CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/241, 289,323/2007-DB & C/409/2008-DB

[Arising out of Order-in-Original No. 36/2006 dated 12.12.2006 and Order-in-Original No.01/2006 dated 17.1.2007 passed by Commissioner of Customs, Cochin.]

M/s. Trichur Traders
C/o, C.k.boban, S/o. Kochunni,
Kanjirakode P.O. Vadakkancherry,
Trichur Dist, Kerala

C. K. Boban
S/o Kochunni
Chungath House
Kunnam Kulam, Trichur. Appellant(s)
Kerala.

A. R. Ajeesh
S/o S. Raghunathan
Ambika House
T. C. 9/387, Pongumoodu,
Medical College P.O.
Thiruvananthapuram – 695 011.

Versus

The Commissioner of Customs
CUSTOM HOUSE
COCHIN – 682 009. Respondent(s)
KERALA

Appearance:

Mr. SANGEETHA LAKSHMANA, Advocate
NANMA ASSOCIATES
FIRST FLOOR, AMINU PLAZA TATAPURAM
SUKUMARAN ROAD,
NEAR PROVIDENCE JUNCTION
COCHIN – 682 018.
KERALA

For the Appellant

Mrs. Kavita Podwal, Superintendent (AR) & Mr. Gopa Kumar (AR)

For the Respondent

Date of Hearing: 11.12.2018

Date of Decision: 14.01.2019

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. A. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20049 - 20052 /2019

Per : P. A. ANJANI KUMAR

DRI has received an intelligence that M/s. Trichur Traders are attempting to smuggle/remove imported goods out of Cochin Port without payment of duty and without observing the customs procedures. Whereas the goods were declared as toys, the actual goods were batteries, CFL, ladies inner ware, soap, etc. Accordingly, they have investigated the case and have issued a show-cause notice to various appellants proposing confiscation of goods and imposition of penalty on M/s. Trichur Traders and Shri C. K. Boban and Shri A. R. Ajeesh.

2. In a follow-up, DRI has also registered a case against M/s. Cherry Medicals, Trichur alleging mis-declaration and illegal clearance in the past. A show-cause notice was issued confirming duty proposing confiscation while imposing penalties on persons involved therein. Shri A. R. Ajeesh is one such person. In both the cases, it was alleged that the imported items were mis-declared and the contents of the containers were illegally being removed from the port premises with the help of Shri A. R.

Ajeesh, Shri Nandanan and others. The Bill of Entry was being filed for the goods declared and nominal duty was being paid.

The above appellants have filed appeals as follows:

Sl. No.	Appeal No.	Appellant	OIO No.
1.	C/409/2008	M/s. Trichur Traders	No.36/2006 dt. 28.1.2006
2.	C/289/2007	Shri C. K. Boban	-do-
3.	C/241/2007	Shri A. R. Ajeesh	-do-
4.	C/323/2007	Shri A. R. Ajeesh	No.1/2007 dt.17.1.2007

3. The Ld. counsel for the appellants at Sl. No.1 and 2 submitted that the adjudicating authority did not consider that M/s. Trichur Traders is a proprietary concern and as such, penalty cannot be imposed both on the firm as well as the person. They further submitted that the appellant was not aware of the clandestine method adopted by the agents for the clearance of the goods. The Custom House Agent (CHA) used to obtain their signature in various documents. He did not know English language and he trusted his agent. The appellant had no nexus with the agent and the alleged violation which was possible only due to unholy nexus between the said officers and the Custom House Agent. The appellant was an innocent victim of circumstances and they had no role in the evasion of duty. The appellants further submitted that the valuation arrived at was not

as per law. They have already suffered arrest and served detention for some time under COFEPOSA.

3.1 Shri A. R. Ajeesh has submitted that he was a student and was son of a CISF constable residing in the port area, neighbourhood of which consisted of officers of customs. He was introduced to one Shri Nandanan who was residing nearby with a customs officer. On being advised by Shri Nandanan, he has joined a car cleaning unit named Rainbow International Car Interior Cleaning and a cargo cleaning unit named Rainbow Impex. He was offered a salary of Rs.2,000/- per month. Occasionally, he was being used in the cargo clearances services as well. in respect of both his appeals that he was neither a CHA nor a holder of customs/port pass on behalf of M/s. Ramanamurthy and Sons which was mandatory for entry into the premises. He has not made any application in terms of Bill of Entry (Electronic Declaration) Regulations, 1995 and he is not an authorised person as defined under Custom House Agent Licensing Regulations, 2004. The appellants entry into the port without these passes will not be possible without the connivance, support and patronage of the customs or port authorities. He was not given an opportunity to cross-examine the officers. He was apprehended by DRI on16.3.2005 and asked him about Shri Nandanan. Mr. Nandanan was not traced. Though he was arrested on 16.3.2005, he was made a witness to mahazar dated 17.3.2005. It was not possible for him to be present during the smuggling activities on 17.3.2005 as alleged in the mahazar. There was no nexus between the appellant and the containers involved.

