

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

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 10516 of 2022-DB

[Arising out of Order-in-Original/Appeal No AHD-CUSTM-000-APP-266-269-22-23 dated 08.06.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

SHRI TEJAS NARENDRA MEHTA

...Appellant

Parle Landmark Co-Op Junction of Bapubhai Vashi Road And
Ansari Road Next To Laxmi Narayan Temple Vile Parle W
Mumbai,
Maharashtra-400056

VERSUS

C.C.-AHMEDABAD

...Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

WITH

- i. Customs Appeal No. 10566 of 2022 (Mr Tony Fernandes)**
- ii. Customs Appeal No. 10567 of 2022 (Shri Bharat Achare)**
- iii. Customs Appeal No.10657 of 2022 (Jaguar Shipping and Logistic Pvt Ltd)**

APPEARANCE:

Shri Sanjay Karla, Shri N. D George, Advocates for the Appellant
Shri Himanshu P Shrimali, Superintendent (Authorized Representative) for
the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No.10107-10110/2024

DATE OF HEARING:03.10.2023
DATE OF DECISION:09.01.2024

RAJU

These appeals are filed by Shri Tejas Narendra Mehta M/s. Jeguar
Shipping and Logistic Pvt Ltd, Shri Tony N. Fernandes Director Jaguar

Shipping, and Shri Bharat Achare G-Card holder Jaguar Shipping and Logistics Pvt Ltd, against imposition of penalty.

2. Learned Counsels for the appellants pointed out that a case was booked against M/s. Sandeep Enterprises regarding mis-declaration and attempt to smuggle cargo. DRI, Surat, examined Bills of Entry No. 3842810 dated 02.11.2017, wherein importation of 1300 cartons of '75 GSM Printing Papers (Un-coated) of size 210 x 297 MMX 75GSM' was declared. After de-stuffing of the container it was revealed that it contained 800 cartons of printing papers having description "Nine Blue Edge Series Multipurpose Photo copy paper A4 size/80GSM 2500 sheets High Bright Paper". The container was also found to contain following items:

TABLE: A

Sr. No.	Description written on cartons/corrugated box	No. of Cartons
1	Royal Mirage Perfume, Made in USA	28
2	Label Here Box/Jovan Musk	50
3	Color Silk Revlon, Made in USA	500
4	Axe Brand Universal Oil (BNA 24616), Expiry date 15.08.2021, Made in Singapore	12
5	No description found mentioned on the corrugated boxes.	69
6	White Apple Trading	7

2.1 SCN was issued to Shri Babu Ramji Bera, Shri Tejas N. Mehta, and Shri Rajesh M. Mukhiyajee in the name of M/s. Sandeep (under fraudulently obtained IEC) calling upon them to show cause as to why the goods valued at Rs. 1,35,65,673/- should not be confiscated and penalties under Section 112(a), 112(b)(iv) of the Customs Act, 1962, and under Section 114A & 114AA of the Customs Act 1962 should not be imposed. Similarly, the present appellants M/s. Jaguar Shipping and Logistic Pvt Ltd (CHA), Shri Tony and

Fernandes Director of Jaguar Shipping and Logistic pvt Ltd and Shri Bharat Achare G-Card holder of M/s. Jaguar were called upon to show cause by penalty under Sections 112(a), 112(b), 114A & 114AA of the Customs Act 1962.

