CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 4

Custom Appeal No. 3813 of 2012

[Arising out of Order-in-Original 26/2012 dated 31.08.2012 passed by the Commissioner of Customs, New Delhi]

M/s. Kartik Traders **……Appellant**

Versus

Commissioner of Customs,
ICD Tughlakabad, New Delhi **……Respondent**

WITH

Custom Appeal No. 3814 of 2012

[Arising out of Order-in-Original 26/2012 dated 31.08.2012 passed by the Commissioner of Customs, New Delhi]

Shri Saket Aggarwal **……Appellant**

Versus

Commissioner of Customs,
ICD Tughlakabad, New Delhi **……Respondent**

WITH

Custom Appeal No. 3815 of 2012

[Arising out of Order-in-Original 26/2012 dated 31.08.2012 passed by the Commissioner of Customs, New Delhi]

Shri Satish Kumar **……Appellant**

Versus

Commissioner of Customs,
ICD Tughlakabad, New Delhi ……Respondent

AND

Custom Appeal No. 3816 of 2012

[Arising out of Order-in-Original 26/2012 dated 31.08.2012 passed by the Commissioner of Customs, New Delhi]

Shri Parveen Agarwal ……Appellant

Versus

Commissioner of Customs,
ICD Tughlakabad, New Delhi ……Respondent

APPEARANCE:

Ms. Kruti Parashar and Ms. Anjali Singh, Advocates for the Appellant
Shri Rakesh Kumar, Authorized Representative for the Department

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 25.08.2025
Date of Decision:19.12.2025

FINAL ORDER No's.51891-51894/2025

HEMAMBIKA R. PRIYA

These four appeals have been filed by M/s. Kartik Traders[1], M/s. Saket Aggarwal, M/s. Satish Kumar and M/s. Parveen

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1 . Principal Appellant

Agarwal against the Order-in-Original No. 26/2012 dated 31.08.2012 passed by the Commissioner of Customs, New Delhi.

2. The brief factual background is as follows:

(i). The Principal Appellant (viz., Kartik Traders) was, inter-alia, engaged in the business of importing and trading herbal medicinal material and various other products.

(ii) In the year 2008, the Directorate of Revenue Intelligence (DRI) initiated an investigation against the Principal Appellant. During the course of the investigation, with respect to two Bills of Entry, viz., Bill of Entry No. 100964 dated 03.08.2005 and Bill of Entry No. 417629 dated 03.11.2005, DRI noted that 500 Kgs of 'Processed Coral Waste" ('impugned goods') had been imported from E.T.N. Industries Ltd., Hongkong. At the time of import, the Principal Appellant declared the CIF value of the impugned goods as USD 5,900/-. The department enhanced the value of the impugned goods to USD 13 per unit, and the said B/E was assessed accordingly.

(iii). With respect to the earlier Bill of Entry No. 100964 dated 03.08.2005, the DRI vide letter dated 20.02.2008 to the Consul (Economic), Consulate General of India, Dubai sought for overseas enquiries in respect of export declarations/ documents filed by the exporter before Dubai customs authorities the actual description and value transaction declared at the overseas port.The Consul (Economic),

Consulate General of Dubai vide their letter 27.03.2008 No. CE/IV/III/2008 dated 27.03.2008 informed that as per the Dubai customs authorities, 209 Kgs. (8pcs.) of "Coral" valued at USD 12,400/- was exported to the Principal Appellant (imported vide Bill of Entry No. 100964 dated 03.08.2005). However, the Dubai customs authorities did not provide any document in this regard.

(iv). Statements of Mr. Satish Kumar (Proprietor) and Mr. Saket Aggarwal were recorded under Section 108 of the Customs Act. In the respective statements, they stated that the actual value of 500 Kgs. of impugned goods imported vide the subject BOE was USD 12,400/- and that the supplier, viz., E.T.N. Industries Ltd., Hong Kong had sent and invoice for lesser value of USD 5,900/-.