4. Ld. AR has reiterated the findings of the Orders-in-Original and submitted that M/s. Trichur Traders had filed Bill of Entry for 3600 pieces of toys from the container IALU 1201439. Shri A. R. Ajeesh who was present along with Shri Unnikrishnan (Manager of the CHA M/s. Ramanamurthy and Sons) has accepted his presence. The container was found to have 650 cartoons of battery, 33,000 pieces of CFL, 19 bags of ladies panties and 50 cartoons of soaps, flower stand and etc. The importer admitted the guilt of having attempted to smuggle out the contents of the container. Shri A. R. Ajeesh gave the work of M/s. Trichur Traders to the CHA. His job was to file import application along with documents and destuffing of the cargo after taking delivery order. The Bill of Lading was given by Shri Boban of M/s. Trichur Traders. He submitted that the facts of the case are very clear

and the same have been accepted by the persons involved. Retractions at later stage are of no use.

5. Heard both sides and perused the records.

6. The present set of appeals are only on the issue of penalty. M/s. Trichur Traders contended that they have imported toys from M/s. Girish Trading Company, Dubai and have handed over the work of CHA to M/s. Ramanamurthy and Sons and have signed the documents given by CHA for the release of the same. They are innocent and are not part of the activities at the port by some persons with the connivance of the officers. From the case records, it is seen that M/s. Trichur Traders are the importers and have filed the Bills of Entry. It is on record that discrepancies in the weight and description of the goods in the Bills of Lading and goods actually arrived in the containers is established. He has arranged for the import of the consignment and paid the foreign supplier. It is very difficult to believe that goods for which an order has not been placed and for which payment has not been made would arrive just like that without the active knowledge of the importer. The importer has filed the Bill of Entry under Section 46 of the Customs Act, 1962. The importer has accepted his guilt in the statements given before DRI. As such, the

importer cannot hide under the reason that they have simply signed the documents given by the CHA for the purpose of clearance of the cargo. It is not the claim of the appellants that they are not importers. The thrust of their argument was that they were not aware of the clandestine/illegal clearance of the goods from the port premises itself without payment of duty. Such an argument would not obviate the fact that they are the importers and as such, they are liable for the discrepancies in the import. Therefore, we find that they have rendered themselves liable to pay penalty. However, we are in favour of accepting the contention that penalty cannot be imposed both on the proprietor as well as the firm. Therefore, we find that imposition of penalty on Shri C. K. Boban is valid. Penalties imposed on M/s. Trichur Traders are set aside. Moreover, looking into the circumstance of the case, it is seen that the importer was not present during the clandestine/illegal clearance of goods from the port premises and their role and knowledge in the illegal import is not established reasonably. Looking into the fact that the appellant Shri C. K. Boban has undergone detention under COFEPOSA for some time, the penalty imposed appears to be on the higher side. We find that penalty imposed can be reduced.

6.1 Coming to the role of Shri A. R. Ajeesh, it is found that he was working for the CHA. As per his own statement, the modus operandi was to file a Bill of Entry and to obtain delivery order for the containers; the containers were destuffed and the goods which are not declared are cleared from the port and the goods which are declared are put up for examination after filing a separate Bill of Entry; they were aware that the port authorities do not require the Bill of Entry for stuffing; the containers cell letter of some other container is obtained and the container number is erased and the required container number is put and is shown to the authorities for clearance of the goods. In this manner, he has earlier cleared goods for M/s. Cherry Medicals also. Shri A. R. Ajeesh accepted that he used to put the signature of Manager of M/s. Ramanamurthy and Sons. Therefore, we find that incontrovertible evidence has been placed to show the role of Shri A. R. Ajeesh in the modus operandi which was also corroborated by the statements of others and photocopy of container cell permission letter recovered from the premises of CHA. Therefore, the retraction by Shri A. R. Ajeesh does not hold any water. His submissions on the suspected involvement of customs/port authorities are out-of-place and are not subject matter of this appeal. Their involvement, if any, would have been established by the investigating agency. In the absence of the same, the request of Shri A. R. Ajeesh appears to be wriggle out of the penalties imposed on him. Even if it is found that some other people are also involved, it would not absolve Shri A. R. Ajeesh of his role in the modus operandi in illegal clearance of goods from the port. Therefore, we find that penalties on Shri A. R. Ajeesh are tenable in respect of both the cases. However, looking into the circumstances of the case and the fact that long years have passed after occurrence of the incident, we are inclined to reduce the penalty.

7. In view of the above, the appeals are partly allowed as below:

Sl. No.	**Appeal No.**	**Appellant**	**Penalty confirmed**
1.	C/409/2008	M/s. Trichur Traders	Nil
2.	C/289/2007	Shri C. K. Boban	Rs.1,00,000/-
3.	C/241/2007	Shri A. R. Ajeesh	Rs.1,00,000/-
4.	C/323/2007	Shri A. R. Ajeesh	Rs.1,00,000/-

(Order was pronounced in Open Court on **__________.)**

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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