Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11811 of 2018-SM
(Arising out of OIO-MUN-CUSTM-000-COM-26-17-18 dated 30/03/2018 passed by Commissioner of CUSTOMS- MUNDRA)

Majhar Muzaffar Hussain Sayed **........Appellant**
Flat No. 514, Green Garden Society, Relief Road, Santa Cruz (W),
Mumbai, Maharashtra

VERSUS

C.C.-Mundra **.......Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

WITH

Customs Appeal No.12279 of 2018
(Arising out of OIO-MUN-CUSTM-000-COM-26-17-18 dated 30/03/2018 passed by Commissioner of CUSTOMS-MUNDRA)

Nathalal Kanjibhai Rathod **........Appellant**
1823-1, Mansuri Chawl No. 1 To 3, Mariyambibi Char Rasta ,
Rajpur, Gomtipur, Ahmedabad City,
Ahmedabad, Gujarat

VERSUS

C.C.-Mundra **.......Respondent**
Office of the Principal Commissionerate of Customs, Port User Buld.
Custom House Mundra, Mundra
Kutch, Gujarat-370421

AND

Customs Appeal No.12280 of 2018
(Arising out of OIO-MUN-CUSTM-000-COM-26-17-18 dated 30/03/2018 passed by Commissioner of CUSTOMS-MUNDRA)

Jatin Kumar Nathalal Rathod **........Appellant**
1823-1, Mansuri Chawl No. 1 To 3, Mariyambibi Char Rasta,
Rajpur, Gomtipur, Ahmedabad City,
AHMEDABAD, GUJARAT

VERSUS

C.C.-Mundra **.......Respondent**
Office of the Principal Commissionerate of Customs, Port User Buld.
Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:
Sh. S.J Vyas & Shri. R Subramanya (Advocates.) for the Appellant
Sh. Sanjiv Kiner, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12184-12186 /2021

DATE OF HEARING: 11.03.2021
DATE OF DECISION:17.06.2021

Raju

These appeals have been filed by M/s. Majhar Muzaffar Hussain Sayed, Nathalal Kanjibhai Rathod and Jatin Kumar Nathalal Rathod, against imposition of penalty.

2. Nathala Kanjibhai Rathod and Jatin Kumar Nathalal Rathod are father and son and have been charged with dealing in the imported goods/cigarettes as alleged in the impugned OIO. DRI had visited M/s. Saurashtra CFS on 17.08.2016 and checked container No. CRXU3199110. On this Re-stuffing the container under Panchnama dated 17.08.2016, it was found to contain white woven PP bags containing 'Readymade Garments' and white PP bags were containing 2 corrugated boxes with cigarettes. The total quantity of cigarettes recovered was as follow:-

Sr. No.	**Details of Cigarette Sticks fround from the container No. CRXU3199110**	**SIZE**	**Quantity (in number of Sticks)**
1.	Cigarettes Sticks of Djarum brand (Clove)	85 mm (tobacco Rod 60 mm and filter 25 mm)	7,60,000
2.	Cigarettes Sticks of Marso Brand (Cherry, Strawberry, Green Apple)	100 mm (tobacco Rod 70 mm and filter 30 mm)	5,80,000
3.	Cigarettes Sticks of Richman brand (orange Mint, Gum, Mint, Grapes)	100 mm (tobacco Rod 70 mm and filter 30 mm)	2,80,000
		Total Sticks	**16,20,000**

3. The said Rs. 16,20,000/- cigarette sticks were not declared in the IGM and therefore the same were placed to under seizure. During investigation the statements of various persons were recorded. The primary evidence in the case is following statements:-

(i) Statement of Shri. Ranjit Dhirendra Jha, proprietor of the firm M/s. Riya imports and exports in which name the goods for imported was recorded. He stated that he was not aware of any export and import related works. He stated that on advice of Shri. Pappu Jha who worked at Air Cargo, Mumbai, he opened a proprietorship firm in the name of Riya Imports and Exports. He stated that the Shri Pappu Jha has helped him in obtaining IEC Code and said that he also managed imports in the allotted IEC Code. Ranjit Dhirendra Jha denied any role in smuggling of cigarettes.