(v). Show Cause Notice dated 24.10.2008 was issued to the Principal Appellant alleging mis-declaration and undervaluation of the impugned goods, which was "Coral" and not "Processed Coral Waste" as declared in the Bill of Entry no. 417629 dated 03.11.2005. Further, relying on the investigation carried out with respect to Bill of Entry No. 100964 dated 03.08.2005 and the statements tendered by various individuals, it was alleged that the Principal Appellant had undervalued the imported goods to evade payment of applicable customs duty and that the amount over and above the declared value was paid by Mr. Saket Aggarwal. Further, proposals for imposition of penalty

on Mr. Satish Kumar, Mr. Saket Aggarwal and Mr. Praveen Aggarwal were also made. Vide the impugned order, the demand was confirmed and the penalties were imposed. Aggrieved the present appeals are before us.

3. Learned counsel submitted that the impugned order was *ex-facie* erroneous and perverse inasmuch as there had been no mis-declaration or undervaluation of the impugned goods imported by the Principal Appellant vide the subject Bill of Entry. The Principal Appellant had correctly described the impugned goods as "Processed Coral Waste". Learned counsel submitted that no independent investigation was carried out with reference to subject Bill of Entry and the entire duty demand was raised and confirmed on the basis of extrapolation, which was impermissible in law. Learned counsel contended that a perusal of the Show Cause Notice demonstrates that the entire duty demand was raised based on the investigations carried out with respect to different consignment, and the department had failed to adduce any substantive evidence to allege mis-declaration or undervaluation of the impugned goods imported. All the purported evidence relied upon in the present proceedings had been applied solely on the basis of extrapolation, without any direct or material evidence with respect to import made qua the subject Bill of Entry.

3.1 Learned counsel further stated that the entire investigations had relied on evidence relating to Bill of Entry No. 100964. In fact, the impugned Order simply stated that since goods imported vide Bill

of Entry No. 100964 and the subject Bill of Entry were same, the entire investigation carried out with respect to the former Bill of Entry would mutatis mutandis apply qua the subject Bill of Entry also. He contended that Department had led no evidence with respect to the imports made vide the subject Bill of Entry, apart from two statements, which were retracted subsequently. Further, learned counsel contended that there was no evidence led by the department to substantiate the allegation of mis-declaration and undervaluation of the impugned goods imported vide the subject Bill of Entry, apart from the retracted statements. The entire duty demand had been raised and confirmed without providing any direct clinching evidence of mis-declaration or undervaluation of the impugned goods as imported vide the subject Bill of Entry. In this context, learned counsel placed reliance on the case of **Principal Commissioner** v. **Sachdev Overseas Fitness Pvt. Ltd.**[2], wherein it was held that the transaction value cannot be rejected on projections and extrapolations. It was further held that each import was an assessment by itself and if the transaction value was higher in any one case, that, by itself cannot form the basis for assessment of other imports. Reliance was placed on the decision in **M/s. Truwoods Pvt. Ltd.** vs. **Commissioner of C. Ex., Vishakhapatnam**[3]**,** wherein it was held that a demand cannot be confirmed only basis an investigation carried out for the past period

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2. (2024) 14 Centax 123 (Tri.-Hyd.)
3. 2005 (186) E.L.T. 583 (Tri.-Del.)

or on the presumption that the same modus operandi would have been carried out in respect of all the imports. The burden of proof in cases where Department alleged undervaluation by way of suppression/misrepresentation/fraud was very high, and hence the Department ought to have led credible evidence instead of simply extrapolating the evidence(s) led in another investigation to raise demand.

3.2 Learned counsel submitted that the entire duty demand had been confirmed only on the statements of individuals. He contended that these statements ought to be eschewed from consideration as they were in violation of the procedure established under Section 138B of the Customs Act. He further contented that the entire case of the department was based on the statements dated 29.09.2008 made by Mr. Satish Kumar and Mr. Sanket Aggarwal, which he contended had been taken under duress and threat of arrest. He submitted that these statements were retracted vide the affidavits dated 11.02.2009. Learned counsel further contended that as the procedure under Section 138B of the Customs Act was not followed these statements cannot be taken into evidence. He placed reliance in the case of **Surya Wires Pvt. Ltd**. v. **Principal Commissioner, CGST, Raipur**[4] wherein it has been held that the provisions of Section 138B are mandatory and failure to comply with the

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4. Final Order No(s). 50453-50454/2025 dated 01.04.2025 - CESTAT Delhi

procedure would mean that no reliance can be placed on the statements recorded under Section 108 of the Customs Act. Further he relied on **Sandeep Kumar Dikshit** v. **Principal Commissioner of Customs (Port), Kolkata**[5]**,** to buttress these submissions. He added that except the statements of the individuals, the department had not brought on record any other corroborative evidence to allege mis-declaration and undervaluation of the impugned goods.

