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

REGIONAL BENCH- COURT NO. 3

CUSTOMS APPEAL NO. 10686 of 2024-DB

(Arising out of Order in Original MUN-CUSTM-000-COM-23-24-25 Dated 18/09/2024 passed by Principal Commissioner of Customs-Mundra)

AMIT DAS **........Appellant**

Then Superintendent, Customs House, Mundra,
Office of the Chief Commissioner, CGST Vadodara Zone,
2nd Floor, Annexe Building, GST Building,
Race Course Circle, Vadodara – 390 007.

VERSUS

Commissioner of CUSTOMS - Mundra Customs **........Respondent**

Office of the Principal Commissioner of Customs,
Customs House, Mundra,
Kutch-Mundra Port & SEZ,
Mundra - 370 421.

APPEARANCE:

Shri Devashish K Trivedi, Advocate appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR) appeared for the Respondent

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

FINAL ORDER NO. 12833/2024

DATE OF HEARING:11.11.2024
DATE OF DECISION:26.11.2024

RAMESH NAIR

The present appeals are filed against Order-in-Original No. MUN-CUSTM-000-COM-23-24-25 dtd. 18.09.2024.

1.1 Brief facts of the case are that, at the relevant time appellant used to work as Superintendent of Customs, SIIB, Mundra. DRI had received some information in regard to the imports made by M/s. Crescent Traders. Following the same, they detained imported goods after the said importer had filed Bill of Entry and out of charge was given by the Customs Authorities. It was found that the goods were mobile accessories viz. mobile screen guard, USB cable, mini speakers, selfie stick for mobile, USB lock connector, etc. The declared value in the Bill of Entry was Rs.14,87,806/-. The case against the main importer M/s. Crescent Traders is that (i) the goods were highly undervalued. The correct value would be around Rs.4.31 Crores as per E-Commerce Website, (ii) the said cell phone accessories were counterfeit of original, (iii) the provisions of BIS were not complied and (iv) in regard to some goods relevant provisions of WPC (Wireless Planning and Coordination) Wing of the Ministry of Communications were not followed. During the course of investigation, various panchnamas were drawn and statements of various persons were recorded. After the detail investigation, show cause notice was issued to various other persons including the Appellant. In adjudication, vide impugned order, Ld Principal Commissioner of Customs, Mundra has imposed penalty of Rs.2,00,000/- on the appellant u/s. 112(a)(i) & 112(a)(ii) the Customs Act, 1962 and he has also imposed another penalty of Rs. 50,000/- u/s. 114AA of the Customs Act, 1962.

2. Shri Devashish K. Trivedi Ld. Advocate appearing on behalf of the appellant submits that it is wrongly concluded in the impugned order that the Appellant, Superintendent, working then at SIIB, Customs House, Mundra had deliberately misguided his superior officer to aid in clearance of subject consignment illegally and that he handed over customs file to a private person and used a fabricated panchnama in clearance of goods. The basis of such conclusion is that, the Adjudicating authority makes an assumption that there are some audio clips/ voice message independently retrieved from the Mobile phone of Shri Nasser Khan which showed that Shri Nasser Khan and Shri Mayur Mehta sent a big amount of illegal gratification to the customs officers at Mundra. However, absolutely no evidence worth the name was found that any illegal gratification was paid to the Appellant herein.

2.1 He also submits that a perusal of the records would show that DRI is supposed to have found a whatsapp chat message entered in between the forwarder i.e. late Shri Mayur Mehta, owner of Dabke clearing and one Ankit Travadi, employee of Dabke Clearing. As per the said chat message, Ankit Travadi has demanded Rs. 8,50,000/- from his boss i.e Mayur Mehta in the name of Appellant. Appellant is not concerned with same. On the basis of said WhatsApp chat, it is sought to conclude that for the purpose of clearing the disputed consignments, Appellant had demanded gratification of Rs. 8,50,000/- However, the same is not correct. In his statement recorded by the DRI, Ankit Travadi admits that the said amount was not given to the appellant but it was given to two other private individuals. The amount was demanded from his late boss wrongly in the name of Appellant. Not only that but the DRI has also recorded statements of said two other private individuals viz. Shri Rajdeepsingh Jadeja, Proprietor of M/s. Sitaram Finance and Shri Vaibhav Dholakia. Both these people have also confirmed the receipt of amount from Ankit Travadi in their respective statements recorded by DRI.

2.2 He also submits that appellant herein had requested the Adjudicating Authority to permit him to cross examine Shri Ankit S. Travadi and other persons. However, the said request of the appellant was not considered. Had there been an opportunity of cross examination, it would have been clear that Ankit Travadi had made a false statement and that in fact no demand at all was made by the appellant herein. It is a settled law that when no cross examination is afforded, the statement of witness loses its evidence value. He placed reliance on the judgement of Hon'ble Supreme Court of India in the case of M/s. Andaman Timber Industries V/s. Commissioner of C.Ex., Kolkata – II, reported at 2015 (324) ELT 641 (S.C.).