(ii) Statements of Shri. Pappu Jha was also recorded. He stated that he was working in M/s. S.V Shipping, and he was a Customs 'G card' holder. He admitted to had helped Ranjit Dhirendra Jha in obtaining IEC Code for M/s. Riya Import and Export. He also stated that he has given reference of the Riya Imports and Exports to Shri. Pravin Kumar Jha. He also stated that Shri. Pravin Kumar Jha went to Dubai in the month of July, 2016.

(iii) Statements of Shri. Pravin Umakant Jha wherein he stated that he did not know Shri. Ranjit Dhirendra Jha. He also denied that Shri. Pappu Jha provided him any document related to Riya Imports and Exports but admitted that Pappu Jha has shown him the documents of M/s Riya Imports and Exports and told him that he had obtained IEC code in the name of his relative. He had also admitted that he had visited Dubai in search of a job on 22.07.2016 and returned on 27th August, 2016. He stated that he visited Dubai with Shrinivas Bejji also known as Shinu who was earlier working at Baggage Section in Air Cargo Complex.

(iv) Statement of Shri Srinivas Marya Bejji alias Shine was recorded and he denied that Pappu Jha had given any documents related to Riya Imports and Exports though he admitted, he went to Dubai with Shri Pravin Jha in search of job.

(v) Statement of Shri S. Madhava Rao, Operation Manager in M/s. Harvard Global Logistics Limited was recorded wherein he stated that he received a copy of Bill Of Lading dated 12.08.2016 through E-mail on 13.08.2016 from Shri. Rajesh Gorde, Deputy Manager, Mumbai Head Office for filing of IGM. He stated that he sent the said Bill Of Lading details to vessal Agent Shri Prem Maheshwari of M/s. Samasara Shipping who filed the IGM on 15.08.2016 on the basis of given details. He also sent a copy of the said Bill Of Ladings to M/s. Saurashtra CFS for internal shifting of container from Terminal to CFS yard.

(vi) Statement of Shri. Rajesh Narayan Gorde, was recorded on 08.09.2016 wherein he stated that he had received the Bill Of Lading dated 12.08.2016 through e-mail on 11.08.2016. He further stated that he had forwarded arrival notice to consignee on19.08.2016 through e-mail. The said e-mail id was provided to him by Mr. Jamilah of M/s Astrogulf Freight Services, LLC, Dubai-UAE. He further stated that he has tried to contact several times on Mobile No. 9409409290 as mentioned of said Bill Of Lading but it was found switched off. He further stated that he received a call on 19.08.2016 from Mobile No. 9909032902 from some person who introduced himself as a clearing Agent from Mundra. The said Clearing Agent told him that he was from M/s S.K. Clearing, Mundra. He further stated that he did not remember the name of the person. The said person asked him about the charges of the Delivery Order.

(vii) Statement of Shri. Dilipsinh Chavda, proprietor of M/s. S.K. Shipping Agency was recorded on 14.09.2016 and 23.09.2016. He stated that one friend of him, Shri. Gambhir Singh Chauhan was working in M/s. Max Marine Services at Mundhra, CFS for survey work. Shri. Chauhan contacted him telephonically on approx 12/13 August (exact date not remembered) and wanted to meet him. Shri. Chauhan came to his office with one person and introduced him as Shri. Yashwant Rathore alias Shri. Jatin Rathore. He stated that Shri. Jatin Rathod told him that one import consignment of Garments was arriving at Mundra and there will be some exports related works in future. Shri. Jatin Rathod sent him the copy of Bill Of Lading through Shri Gambhir Singh by hand next day. Shri. Jatin Rathod provided him the required documents and details and also inquired about the Shipping Line charges. Shri Jatin Rathod enquired from him about one container of smuggles cigarettes that had been detected at Mundra and also enquired from him about the importer. He further stated that he came to know through news paper about the container containing smuggling goods detected in M/s. Saurashtra CFS was of M/s. Riya Imports and Exports.