3.3 Learned counsel also stated that apart from extrapolating past investigations and placing reliance statements which were subsequently retracted, the department had not produced any cogent evidence to support the allegation that the appellant had fraudulently mis-declared the goods and short-paid the duty. He submitted that the Principal Appellant had adduced the invoice of the impugned goods supplied by the supplier, viz., E.T.N. Industries Ltd., Hong Kong, which specifically mentioned that the item as "processed coral waste" with the value as USD 5,900/- (CIF) for 500Kgs.Further, the Principal Appellant had also produced a declaration from the supplier (E.T.N. Industries Ltd., Hong Kong) certifying that the exported goods were indeed "Processed Coral Waste", though, the impugned Order gave no cogent finding on either the invoice or the declaration.The Principal Appellant had also got a second declaration from the supplier stating that the goods imported vide the subject B/E were indeed coral waste valued at USD 5900. He contended that

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5. Final Order No. 76880/2025 dated 10.07.2025 - CESTAT Kolkata

raising a demand with respect to. the subject Bill of Entry on the basis of investigations carried out with respect to different consignment was, therefore, incorrect.

3.4 Learned counsel submitted that there was no evidence that demonstrates that the payments other than official banking channels were made to the supplier. The allegation regarding making unofficial payments was a serious charge which should be demonstrated based on cogent evidence. In the present case, the department had failed to discharge its onus to prove the same. He placed reliance on the following case laws:

- **Aggarwal Metals & Alloys** v. **Commissioner of Customs, Kandla[6];**
- **Kelvin Infotech Pvt. Ltd**. v. **Commissioner of Cus., C. Ex. & S.T., Meerut**[7]; and
- **Impex Steel & Bearing Co**. v. **Commissioner of Customs, Delhi-IV[8].**

3.5. As regards undervaluation, learned counsel submitted that the impugned goods were imported vide the subject B/E from E.T.N. Industries Ltd., Hong Kong and at the time of import, the Principal Appellant had declared the CIF value as USD 5,900/-. However, the department had enhanced the value of the impugned goods to USD 13 per unit, at the time of import and the subject Bill

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6. 2021 (378) E.L.T 155 (Tri.-Ahmd.)
7. 2015 (316) E.L.T. 146 (Tri.-Del.)
8. 2014 (302)E.L.T. 464 (Tri.-Del.).

of Entry was assessed accordingly. Hence, the department cannot once again enhance the value of the same goods. Learned counsel further contended that the duty demand had been confirmed by invoking the extended period of limitation. Although neither the Show Cause notice nor the impugned order invokes the proviso to Section 28 of the Customs Act, the demand had been made for the import falling under the extended period of limitation. He submitted that the extended period of limitation has been invoked by alleging/ confirming the charges of producing false / bogus documents such as invoice and the statements of individuals. The department has however, not adduced evidence to demonstrate that the invoices or the documents produced by the Appellant were false or bogus. Hence, the impugned order deserves to be set aside.