2.2 The learned Counsel for Shri Tejas N. Mehta pointed out that it has been alleged that the appellant Shri Tejas N. Mehta of M/s Samrat Shipping Agency is also involved with the importer namely Babu Ramji Bera in illegal smuggling of cosmetics by mis-declaring the same as printing paper. It was alleged that Shri Tejas N. Mehta in his statement dated **13.11.2017** stated that he had made payment of Customs Duty on behalf of the importer Sandip from his Dena Bank No. 002111002149, and the amount was paid to him by Shri Babu Ramji Bera in cash. The said account was found to be in name of Samrat Shipping Agency and Shri Tejas Mehta's mother is the proprietor of M/s. Samrat Shipping Agency. The custom duty for the clearance of Bill of Entry No. **6611719** filed by M/s. Sandip amounting to Rs. **3,10,449** on **16.09.2016** was paid through the said account. It was also alleged that the duty for Bill of Entry No. **6419171** dated **19.08.2016** filed by M/s. Sandip amounting to Rs. **3,10,449/-** on **16.09.2016**, was also paid through Dena Bank Account No. 002111002149 of Shri Tejas N. Mehta. In the said statement, Shri Tejas Mehta had admitted that it was his fault that he did not asked Shri Babu Ramjee Bera to get IEC in his own name and to pay customs duty from his own Bank Account. He also admitted that he used to go to ICD Ankleshwar, and ICD **Supratnama** for clearance of goods imported by M/s. Sandip though he was aware that only authorized person can enter the ICD premises and he did not obtain any special permission to enter in ICD premises. It was also found that there were E-mail communication between Shri Tejas Narendra Mehta and Shri Rajesh Mukhiyaji G- Card holder of Jaguar Shipping and Logistic Pvt Ltd regarding the address to be mentioned on the bills of entry.

2.3 It was also found that the appellant had used the FMS duty Credit Script No. 0319063514 dated 15.03.2016 for duty debit for clearance of Bill of Entry No. 7898266 dated 20.12.2016 of M/s. Sandip. Shri **Vivek Ashok** Manager export and of M/s. Sanzi Group import and export, Mumbai in his statement dated 05.04.2018 stated that they had not got the FMS duty Credit Script No. 0319063514 dated 15.03.2016 and they had not sold the said duty script to M/s. Sandip. Shri Rajesh Mukhiyajee G-card Holder of Jaguar in his statements dated 05.04.2018 clarified that he had received the FMS script from Tejas N Mehta of M/s. Samrat Shipping Agency personally and that the handwriting in the original FMS duty Credit Script No. 0319063514 dated 15.03.2016 was also of Tejas N. Mehta. He also stated that Shri Tejas N. Mehta used to calculate the duty debit and used to arrange license/scripts for duty debit. He also stated that sometimes Shri Babu Ramji Bera used to arrange license/scripts. On the strength of above evidence, Shri Tejas N. Mehta was linked to the current imports, wherein there was mis-declaration and an attempted to smuggle. Learned Counsel for the appellant pointed out that no cross-examination was permitted to them. He relied on the following case laws:

- Kallatra Abbas Haji Vs. Government of India-1994 (69) ELT 212 (Ker.)
- Andman Timber Industries Vs. Commr of C.EX., Kolkata-II-2015 (324) ELT 641 (SC)
- Mahek Glazes Pvt Ltd Vs. Union of India-2004 (300) ELT 25 (Guj.)

2.4 He argued that no reasons have been given for denying cross-examination. Learned Counsel argued that there is no material other than statement in the impugned order. It was asserted by the learned Counsel that the bill of entry was filed by the importer who has appeared before the investigating authorities.

2.5 He further argued that the appellant had no role in the import of said goods and had not abetted the import of said goods. Therefore, no penalty under Section 112, 114A or 114AA can be imposed on the appellant. He further argued that even if it is assume that the appellant had paid the duty on behalf of the importer and was later reimbursed by the importer, it cannot be an offence under Section 112 or 114A, 114AA of the Customs Act. He further argued that the script used by the importer M/s. Sandip Enterprises is not forged or illegally obtained as the details are available in DGFT website as genuine. In this background, learned Counsel sought relief.

2.6 Learned Counsel appearing on behalf of the appellant Jaguar Shipping and Logistics Ltd, Shri Tony N. Fernandes and Shri Bharat Achare pointed out that there is no direct role of the appellants in the import of goods. It has been argued in the impugned order that the appellant had failed to verify the business premises of the importer M/s. Sandeep at Thane, Pune and Ahmedabad. He argued that from the order-in-original, it is seen that linkage with the importers namely Shri Babu Ramji Bera and Shri Tejas N. Mehta has been made without any evidence.

