urgent work so he went to the office at about 08.10 p.m. The Superintendent of Police gave the complaint dated 05.01.2010. He met the complainant and after discussing him, he asked the defacto complainant [PW-3] to come on the next day i.e on 06.01.2010 along with the alleged bribe money. Accordingly, PW3[Mr.V.Prakash] came to the CBI office on 06.01.2010 at about 09.00 a.m, with the tainted money and the tainted money was smeared with phenolphthalein. Though PW-3[Mr.V.Prakash] and PW-4[Mr.M.V.V.Sathyanarayana] have deposed that A1[V.S.Sundararajan] demanded bribe and asked PW-3[Mr.V.Prakash] to put the money in the table drawer, in the cross examination of PW-4 [Mr.M.V.V.Sathyanarayana] admits that the cabin of A-1 is an Air-Conditioned cabin with automatic door closure. While PW3 [Mr.V.Prakash] says that PW-4 [Mr.M.V.V.Sathyanarayana] was standing outside the A-1's chamber and watching the transaction three feet away from the cabin through open door.

WEB COPY

22. This contradiction was made during the cross examination of PW-4 [Mr.M.V.V.Sathyanarayana], coupled with the contradiction between PW4 and PW7 regarding the manner in which the tainted money was

http://www.judis.nic.in

recovered from A1 [V.S.Sundararajan] creates doubt about the reliability of the PW-4's evidence.

23. Further, PW-4[Mr.M.V.V.Sathyanarayana] has deposed that when the Inspector asked A1[V.S.Sundararajan] where he kept the bribe money received from the complainant, A-1 showed his inner pocket of pant. After giving a lungi to A1, he was asked to remove his pant and hand over to the Inspector. The Inspector on receiving the pant of A1 [V.S.Sundararajan] found the money in the inner pocket. Whereas PW7 [Mr.T.Sathyamoorthy] the trap laying officer has deposed that when A1[V.S.Sundararajan] was asked where he has kept the amount of Rs.1,000/- received from PW-3[Mr.V.Prakash], A1 pointed the inner pant pocket. Personal search was conducted by him and found Rs.1,000/- in the inner pocket of the pant. This contraction read with the explanation of A1[V.S.Sundararajan] that on 06.01.2010, after finishing his lunch, he came to his office cabin. On opening his table drawer, he found currency notes, which do not belong to him. As he was wondering how the currency deposited in the table drawer, two persons rushed in to the room. One identifying himself as CBI Inspector and demanded, where is the bribe amount, he told him that he did not receive any bribe, when he was away for lunch, some one has left the money in his table drawer. Thus,

WEB COPY

explanation has been given by A1, how the money was found in his possession and the manner in which it was recovered from him.

24. At this juncture, the content of the complaint requires a deep analysis. If A1 [V.S.Sundararajan] and A2[D.Ramani] had conspired to receive bribe from the defacto complainant and want the same to be collected discreetly through a third party, there is no necessity for A2 to say that his bribe money amount should be given to Shri.Shahul Hameed[PW-6] and the bribe money of A1 should be given to A-1 directly.

25. This Court wants to emphasis his improbability because Shri.Shaul Hameed, who turned as Approver and examined as PW-6 is not acquittance to A1 or A2. It is an admitted fact that he was substituted only a few days prior to trap to the regular staff of M/s Aramex India Private Limited, who was in-charge of Customs clearance. A1 admittedly has not demanded any bribe from PW-3[Mr.V.Prakash]. It is the uncorroborated version of PW-3[Mr.V.Prakash] that on 06.01.2010, A1 demanded money and asked him to place it in his table drawer. This has happened, after A1 and A2 had refused the request of PW-3 to grant duty exemption to the goods pointing that he has imported goods mis-declaring it as Printed Circuit Board without mentioning it as Used Printed Circuit

WEB COPY

http://www.judis.nic.in

Board. In such circumstances, PW-6[Mr.Shri Shahul Hameed], who claims to have received the money from PW-3 [Mr.V.Prakash] on behalf of A2[D.Ramani], cannot be a worthy witness to rely upon for the simple reason that he is staff of M/s Aramex India Private Limited, which has transported consignment from Colombo to Chennai and he is representative Agent of the defacto complainant. Any money transacted between them cannot be attributed as bribe money to the accused person unless and until there is strong substantial evidence to prove that PW-3 gave Rs.1,500/- to PW-6[Shiri Shahul Hameed] as bribe to be given to A1.