4. Learned authorised representative for the Department submitted that the Principal Appellant had actually imported 'Coral', by mis-declaring them as 'Processed Coral Waste', by suppressing the actual value and mis-declaring the description. He contended that the Consulate General of India, Dubai had supplied the information of actual transaction value in respect of the earlier consignment vide Bill of Entry No. 100964, dated 03.08.2005 filed by the importer, this fact of undervaluation was confirmed and accepted by Shri Saket Agrawal and Shri Satish Kumar in their respective statements both dated 03.07.2008. As the impugned consignment imported under Bill of Entry No. 417629, dated 03.11.2005 related to the identical goods, i.e., 'Coral', imported earlier for which overseas

investigation had been done. Therefore, the actual transaction value had been re-determined in respect of the impugned consignment. Learned authorised representative also submitted that the correct transaction value as declared before Dubai Customs and as accepted by Shri Saket Aggarwal and Shri Satish Kumar, is the correct Free on Board value. In this regard, the appellant did not produce any document showing the exact amount of payment for Freight and Insurance in respect of this consignment. Thus, the CIF value of the said consignment had been worked out by adding freight @ 20% of FOB and Insurance @ 1.125% of FOB in terms of Rule 9(2) of the Customs Valuation Rules, 1988.

4.1 Learned authorised representative further submitted that the goods had been sent for examination to the Department of Wild Life Preservation only to ascertain whether the goods were prohibited or not. The report of Department of Wild Life Preservation had reported that the goods were not prohibited under the Wild Life Act. Learned authorized representative further submitted that there was a categorical admission by Shri Satish Kumar and Shri Saket Aggarwal regarding the misdeclaration and undervaluation of the imported goods i.e, Processed Corallium Waste. He submitted that the Principal appellant and other appellants had voluntarily admitted the suppression of actual transaction value in their statements. He contended that their retraction affidavits were all dated 11.02.2009 whereas the impugned statements had been recorded as early as on 09.01.2008, 10.01.2008, 13.02.2008, 03.07.2008 & 29.09.2008.

Thus, the retractions of statements filed after a gap of over six months to one year, cannot be termed as valid as the statements have not been retracted within the earliest available opportunity. In this context, learned authorized representative relied on the following case laws:-

i) **Asia World Exports** vs. **Commissioner of Customs, ACC, Mumbai**[9]**,**

ii) **GautamTrades & Agencies** vs. **Commissioner of Customs, ICD, New Delhi**[10]

5. We have heard the learned counsel for the principal appellant and the appellants and the learned Authorized Representative for the Department.

6. The issue before us relates to import of Coral which the appellant had declared as processed Coral waste vide B/E 417629 dated 03.11.2005. It is seen that the Pr. Appellant had imported an earlier consignment of Coral from Dubai on which the Customs authorities had initiated enquiries. The issue is briefly encapsulated hereinafter.

6.1 **Bill of Entry 100964 dated 03.08.2005**: The appellant filed the said Bill of Entry for import of 200 kgs Corallium Rubrum Waste from M/s. Hemani General Trading, Dubai and declared value at $2600. The customs authorities conducted enquiries with the Dubai Customs through the Consulate General of India, Dubai, who reported that enquiries with Dubai Customs revealed that the

9.2011(274)ELT 225 (Tri. Mumbai)
10. 2011 (274) ELT 408 (Tri. Delhi)

exporter viz., M/s Himani Trading had declared export of 209 kgs of Coral valued at US $12400, vide letter dated 27.03.2008, which is reproduced herein below:

" **CONSULATE GENERAL OF INDIA**

CE/IV/III/2/2008 March 27, 2008

Sub: Investigations into the imports made by M/s. Kartik Traders, Ghaziabad- Reg.

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1. ……..

2. The matter was taken up for enquiry with the Customs authorities of Dubai and other countries. As per the information furnished by Dubai Customs authorities in respect of the consignment at Sl. No.6 of Annexure-A to the letter dated 20.2.2008 of DRI, New Delhi, 209 Kgs. (8 pcs) of Coral valued at US $ 12,400 were exported by M/s. Hemani General Trading LLC, Dubai vide Export Bill No. 1115 0080 9511 dated 2T. 1.2005 by Flight Al 746 on 31.7.2005.

……..”

6.2 From the said letter, it is evident that the item exported by M/s. Hemani was Coral valued at US $12,400, which was declared as Corallium Rubrum Waste valued at US $2600. The mis-declaration and undervaluation stood established. We note that the Courts have held that overseas enquiries by Customs authorities play a crucial role in cases dealing with undervaluation or mis-declaration during import/export transactions. In the instant case, we note that the DRI

has relied on the letter received from the officer from the Consulate General of India, based in Dubai which has clear evidentiary value. Thus, the action taken in respect of the B/E 100964 dated 03.08.2005 by the DRI cannot be faulted.