2.7 The SCN alleges that Shri Rajesh Mukhiyajee G-Card Holder had given contradictory statements. On the one hand in his statement dated 21.03.2018 had stated that Babul Ramji Bera never gave copy of transfer letter/Sale letter of Script/license, but he must be having it and he has never submitted transfer letter/sale letter of script/license to customs at the time of clearance as no customs officer asked for it. In another statement, he stated that he had submitted all licenses/script/Xerox copies out of charge in files and they didn't have photo copies other than FMS duty Script No. 0319063514 15.03.2016, Shri Tejas N. Mehta in his statement dated 16.04.2018 had disclosed that Rajesh Mukhiyaji G- Card Holder had paid duty for Bill of Entry No. **79776181 dated 24.11.2016** of M/s. Sandip Enterprise from his own

Union Bank Account. He has also stated in his statement that license/script purchased by Rajesh Mukhiyaji and transport payments and arrangements were also made by Rajesh Mukhiyaji. The fact regarding payment of duty from his own account was admitted by Shri Rajesh Mukhiyaji in his statement dated **26.04.2018**.

2.8 As regards Tony Fernandes Director of Jaguar Shipping And Logistic Pvt Ltd, it was alleged in the SCN that he was equally involved in the import/smuggling of the goods in the name of Sandeep Enterprising using fraudulent IEC. He had submitted in his documents of M/s. Sandip Enterprises verified from original business premises M/s. Sandeep Enterprises at Thane, Pune, Ahmedabad. It was also alleged in the SCN that he did not insist name of Shri Babu Ramji Bera in the IEC document. It was also alleged that the CHA accept payment of custom duty from 3rd party and CHA charges were also connected from 3rd party. It was also alleged that the CHA did not maintain records of license/scripts/transfer letters of FMS.

2.9 In the notice, the allegation against Shri Bharat Achare G-Card Holder oo CHA relates to the failure to verify the KYC documents of the importer M/s. Sandip Enterprises.

3. The order-in-original orders absolute confiscation of cosmetics not declared in BOE No. 3842810 dated 02.11.2017, seized on **06.11.2017** under Section 111(d), 111(f), 111(i), 111(m) of the Customs Act. The order-in-original re-determined the value of imported goods) Rules, 2007 read with Section 14(1) of the Customs Act 1962. The order-in-original also confiscate printing paper and offer the same on payment of redemption fine of Rs. **70,000/-** under Section 125(1) of the Customs Act, 1962. The order-in-original does not imposed penalty on Sandip Enterprises under Section 112(a)

of the Customs Act. The order imposes penalty on Shri Baburam Bera of Rs. 20 Lakh under Section 112(a) of the Customs Act, Rs. 15 Lakhs under Section 114AA of the Customs Act. The order-in-original imposes penalty on Shri Tejas N. Mehat of Rs. 15 Lakhs under Section 112(a) of the Customs Act and Rs. 10 Lakhs under Section 114AA of the Customs Act. On Rajesh Mahendra Muhiyaji, the order-in-original imposes penalty of Rs. 15 Lakhs under Section 112(a) of the Customs Act and Rs. 10 Lakhs under Section 114 AA of the Customs Act.

3.1 The order-in-original does not impose any penalty on M/s. Sandeep Enterprise either under Section 112(a) or Section 114AA of the Customs Act, 1962. The order in original imposes penalty of Rs. 5 Lakhs under Section 112(a) and Rs. 5 Lakhs under Section 114AA on Jaguar Shipping and Logistics. The order in original imposes penalties of Rs. 5 Lakhs under Section 112(a), and Rs. 5 Lakhs under Section 114AA of the Customs Act on Shri Tony and Fernandes. The order in original imposes penalty of Rs. 5 Lakhs under Section 112(a) and Rs. 5 Lakhs under Section 114AA of the Customs Act on Shri Bharat Achare.

