IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. C/54732, 55168 & 55787/2014-CU (SM)

(Arising out of common Order-in-Original No.04/Commr./CUS/GZB/2013-14 dated 7.5.2014 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

National Steels — Appellant
Shri Praveen Bansal
Shri Praveen Kumar Jain

Vs.

Commissioner of Customs, Ghaziabad — Respondent

Appearance:

Shri Akshay Anand, Advocate in Appeal NO.C/55168/2014, Shri Rajesh Chhibber in Appeal No.C/55787/2014 for the appellants.

Shri Mohd. Altaf, AR for the respondent.

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing:15.12.2017
Date of decision:24.07.2018

Final Orders Nos. 71701-71703/2018

Per: Anil Choudhary

These appeals are against imposition of penalty under Section 112 (a) & (b) and under Section 114 A of the Customs Act. Though separate penalties have been imposed upon all the appellants, these relate to the same transaction and bill of entry and accordingly are taken up together for disposal.

2. National Steel's Proprietor, Shri Shryansh Jain imported a consignment of iron scrap/HMS and filed Bill of Entry No. 6307332 dated 20 March 2012 wherein the goods were declared as iron scrap (HMS – 2) for total quantity of 110 MT. Upon suspicion, the said containers were subject to 100% examination, being total five in number, on 23 March and 24 March, 2012. The net weight of iron scrap, as contained in the said five containers was found 81.490 MT and undeclared goods 1350 Gas cylinders of Refrigerating gas – 22 (ozone-depleting substance) were found concealed in two of the containers. Thus in terms of the declaration (bill of entry) quantity of metal scrap was mis-declared and the same was used for concealment of 1350 cylinders of refrigerating – 22 gas, which were not declared. Refrigerating – 22 gas is restricted/prohibited for import, in terms of import licensing note of Chapter 29 in ITCHS classification of export and import items, 2009 – 14 issued by the office of DGFT, read with provisions of the ozone-depleting substances (regulation and control) Rules 2000 of Ministry of Environment and Forest. The consignment was seized on 30 March, 2012 as the same appeared to be liable for confiscation.

3. In investigation, Shri Shreyansh Jain, Proprietor of National Steel stated that he had rented out his IEC to Praveen Bansal for consideration, who further forwarded the same to Praveen Kumar Jain and Sanjay Jain and they illegally smuggled/imported refrigerating – 22 gas, a prohibited/restricted item in violation of the provisions of Customs Act and other allied Acts. Shri Shreyansh Jain further revealed that he accepted the offer of one Praveen Bansal for lending his firm's name, IEC number and pollution certificate for import of goods(metal scrap) by one of his known persons for monetary consideration of Rs.250 per MT. As proprietor of National Steels, he signed various import documents, thereby helped and abetted in illegal import of contraband goods being R-22 gas, which appeared to be liable to confiscation under Section 111 Clauses (d), (i), (e), (f), (l), (m) and Section 119 of the Customs Act.

4. Mr.Praveen Bansal, resident of Kamlanagar, Delhi, had procured IEC number and pollution certificate of National Steel from Shreyansh Jain and further gave the same to Praveen Kumar Jain and Sanjay Jain and they illegally imported the R-22 gas at ICD, Loni. This is evident from the facts that his Mobile No. 9312247815 is mentioned as contact person of National Steel, at Serial No. 2 of form 9 (transboundary movement – document). This form 9 was issued by the supplier – Al Punjab Metal Trading LLC Sharjah, of the instant consignment. He

provided the pollution certificate and IEC code of National Steel to PK Jain and Sanjay Jain and in turn, they promised to pay him Rs.500/- per MT of iron and steel scrap, out of which he would retain Rs.250/- per MT and paid the balance Rs.250 per MT to Shri. Shreyansh Jain. He had also booked the tickets for Mr PK Jain and Sanjay Jain through his company "Sapna tour and travel" to visit Dubai for shipment and unloading of containers.

5. Shri. Sanjay Jain have admitted in his statement that he and Praveen Kumar Jain met with Praveen Bansal**,** a friend of Sanjay Jain who was dealing with scrap. They discussed with Praveen Bansal regarding import of refrigerating gas R – 22, and requested him to provide an IEC code of some firm, for the said purpose. Praveen Bansal became partner in the venture and he was ready to also invest money with Praveen Kumar Jain in the import of prohibited R-22 gas. Praveen Bansal gave Sanjay Jain the responsibility of sale of refrigerating gas, to be imported. They were ready to pay 5% of profit share to him.

6. Shri Neeraj Jain proprietor of N.K. Trading, relative of Sanjay Jain had shared the idea of importing refrigerating gas. He allowed Praveen Kumar Jain and Sanjay Jain to utilise his firms bank account, for money transactions pertaining to the said illegal import of goods, in violation of the Customs Act. Rs.3.25 lakhs were transferred from the account of N.K

Trading to the account of National Steels, for payment of shipment charges and customs duty.

7. Sanjay Jain alongwith Praveen Kumar Jain procured IEC number and pollution certificate of National Steels through Praveen Bansal and they illegally imported R-22 gas in violation of the Customs Act and other laws. This fact is evident, as Neeraj Jain had shared the idea of importing illicit refrigerant gas with Praveen Kumar Jain and thereafter Praveen Kumar Jain and Sanjay Jain met Praveen Bansal and discussed their plan and requested him to provide an IEC number of some firm for the said purpose. Praveen Bansal became partner and also ready to invest money with Praveen Kumar Jain in the import of the prohibited R-22 gase. Accordingly, Praveen Kumar Bansal provided the IEC number and pollution certificate of National Steel.

8. Further, it has come on record that the air tickets were provided by Praveen Bansal, both Praveen Kumar Jain and Sanjay Jain, visited Dubai in February 2012, where they collected R-22 gas filled cylinders from 3-4 places, for which payment was made by them. The said cylinders were handed over to Mr. Khalid proprietor of Al Punjab Metal Trading for loading in containers, behind iron scrap/HMS. Mr. Khalid got loaded the R-22 gas cylinders in the containers behind the iron scrap so as to conceal the illicit gas. Thereafter both Praveen Kumar Jain and

Sanjay Jain returned to India on 24 February, 2012. Further Mr. Sanjay Jain got deposited amount of Rs.02 lakhs as cash in the bank account of N.K. Trading Company in Delhi and got Cheque No. 350940 dated 23 March, 2012, of Rs.3.25 lakhs of N.K Trading Company in the name of National Steels, for payment of Customs duty and other clearance charges. Sanjay Jain and Praveen Jain also got sent FDS bond to Praveen Bansal by email and they also contacted Amrendra Sharma employee of DN International (CHA),, G card holder, for clearance of these five containers in question.

9. It appeared to Revenue from the facts and statements of Sanjay Jain and others, that Sanjay Jain alongwith Praveen Kumar Jain, Praveen Bansal and Neeraj Jain were fully involved in the said illegal imports of R-22 gas, a prohibited/restricted item, under concealment alongwith declared goods – iron scrap.

10. Accordingly SCN dated 08/09/2012 was issued requiring these appellants along with Sanjay Jain and Neeraj Jain and 'worldwide inspection services – SARL' to show cause as to why not the prohibited goods imported, not to be confiscated and also proposing confiscation of the iron and steel scrap used for concealing the prohibited goods and also proposal to impose penalties under Section 112 (a) and (b) and 114 AA of the Customs Act. The SCN was

adjudicated vide order-in-original passed by the Commissioner Customs and Central Excise, Ghaziabad absolutely confiscating the 1350 cylinders filled with R-22 gas, valued at Rs. 91, 80, 000 (at the rate of 500 per KG) having net weight of 18,360 KG which was found concealed in the HMSI scrap. Further, the heavy melting scrap (HMS scrap) 81.490 M.T. in loose packing, valued at Rs.14,23,052/- (at the rate of USD 350 per M.T.), which was misdeclared in quantity and also used for concealment of the restricted goods (R – 22 gas) under Sections 111 (d)(m)(i)(f) & (l) of the Customs Act. However, option to redeem the scrap was given on payment of redemption fine of Rs.4,00,000/-. Further, penalties were imposed as follows: -

Sl. No.	Name of the party	U/S 112(a)/b	U/S 114 AA
1.	M/s.National Steels (Shri Shreyansh Jain, Proprietor)	Rs.40,00,000/-	
2.	Shri Praveen Kumar Jain	Rs.10,00,000/-	Rs.10,00,000/-
3.	Shri Sanjay Jain	Rs.10,00,000/-	Rs.10,00,000/-
4.	Shri Praveen Bansal	Rs.10,00,000/-	Rs.10,00,000/-
5.	Shri Neeraj Jain	Nil	Nil
6.	M/s.Worldwide Inspection Services (WISE)	Rs. 5,00,000/-	

11. Being aggrieved, the present appeals are filed by the appellants before this Tribunal. Heard the parties and perused the case records.

12. Having considered the rival contentions, I find that conspiracy to import the restricted goods - R-22 gas was first hatched between Sanjay Jain and Neeraj Jain, who were relatives. Thereafter, they also joined Praveen Kumar Jain and Praveen Kumar Bansal as co-ventures in the illicit import of R-22 gas. It was Praveen Bansal, who approached Shri Shreyansh Jain, Proprietor of M/s. National Steels, and offered him Rs.250 per metric tonne as remuneration for using his IEC code and pollution certificate of M/s.National Steels. It was Praveen Bansal, who got various documents signed by Shri Shreyansh Jain and gave information of arrival of containers and got authorization from him in favour of the CHA, called S. Jain to his office for executing various documents, got cheques and DD prepared from Shri Shreyash Jain towards clearance charges and duty payment of the goods in dispute. Further in form-9, the name of Praveen Bansal was mentioned along with his mobile number, who is the contact person, which was issued by the supplier/shipper, M/s. Al Punjab Metal Trading LLC, Sharjah-UAE.

13. Further, the complicity of Sanjay Jain is also there as he approached Praveen Kumar Jain and also Praveen Bansal. He is the person, who took along Praveen Kumar Jain with him to Dubai, and made the survey and again went before shipping and collected the gas cylinders from 3 to 4 places and made the payment for the same and thereafter handed over the R- 22 gas cylinders to the shipper – Al Punjab metal trading LLC.

14. Further, it was Praveen Bansal, who paid for the airfare for sending Sanjay Jain and Praveen Kumar Jain to Dubai.

15. So far Praveen Kumar Jain is concerned, it appears that he accompanied Sanjay Jain to Dubai for making survey and again went before the shipping along with Sanjay Jain.

16. Further, Neeraj Jain is also fully involved, as he is the person who hatched the idea of importing the restricted goods. He also facilitated payment of clearance charges and customs duty by transferring money from his bank account to the bank account of National Steel.

17. From the overall facts and circumstances, it appears that Praveen Kumar Jain had unknowingly got involved, without understanding that R- 22 gas is a restricted item. Further it appears that he was interested in learning the process of import export business. Had he known that R- 22 gas is a restricted item, and not

freely importable, he would not have been present at the time of inspection by the customs. Accordingly the penalties imposed on Praveen Kumar Jain are set aside giving the benefit of doubt. So far National Steel and its proprietor Shri Shreyansh Jain is concerned, from the appreciation of facts on record, it appears that they were not knowing that their IEC code was being used for import of restricted goods. However they have violated the law by allowing the use of their IEC code by others scrupulous persons. Accordingly the penalty imposed is reduced to Rs. 5 Lacs.

p18. So far Praveen Bansal is concerned, I find that he is the kingpin in the whole illicit import of R-22 gas. For making super profit, he has practically arranged all the things required. However under the facts and circumstances, the penalty of Rs. 10 lakhs under Section 112 (a) (b) and further penalty under Section 114AA of the Act are reduced to Rs. 3 lakhs each, under each section.

19. For reducing the penalty, I find it justified as the goods have been absolutely confiscated by the Customs, being the restricted goods, valued at about 91.8 lakhs. Further, there is also seizure of HMS scrap valued at Rs. 14.23 lakhs.

20. Accordingly, the appeal of Praveen Kumar Jain is allowed. Other appeals are allowed in part, as indicated hereinabove. The appellant(s) are granted consequential benefit in accordance with law.

(Pronounced on 24.07.2018)

(Anil Choudhary)
Member (Judicial)

Ckp.