(viii) Statement of Shri Gambhirsing Chauhan was recorded on 16.09.2016. He stated that Shri. Jatin Rathod came in contact with him when he was security in-charge at Mundra CFS. Shri. Jatin Rathod contacted him telephonically in August, 2016 and met him at CWC CFS Gate on 12th August, 2016 and asked for clearing of import Consignment. He told Shri. Jatin Rathod that he was not involved any Customs clearing related matters. He directed him to the office of Shri. Dilipsignh at Honeycomb CFS.

(ix) Statements of Shri. Jatin Nathalal Rathod and Nathalal Kanjibhi Rathod were also recorded wherein they denied having anything to do with M/s Riya Imports and Exports. Both of them stated that Shri. Hasanbhai Kureshi ask them for clearance of the said container. Both of them stated that Shri. Hasan Bhai Kureshi told him that the container contained Garments.

(x) Statements of Shri. Majhar Muzaffar Hussain was also recorded on 10.10.2016 and 18.10.2016 wherein he stated that he had met with Shri. Jatin Rathod and Nathala Kanjibhai Rathod two or three times along with Shri. Hasan Bhai Kureshi. He stated that he has no dealing with Shri. Jatin Rathod and Nathala Kanjibhai Rathod. He further stated that he was the owner of the said goods covered under Bill Of Lading dated 12.08.2016 and he did not know the owner of the said goods. He further stated that Shri. Hasan Bhai Kureshi of Ahmedabad had taken the work of clearance of said container from Mundra and he was also involved in stuffing of goods in the said container. He further stated that he knew Shri. Hasan Kureshi only from last six months and had met him only in March, 2016 through one of his friend. Shri. Hasan Kureshi had asked him for investment for exports of live stocks. He had given approximately Rs 33 Lacs to Shri. Hasan Kureshi for investment in live stock. When he wanted to take the money back from Shri. Hasan Kureshi, he was told that he will have to arrange money from Dubai and asked him to a accompany him to Dubai. He further stated that during the stay, in Dubai no money was returned by Shri. Hasan Kureshi. He further stated that Shri. Hasan Kureshi took him to meet a person name Shoaib who asked him about any contacts at Mundra Customs. He further stated that Shoaib asked offered Shri. Hasan Kureshi for Smuggling of cigarettes at Mundra port and Shri. Hasan Kureshi agreed. He further stated that Shri. Hasan Kureshi and Shoaib supervised stuffing of goods in said container. He further stated that he did not know Ranjit Jha of M/s. Riya Imports and Exports. He provided some photographs and videos during the statement that show that the stuffing has been done in presence of Shri. Hasan Kureshi.

(xi) Statement of Shri. Hasan Kureshi has been recorded on 18.10.2016. He admitted having taken Rs. 33 lacs from Majhar Bhai. He stated that he had already returned of Rs. 5 lacs and was yet to pay Rs.28 lacs. He stated that Majhar Bhai Called him and told him about smugglings of cigarettes and concealed behind the garments if further stated that Majhar Bhai asked him about any source available at Mundra Port through which imported goods could be cleared. He stated that he contacted Nathalal Rathod who served Jatin Rathod working as security person at Mundra port. He stated that Nathalal Kanjibhai Rathod from promised him regarding clearance of cigarettes concealed behind the garments he took Rs 2 Lakhs advance for clearance of cigarettes.

4. From the above sequence of grievance, it is seen that the entire case based on primarily on statement. The charges have also been established on the basis of these statements.

5. It is seen that all three notices have denied any knowledge of the transaction of presence of cigarettes in the containers. There is no specific primary evidence produced by revenue, except the statements, to establish that the notices were aware of the presence of cigarettes in the container. It was argued by Learned Counsel for Majhar Bhai that they had demanded the cross-examination of witnesses however the same was not allowed. Learned counsel argued that no reliance can be placed on the statements if cross-examination has not been allowed. Since it is seen that there no major evidence other than the statements has been produced about the knowledge of the appellants about presence of the cigarettes in the container. It is on paramount importance that the statements are properly tested with cross-examination..

6. Since Cross-examination is not granted the impugned order is set aside and matters are remanded for fresh decision after giving opportunity of cross examination to the appellants. The appeals are allowed by way of remand to original adjudicating authority.

(Pronounced in the open court on 17.06.2021)

(RAJU)
MEMBER (TECHNICAL)

Prachi