4. Learned AR relied on the impugned order.

5. We have gone through the rival submissions. We find that the primary evidence is in the nature of detection of certain luxury goods concealed behind paper cartons. The entire case linking the role and knowledge of all the appellants namely Shri Tejas Narendra Mehta of Jaguar Shipping and Logistic Pvt Ltd, Shri Tony Fernandes and Shri Bharat Achare is based on the statements have been recorded of (1) Shri Rajesh MukhiaJee G- Card holder (2) Shri Tejas N. Mehta of M/s Samrat Shipping Agency, (3) Shri Babu ramji Bera the alleged importer Shri Bharat Achare of Jeguar Shipping And Logistics Pvt Ltd, Shri Karan Adhikrao Bamne, Shri Tony N. Fernandis Authorized

Secretary/Director of M/s. Jaguar Shipping and Logistics Pvt Ltd. Apart from the above statements services were also conducted in the residence of Shri Babu Ramjee Bera, and Geeta N. Mehta at Flat No. 401, Parle Landmark Co-operative Hdg., Society, Junction of Bapubhai Vashi Road and Ansari Road, Next to Laxmi Narayan Temple, Vile Parle (West) Mumbai- 400056, and also at his Flat.

5.1 It is seen that *prima facie* no significant evidence has been gathered from the searches made in premises of the appellants. From the above said all evidences, it is apparent that the SCN is largely based on the statements recorded during investigations.

5.2 It is seen that Shri Tejas N. Mehta had specifically sought Cross-examination of the persons whose statement has been relied upon, but the same has been denied giving following reasons:

10.7 It has been held by the Hon'ble Supreme Court in the judgment in Bhana Khalpa Bhai Patel v. Asst. Collector of Customs, Bulsar reported as 1997 (96) E.L.T. 211 (S.C.):

"47. An attempt was made to contest the admissibility of the said statements in Evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal. AIR 1970 SC 940, and Kl. Pavunny. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) [E.L.T.](#) 241 (S.C) = (1997) 3 SCC 721."

10.7.1 The Hon'ble Supreme Court has held in the case of Naresh J. Sukhwani v. Union of India reported as 1995 Supp. (4) SCC 663 = AIR 1996 SC 5 = 1996 (83) E.L.T. 258:

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the

petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of india. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and Imposition of penalty. There is no ground warranting reduction of fine."

10.7.2 A Constitution Bench of Apex Court of India in the matter of Romesh Chandra Mehta v. State of W.B. (1969) 2 SCR 461 AIR 1970 SC 940, held that the Customs Officers are entrusted with the powers specifically relating to the collection of customs duties and prevention of smuggling and for that purpose they are invested with the power to search any person on reasonable suspicion, to summon, X-ray the body of the person for detecting secreted goods to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act, to obtain a search warrant from a Magistrate to collect information by summoning persons to give evidence and produce documents and to adjudge confiscation He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve summons to produce a document or other thing or to give evidence and the person so summoned is bound to attend either in person or by an authorized agent, as such officer may direct, is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Customs Act. He is invested with the power to enquire into infringements of the Act primarly for the purpose of adjudicating forfeiture and penalty.

10.8 In the present proceeding, the case is based on the seizure of smuggled goods and the statements of the key persons involved in the smuggling activities recorded under Section 108 of the Customs Act, 1962. In these statements recorded under Section 108 of the Customs Act, 1962 there are clear and repeated reference to S/Shri Babu Ramji Bera, Tejas N. Mehta and Rajesh Mahendra Mukhiyaji controlling & financing the activities of M/s Sandip, which are reconfirmed by Shri Tony Fernandes, Director, M/s, Jaguar. I find that it is settled law that statements made to an officer of Customs are admissible as evidence under Section 108 of the Customs Act, 1962. Apex Court of India in their judgment in case of Gulam Hussain Shaikh Chougule Vs. S Reynolds, Supdt. of Customs, Marmgoa, reported as 2001 (134) ELT (SC), after quoting from several other judgments, has held that such statements are admissible in evidence. Further the admitted facts need not to be proved as held by Hon'ble High Court of Madras in the case of Govindasamy Raghupati reported as 1998 (98) ELT 50 (Mad.). Hon'ble Supreme Court in the case of Surjeet Singh Chhabra Vs UO reported as 1997