6.3 We now examine the B/E 417629 dated 3.11.2005 which is the issue under dispute. The Pr Appellant had filed the said Bill of Entry for import of 500 kgs of Processed Corallium Waste valued at US$ 5900 from M/s E.T.N Industries Ltd., Hong Kong. The Department enhanced the value at the time of examination and the said goods were cleared. Thereafter, the investigations were launched by the DRI and based on the response of the Dubai enquiry, the Department issued the instant show cause notice demanding differential duty and proposing to levy penalty on the other appellants. The impugned order has relied heavily on the overseas enquiry report received in respect of the earlier consignment while enhancing the value of the consignment imported from Hong Kong. In this context, we take note of the submissions of the Ld Counsel in this regard. We note that no independent investigation was carried out with reference to the subject Bill of Entry and the duty demand has been confirmed on the basis extrapolation.We also observe that the department has failed to adduce any substantive evidence to allege mis-declaration or undervaluation of the goods imported vide the B/E 417629. The evidence relied upon in the present proceedings have been applied solely on the basis of extrapolation, without any direct or material evidence with respect to import made qua the subject Bill of Entry.

In this context, we find that in the decision in **Principal Commissioner** v. **Sachdev Overseas Fitness Pvt. Ltd.**, this Tribunal held as follows:-

> "24. As may be seen, the proposal to reject that transaction value in respect of those imports listed in WORKSHEET II to the SCN [indicated in paragraph 10 (a) above] is based on the EXCEL sheet recovered from the Pen drive recovered from the residence of Shri Sachdev of the respondent and the copies of invoices recovered from the office of the respondent. As for the imports listed in WORKSHEET IIIA to the SCN [indicated in paragraph 10(b) above] and WORKSHEET IV to the SCN [indicated in paragraph 10(c) above], they are based on projections and extrapolations. Since the officers found some reason to reject the transaction value in imports covered by WORKSHEET II, it is also proposed to be rejected in the imports covered by the other two worksheets. We do not find any legal provision by which the transaction value can be rejected by extrapolation. As we explained above, each import is an assessment by itself and is appealable and if there are a hundred imports at different transaction values, duty on each import must be determined based on the transaction value of that import. If the transaction value is higher in any one case, that, by itself cannot form the basis for assessment of other imports. Conversely, if the transaction value in any one case is lower, the importer cannot ask for that to be the basis for assessment of all other imports. A single value has to be reckoned for assessment of all imports only if it is a tariff value fixed by the Board under Section 4 (2).
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> **25. Undervaluation of goods is a serious charge which entails not only re-determination of duty and recovery of duty but also penalties. If one is found to have undervalued goods in one case, inference cannot be drawn that he has undervalued in all other imports as well. Penalties and pecuniary liabilities based on extrapolation is, in our considered view,**

> **impermissible and is inconsistent with the legal principles known to us.** For example, if a suspect is caught stealing a wallet on a day, he can be prosecuted for that crime but it cannot be presumed, without any evidence, that given the character of the suspect, he must have been stealing a wallet every day and prosecute him for several thefts. If an unscrupulous government employee is caught accepting a bribe of Rs. 5,000/- to process a file, he can be prosecuted for corruption to that extent. However, he cannot be prosecuted by extrapolating that since he handled 200 similar files and must have accepted Rs.5,000/- as bribe in each case and therefore must have taken bribes totalling Rs. 10,00,000/-. If income tax department discovers that an assessee had under-reported his income by 30% in one financial year, it cannot presume, that given his nature, he must have similarly underreported 30 % of his income for the past five years. If Central Excise officers find that a truck of goods has been clandestinely removed by the manufacturer on a day, it cannot be presumed that the manufacturer has been clandestinely removing one truck of goods every day for the past five years. Each case must be examined only based on the evidence in it. Since each assessment is a quasi-judicial order based on the transaction value in it, transaction values cannot be rejected under Rule 12 by extrapolations. They can be rejected if the officer has reasonable belief based on the evidence in that case, that the transaction value is not true and accurate. We, therefore, find that the rejection of the transaction value in the imports covered in Worksheets IIIA and IV of the SCN by extrapolation and re-determination of the value have no legal basis and need to be set aside. Consequently, the demands in these cases by re-determination of the values cannot also sustain."
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> **[emphasis supplied]**