2.3 He also submits that it is wrongly concluded by the Adjudicating Authority that Appellant had handed over file to a private person. The so-called person which is referred by the Adjudicating Authority is Ankit Travadi. The file which is referred by the Adjudicating authority is a part of Relied upon documents. A perusal of the said file would show that it contained documents such as Bill of Entry, packing list, invoices, duty payment challan, CFS Gate Entry Slip, etc. pertaining to the bill of entry in question. There is nothing secret in the said file. Ankit Travadi was an employee of the forwarder who had got the goods cleared. Already he was having copies of all these documents. He was an authorized person of the said forwarder. He was having permission to operate in the customs area.

2.4 He also submits that the allegation pertaining to backdating of panchnama is not sustainable. There was no reason, logic, motive to do so . In order to enlighten this aspect, Appellant had requested the Adjudicating authority to afford cross examination of the panchas to the panchnama, Ankit Travadi, all other people who are supposed to have said that the panchnama was backdated. However, the Adjudicating authority failed to afford cross examination of any of these persons. Therefore, the said allegation could not be sustained.

2.5 He further submits that as far as the valuation part is concerned, the appraiser of the customs, sitting at the port of import had already valued the goods. Not only that but he had enhanced valuation of goods imported by the importer. The declared value was enhanced on the basis of value of contemporaneous imports. The appraiser had done so and the Assistant Commissioner (Appraising) had approved.

3. On the other hand, Shri Sanjay Kumar, learned Superintendent appearing on behalf of the Revenue reiterated the finding of impugned order.

4. Heard both sides and perused the case records. We find that in the impugned order, the Ld. Commissioner noted that Shri Ankit S. Travadi has affirmed in his statement that he offered amount to accused Customs officers for clearances of disputed goods and he was also actively involved in negotiation with the Customs Officers. The amount is seen to have been arranged through Anagadia and had reached Mundra. In addition to the statement of Shri Mayur Mehta, Shri Ankit Travadi, Shri Chirag Taavadi and Shri Nasir Khan, there are some Audio clips/voice message retrieved from the mobile phone of Shri Nasir Khan which show that Shri Nasir khan and Shri Mayur Mehta sent big amount of illegal gratification to the Customs Officers at Mundra. We find that in the present matter even after the request of appellant for cross-examination of these persons/witnesses and panchas, were not offered. In such circumstances we find that their statements are not reliable evidence against the Appellant. The adjudicating Authority has not examined the persons who have given the statements which have been relied upon to implicate the appellant. Also, no opportunity of cross-examination was given to the appellant to question the basis on which the co-accused has implicated the appellant in this case. When the procedure set out in Section 138B is not followed, the statement of the co-accused has no evidentiary value. Also, in this case the statement of the co-accused has not been corroborated by any other evidence. We also observed that the Tribunal in *Arvind Kumar* v. *CC, New Delhi,* 2001 (136) E.L.T. 439 (Tri.-Del.). held as under:-

> *"statement of importer implicating the officer without corroboration by any other record does not prove abetment-penalty on customs officer not imposable under Section 112(b) of Customs Act, 1962. It was also held in the said case that person giving differing versions or facts which also at variance with record cross-examination of such a person necessary. In the instant case, the main accused i.e., Abdul Sathar has not at all appeared for personal hearing and hence he could not be cross-examined. Consequently there is no corroboratory evidence implicating Shri Santosh Talpade as held in the said case law. Further it is undisputed fact that Shri Santosh Talpade has not cleared Shri Abdul Sathar from Counter No.9."*

4.1 We also find that in the present matter except the bald allegation that Appellant had demanded illegal gratification, there is no specific allegation against the appellant to prove that Appellant have done or omitted to do any act which itself rendered the goods liable to confiscation. We also observed that as evident from paragraphs 16.2 of the show cause notice dtd. 29.09.2022, Shri Ankit S. Travadi reiterated in his statement dtd. 29.09.2017 recorded under Section 108 of the Customs Act, 1962 that the amount of Rs. 8 lakhs arranged through angadia and collected by his younger brother Chirag from Bhuj; that the said amount was given by him to Shri Rajdeep Sinh and Shri Vaibhav Dholakia from whom he had borrowed earlier. Shri Rajeepsinh Jadega and Shri Vaibhav Dholakia have in turn confirmed this fact in their respective statement dtd. 01.11.2017. None of these persons has ever stated that they have paid any money to Appellant.

4.2 We find that for Customs Act, irrespective of the fact whether the person is an officer of Customs or any other person, penalty for an offence of abetting can be imposed only on establishing a positive act on abetment of another person’s act or omission which will make the connected goods liable for confiscation. On careful consideration of the evidence on record and submission made by the appellant, we find that there is no sustainable ground to impose penalties under Section 112 on the appellants in the present case.

4.3 We also find that section 114AA (supra) is attracted when a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect. Needless to mention that when the appellant had no personal interest in the transaction or that the charge of demand of illegal gratification fails, then automatically it is concluded that there was no knowledge or intention on part of the appellant. Therefore, no penalty could be imposed on the appellant under Section 114AA(supra) also.

5. In these circumstances, it is difficult to uphold the orders passed by the Ld. Commissioner imposing penalties on the Appellant. Accordingly, the impugned order is set aside insofar as it relates to penalties on the appellant, and the appeal is allowed with consequential relief.

(Pronounced in the open court on 26.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi