

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

(E-Hearing)

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70593 of 2017

(Arising out of Order-In-Original- 06-PR-COMMR-NOIDA-CUS-2017, dated - 28/03/2017 passed by Commissioner, Customs, Noida)

Kamlesh Ratnashi Sonagela

.....Appellant

(R.P.V. Vasa, Flat No.-1, Bhagwan Niwas, R.R.T Road,
Mulund (W), Mumbai, Maharashtra 400080)

VERSUS

Commissioner, Customs, Noida

....Respondent

(Tilpata, Dadri, Gautam Budh Nagar, UP-201311)

APPEARANCE:

Shri Anupam Dighe, Advocate for the Appellant

Shri A.K. Choudhary, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER NO.-70218/2025

DATE OF HEARING : 20.02.2025

DATE OF DECISION : 24.04.2025

P. ANJANI KUMAR:

Intelligence collected by Directorate of Revenue Intelligence (DRI) indicated that a syndicate of unscrupulous persons were engaged in illegal import of R-22 gas cylinders; M/s Ramesh & Company and M/s Vipain& Company, Mandi Gobindgarh imported R-22 under the cover heavy melting scrap; on examination of the impugned containers, imported by the above companies, it was noticed that R-22 cylinders were

concealed behind the consignment of heavy melting scrap by creating a false partition. Investigations conducted revealed that the above cited two companies imported the said melting scrap shipped by M/s Aditi Global General Trading LLC. On conclusion of the investigations, a show cause notice dated 26.12.2014 was issued seeking to confiscate the seized R-22 cylinders, Nozzles & scrap used to conceal the same; impose penalty on Ramesh & Company; Shri Ashok Kumar Goyal, Manager and Power of Attorney, M/s Ramesh & Company; Shri Vipin Kumar Garg, Proprietor, M/s Vipin & Company; Shri Bhavesh Thakkar, owner of Shyam Shipping Agency; Shri Mukesh Thacker. A Corrigendum dated 30.04.2015 was issued seeking to impose penalty on M/s Premium Cargo Movers, CHA. An addendum dated 17.06.2015 was issued seeking to impose penalty under Section 112(a)(i) and under Section 114AA on the appellant, alleging that the appellant had knowingly abetted the export of R-22 gas from Dubai. The show cause notice was adjudicated and the confiscated goods were seized while imposing penalties on various persons/companies involved. A penalty of Rs. 20,00,000 under Section 112(a)(i) and a penalty of Rs. 15,00,000 under Section 114AA of the Customs Act was imposed on the appellant.

2. Learned Counsel for the appellants submits that the show cause notice is issued without any jurisdiction as the alleged offence was committed in Dubai, a place outside India, and as such show cause notice could not issued before the amendment to, sub-Section 2 of Section 1 of the Customs Act w.e.f. 29.03.2018. No penalty can be imposed even if the allegation

that the appellant has abetted the alleged mis-declaration and smuggling by the importers situated in India is proved.

3. Learned Counsel further submits that penalty was imposed on him only on the basis of the statement of a co-noticee i.e. Bhavesh Thakkar which was retracted later; on an appeal filed by Shri Bhavesh Thakkar, against the same impugned order, this Bench has set aside the penalty on Shri Bhavesh Thakkar; Shri Ashok Kumar Goyal and Shri Vipin Kumar Garg have accepted their role in the alleged illegal import and therefore Tribunal has imposed appropriate penalties on them. He submits that penalty cannot be imposed on the basis of statements of co-noticees as held in the following

- *Mridul Agarwal vs. Commissioner of Customs, Lucknow 2018 (362) E.L.T. 847 (Tri. – All.)* . The decision of this Hon'ble Tribunal was upheld by the Hon'ble Allahabad High Court [2019 (366) E.L.T. 634 (All.)]
- *Saurabh Aggarwal vs. Commissioner of Customs, New Delhi [2020 (373) E.L.T. 676 (Tri. – Del)]*
- *Commissioner of Customs (Preventive), Kolkata vs. Amit Jalan [(2024) 23 Centax 266 (Tri. – Cal)]*

4. Learned Counsel for the appellant further submits that the proceedings are vitiated as he was not provided an opportunity of cross examination of the co-noticees, even when the same were relied upon, though un-corroborated. He Relies upon the following cases

- *Gobinda Das vs. Commissioner of Customs (Prev.) Kolkata [(2023) 7 Centax 201 (Tri. - Cal)]*
- *Sunil Aidasani @Vicky vs. Principal Commissioner of Customs (Import), New Delhi [(2024) 18 Centax 321 (Tri. – Del)]*

- *Bansal Fine Foods Pvt. Ltd. vs. Commissioner of Customs, Mundra [(2023) 5 Centax 109 (Tri.-Ahmd)*
- *Tejas Narendra Mehta vs. Commissioner of Customs, Ahemdabad [(2024) 15 Centax 206 (Tri. – Ahmd).*

5. Learned counsel for the appellants submits further that penalties under Sections 112(a)(i) and 114AA is unwarranted and is liable to be set aside, as he had neither colluded/connived with the importers nor did he have the knowledge that the goods being exported were prohibited for import into India as he had mentioned in his Statement recorded under Section 108 of the Act. As he had not signed any documents and has not caused any document to be signed, penalty cannot be imposed on him. He relies on

- *Rajeev Khatri vs. Commissioner of Customs (2023) 9 Centax 412 (Del.)*
- *M/s MSA Shipping Pvt. Ltd. vs. C.C., Mundra [2018 (2) TMI 1686]*
- *Mohd. Ilyas vs. Commissioner – 2018 (360) ELT 570 (Tri. Del.),*
- *Parag Domestic Appliances vs. Commissioner of Customs, Cochin [2018 (360) ELT 547 Tri – Bang]*

6. Shri A.K. Chaudhary, learned Authorized Representative for the revenue reiterates the findings of the impugned order and submits that learned Commissioner has properly appreciated the role of the appellant in the smuggling of R-22 gases and accordingly imposed suitable penalties.

7. Heard both sides and perused the records of the case. We find that the learned Commissioner has confirmed the role of the appellant in the impugned case of smuggling of R-22 gas and

has imposed penalties on the grounds that the appellant along with Shri Bhavesh Thakkar was the mastermind and chief strategist; Shri Vipin Kumar Garg stated that the appellant came up with the offer of sale of R-22 gas during the meeting and that he was physically present when the impugned goods were loaded.

8. We find that the role of the appellant was confirmed on the basis of the allegations that he along with Shri Bhavesh Thakkar was the mastermind. However, we find that CESTAT vide Final Order No. 70593-70596/2024 has set aside the penalty on Shri Bhavesh Thakkar. If Shri Bhavesh Thakkar, who along with the appellant was alleged to be the mastermind of the illegally import of R-22 gas, was not held liable for penalty, it is difficult to believe that the appellant is liable for penalty. Conspiracy alleged to have been entered into two persons cannot be now restricted to one person. It is a matter of common sense that no conspiracy will be possible with one conspirator. Therefore, the moment penalty imposed on one of the two-conspirators has been set aside, it would not be possible to sustain the same on the other.

9. Learned counsel for the appellants submits in addition that the appellant was alleged to have committed the violations during his stay in Dubai; as the customs act was not made applicable to such persons before 29.03.2018, the appellant cannot be penalized for violations if any committed prior to that date. We find that the submissions of the appellant to that extent are having a force and need to be accepted.

10. Learned counsel for the appellant submits in addition that they have requested to cross examine the other co-accused like

Ashok Kumar Goyal of M/s Ramesh & Company and Shri Vipin Kumar Garg of M/s Vipin & Company. We find that the case against the appellant is based on the statements , of different persons involved in the case, including the above. Therefore, denying the cross examination violates principles of natural justice, more so looking into the fact that the adjudicating authority has also not examined the said persons under the provisions of Rule 9D of Central Excise Act.

11. In view of the above, we find that Revenue has not made out any case for imposition of penalty on the appellant under Section 112(a)(i). Our point of view is supported by the various case law relied upon by the appellants. We further find that the appellant having not filed any declaration/form under the provisions of Customs Act cannot be fastened with the penalty under Section 114AA.

12. In view of the above, the appeal is allowed.

(Pronounced in open court on 24.04.2025)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash/Nihal