26. In addition, as pointed out by the learned counsel appearing for the appellant that it is admitted by all the witnesses that when PW-3[Mr.v.Prakash] gave money to PW-6 [Shri Shahul Hameed], A-2[D.Ramani] was within their vicinity near the car parking. If the money given to PW-6 is meant as bribe for A2, PW-6 would have asked PW-3[Mr.V.Prakash] to give the money directly to A2. It is admitted by both PW-3 and PW-4 that PW-6 was having all the papers relating to the import of 2 pieces of Printed Circuit Board by PW-3, so the probability of giving this money to PW-6 for the professional charge cannot be ruled out.

27. In such circumstances, the money transaction between PW-3

WEB COPY

and PW-6 just because it is smeared with phenolphthalein cannot be adequate to hold that it was bribe money received on behalf of A-2. The evidence relied on by the prosecution are very weak and the documents relied on by the prosecution, more particularly, the import documents produced by the defacto complainant are not consistent but what was produced before the Customs before trap is different from what has produced during the adjudication proceeding after the trap. Comparison of Exs.P9 and D6 are invoices imported from G.Ramshanker of Colombo, Sri Lanka pertaining to 2 pieces of Circuit Board but we find material corrections and alterations in this. When Ex.P9 was submitted to Department before the trap, it does not contain the word "repair and return" and 'duty exempted' under Notification No.94-96(2sheets). Thus, it is evident that the defacto complainant as an importer has produced two different documents for the very same goods at two different point of time.

सत्यमेव जयते
WEB COPY

28. Likewise, there is a material difference between Ex.P-23 and Ex.D-14. Though both documents and narration of proceedings conducted at Common User Courier Terminal, Mennapakkam, Chennai at the chamber of Assistant Commissioner, on 16.25 hours, in Ex.P-23 two witnesses viz., Shri.Shahul Hameed and Mr.T.Sathyamoorthy were shown

http://www.judis.nic.in

as PW-6 and PW-7 and their signatures are found in Ex.D-14. Whereas their signature are not available in Ex.P-23.

29. The bone of contention between the importer and the Custom Department was regarding the nature of the goods, whether it is used Printed Circuit Board or Brand new Printed Circuit Board. Whether it was imported as sample or imported for commercial purpose. The appellants herein had made out the case of defence that having found the defacto complainant had violated the exemption policy they have taken measure to impose duty and penalty on the goods. Aggrieved by that, he had given a false complaint to the CBI. The investigating officer without proper verification on the fact had arrested A1[V.S.Sundararajan] and A2[D.Ramani], based on the money recovered from PW-6[Shri.Shahul Hameed] and the money planted by PW-3[Mr.V.Prakash] in the table drawer of A1[V.S.Sundararajan], when he was away from the seat.

WEB COPY

30. On cumulative assessment of the evidence placed by the prosecution and in the light of the fact that PW-4 [Mr.M.V.V.Sathyanarayana] the accompanying witness does not inspire the confidence of the Court, due to contradictions and inconsistency it may not be proper to uphold the conviction of the

http://www.judis.nic.in

appellants, based on uncorroborated and doubtful evidence of PW-3[Mr.V.Prakash] and PW-6[Shir Shahul Hameed]. Hence, these appeals are liable to be allowed.

31. In the result, **these Criminal Appeals are allowed**. The judgment of conviction passed by the learned XII Additional Special Judge for CBI Cases at Chennai made in C.C.No.33 of 2010 dated 12.03.2013 is hereby set aside. Fine amount, if any, paid by the appellants should be refunded to them. Bail bond, if any, executed by the appellants shall stand cancelled. The appellants are at liberty unless their presence are required in connection with any other case.

15.12.2017

Index:Yes/No
Internet:Yes/No
Speaking order/non speaking order
ari
To
1.The Inspector of Police, SPE:CBI:ACB,Chennai.
2.The Special Public Prosecutor for CBI Cases, High Court, Madras.

सत्यमेव जयते
WEB COPY

Dr.G.Jayachandran,J.

ari

Pre-delivery judgment made in
Crl.A.Nos.248 and 238 of 2013

WEB COPY

15.12.2017

http://www.judis.nic.in