6.4 We also take note of the Tribunal's decision in **Truwoods Pvt. Ltd.** vs. **Commissioner of C. Ex., Vishakhapatnam[11],** as relied by

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11. 2005(186) E.L.T. 583 (Tri.-Del.)

the learned Counsel wherein it was held that a demand cannot be confirmed only basis an investigation carried out for the past period or on the presumption that the same modus operandi would have been carried out in respect of all the imports. The relevant paras are reproduced hereinafter:

> "2. We have heard both sides. There is no dispute that the demand has been confirmed only on the basis of evidence in respect of a prior period. This is even more clearly established by the finding of the Commissioner in para 21 of the impugned order wherein he has held that "there is no evidence for the period beyond November 2002 as there is no investigation into the issue and there is no need for such investigation as it is not possible to raid and search every buyer every time for all the future periods to uncover the same set of evidences". There is no evidence for the period in dispute. The earlier evidence is adopted for the reason that there is no evidence that the assessees have modified the transaction value or otherwise effected any significant changes in their pattern of production and sale. The adjudication order proceeds on the presumption that the same modus operandi adopted by the appellants continues. Even verification of invoices for the period in dispute showed that the appellants continued to mention lower prices/values in their Central Excise invoices compared to the prices/values in the private records for the prior period and therefore, learned SDR's reliance on the difference in prices/values does not advance the case of the department. The order is clearly unsustainable in the absence of any evidence of undervaluation during the disputed period, in the light of Tribunal's Order in Alfa Ceramics Industries v. CCE, Indore - 2002 (145) E.L.T. 454. Demand cannot be confirmed on the basis of presumption."

7. In the instant case, we note that the impugned order has confirmed the demand and imposed penalties on the ground that

"the impugned consignment imported under Bill of Entry 417629 dated 3.11.2005 related to identical goods i.e., Coral imported earlier, therefore, I find that the actual transaction value re-determined in respect of the said consignment would mutatis mutandis apply to the impugned consignment". There is no other independent evidence led by the Department to justify the demand confirmed in respect of the B/E under dispute. It is an admitted fact that the Principal Appellant had supplied the invoice of the supplier, viz., E.T.N. Industries Ltd., Hong Kong, which described the item as 500 Kgs of "processed coral waste" valued at USD 5,900/- (CIF). Further, it has been submitted by Ld Counsel that a declaration from the supplier viz., E.T.N. Industries Ltd., Hong Kong was also produced certifying that the exported goods were "Processed Coral Waste". It is also on record that the Principal Appellant had also got a second declaration from the supplier stating that the goods imported vide the subject B/E were indeed coral waste valued at USD 5900. However, these have not been dealt with or suitably rebutted in the impugned order. In this context, we take note of the Supreme Court's judgment dated 06.10.2023 in Commissioner of Customs vs Ganpati Overseas in Civil Appeals 4735-4736/2009 wherein the Apex Court stated that the transaction value or the invoice value cannot be rejected arbitrarily without giving any valid reasons. The Hon'ble Court opined that the allegations of undervaluation should be buttressed by valid evidence or the price of contemporaneous imports of comparable goods. In the absence of the above, the

benefit of the doubt must be given to the importer and the invoice price as declared shall be accepted. In the instant case, it is on record that the goods had been examined by the Customs authorities before clearance, and apart from increasing the value, the authorities did not dispute the nature of the goods. In view of the settled legal position, we hold that the impugned order cannot be sustained. Consequently, the demand of duty and the penalties imposed on the Pr. Appellant and other appellants are set aside.

8. Accordingly, we set aside the impugned order and allow the appeals.

(Pronounced in the open Court on 19.12.2025)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER(TECHNICAL)

Archana