(89) ELT 646 (SC) has also pronounced that confessional statement made before Customs officer under Section 108 of the Customs Act, 1962, though retracted, is an admission and binding since Customs Officers are not Police Officers. Further, in the case of Gulam Hussain Shaikh Chougule Vs S. Reynolds, Supdt. Of Customs, Marmgoa reported as 2001 (134) ELT 3 (SC), relying on various judgments of Apex Court of reported as AIR 1972 SC 1224, 2000 (120) ELT 280 (S.C.); 1999 (110) ELT 324 (S.C.); 1992 (60) ELT 24 (S.C.); 1999 (110) ELT 309 (S.C.); 1983 (13) ELT 1443 (S.C.); 1983 (13) ELT 1590 (S.C.), has further held that confessional statement recorded by Custom officer under Section 108 of Customs Act, 1962 are not required to follow safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.

10.8.1 In view of the above, the statements under the present proceeding are material piece of evidence to establish the case for Revenue. Apex Court in the case of Kl. Pavunny Vs AC Cochin reported as 1970 (90) ELT 241 (SC) has held that when the material evidence establish fraud against the revenue, white collar crimes committed under absolute secrecy shall not be exonerated from penal consequence of law. Enactments like Customs Act, 1962, are not merely taxing statute but are also potent instruments in the hands of the Government to safeguard the interest of the economy. Preponderance of probability comes to rescue of Revenue and revenue is not required to prove its case by mathematical precision. The Supreme Court has observed in Kanhaiyalal Vs Union of India reported as (2008) 4 SCC 668, that specialized enactments, like Narcotic Drugs & Psychotropic Substances Act and Customs Act, are meant to deal with the special situations and circumstances.

10.8.2 In the case of Collector of Customs, Madras and Others Vs D. Bhoormull reported as 1983 (13) ELT 1546 (S.C.), the Apex Court held as under:

"30. It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world.

The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.

*31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in *Blatch v. Archer* (1774) | Cowp. 63 at p. 65 "According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.*

32, Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned, and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty."

5.3 In the facts of the case, it is apparent the role of each person involved has been decided primarily on the basis of the statements. Section 138B of the Customs Act reads as follows:

SECTION 138B.

Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]”

5.4 Hon’ble High Court of Gujarat in the case of M/s. Aziz Fakirmohamed Sumbhaniya Versus Union Of India-2023 (384) ELT 250 (Guj.) as observed as follows:

"34.5 *The cross-examination, in a given scenario, as was there before the Apex Court, is held not to be an absolute right and the facts of every matter shall need to be regarded by the Court at the time of considering the request for cross-examination. This Court also is not oblivious of the fact that without proving the version of the witnesses in examination-in-chief, it is impermissible for the prosecution/departments to take into account their evidence given in the form of oral statements. Section 9D of the Central Excise Act and Section 138B of the Customs Act require fulfilment of these requirements. However, these being legal issues can be raised at any stage before any judicial or quasi-judicial authority and they need to be regarded by those authorities. Again, non-availment of opportunity whether would also cause serious prejudice to the parties, also, can be well appreciated by the Appellate authority as and when raised."*

From the above, it is apparent that the statements cannot be relied without cross-examination of the witnesses.

6. In this background, it will be necessary for the authorities to grant cross examination of all the witnesses before relying on their statements. The

current order which has been relying very heavily on all these statements and that too without granting cross-examination cannot therefore be sustained. The order is therefore set aside and matter remanded to the original adjudicating authority to decide the issue afresh after giving an opportunity to cross-examine the person whose statement have been relied. The appeals are allowed by way of remand.

(Pronounced in the open Court on 09.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK