# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH,
COURT NO. II

**Customs Appeal No. 50313 of 2019**

[Arising out of the Order-in-Original No. 32/2018/RNS/COMMR/IMP/ICD/TKD dated 23/10/2018 passed by The Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.]

**Shri Sanjeev Singh Yadav** **Appellant**
11 Floor, Penta House – 2,
B-1 Block, Lotus Pond, Indrapuram,
Ghaziabad (U.P.).

VERSUS

**Commissioner of Customs (Import)** **Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi.

**WITH**
**Customs Appeal No. 50320 of 2019**

[Arising out of the Order-in-Original No. 32/2018/RNS/COMMR/IMP/ICD/TKD dated 23/10/2018 passed by The Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.]

**M/s Royal Décor India Pvt. Ltd.** **Appellant**
13 Chawla Complex, A-2015,
Vikas Marg, Shakurpur,
New Delhi – 110 092.

VERSUS

**Commissioner of Customs (Import)** **Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi.

**AND**
**Customs Appeal No. 50321 of 2019**

[Arising out of the Order-in-Original No. 32/2018/RNS/COMMR/IMP/ICD/TKD dated 23/10/2018 passed by The Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.]

**Shri Bhupesh Tyagi** **Appellant**
R/o B-1/401, Lotus Pond,
Indrapuram,
Ghaziabad (U.P.).

VERSUS

**Commissioner of Customs (Import)** **Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi.

**AND**

**Customs Appeal No. 50372 of 2019**

[Arising out of the Order-in-Original No. 32/2018/RNS/COMMR/IMP/ICD/TKD dated 23/10/2018 passed by The Commissioner of Customs (Import), Inland Container Depot, Tughlakabad, New Delhi.]

**Shri Sunil Kumar – CHA,** **Appellant**
**M/s Mouli Worldwide Logistics,**
J-2/107 B, DDA Flats, Kalkaji,
New Delhi.

VERSUS

**Commissioner of Customs (Import)** **Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi.

**APPEARANCE**

S/Shri Piyush Kumar, A.K. Seth and Ms. Reena Rawat, Advocates – for the appellants.

Shri Sunil Kumar, Authorized Representative (DR) – for the Respondent

CORAM :**HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51607/2019**

DATE OF HEARING : 17/06/2019.
DATE OF DECISION : 06/12/2019.

**C.L. MAHAR :-**

All the four appeals, as mentioned above, arise from the same impugned order-in-original No. 32/2018 dated 23 October 2018.

2. The brief facts of the matter are that working on a specific intelligence the officers of the Department detained 4 containers having nos. BLJU 2750023, BLJU 2750050, BLJU 2751267 and BLJU 2751288 imported vide bill of entry No. 3132662 dated 2 November 2015 which was filed by M/s Samco Industries Ltd. for clearance of 104 M.T. of calcium carbonate. The officers of DRI

examined all the 4 containers and it was detected that the item of import namely calcium carbonate was only used for concealment of other prohibited and undeclared items like firework and telescopic channels. The contents of all the 4 containers as found after examination are given here below :-

| Sl. No. | Container No. | Description of items as per Panchnama dated 06/11/2015 | Total quantity of items (in Kgs.) |
|---|---|---|---|
| | | Calcium Carbonate | 15000 |
| | | Gogo fireworks K0201 (made in China) | 6248 |
| 1. | BLJU 2750023 | Telescopic Channels 12 inch Vega Mark | 1224.60 |
| | | Telescopic Channels 20 inch Vega Mark | 1955.10 |
| | | Calcium Carbonate | 11500 |
| | | Gogo fireworks K0201 (Made in China) | 6710 |
| | | Telescopic Channels 10 Inch | 700.70 |
| 2. | BLJU 2750050 | Telescopic Channels 12 inch | 1057.30 |
| | | Telescopic Channels 14 inch | 1400.60 |
| | | Telescopic Channels 16 inch | 1430.80 |
| | | Telescopic Channels 22 inch | 500 |
| | | Calcium Carbonate | 13750 |
| | | Gogo fireworks K0201 (Made in China) | 7018 |
| 3. | BLJU 2751267 | Telescopic Channels 20 inch, 1 Core Mark | 3168 |
| | | Telescopic Channels 18 inch, 1 Core Mark | 2415.60 |
| | | Calcium Carbonate | 16250 |
| 4. | BLJU 2751288 | Gogo fireworks K0201 (Made in China) | 6512 |
| | | Telescopic Channels 18 inch, Vega Mark | 3096 |

2. It can be seen from the above-mentioned table that imported cargo was mis-declared and an attempt was made to clandestinely import and clear firework, telescopic channels.

3. The Directorate of Revenue Intelligence has undertaken investigation into the matter and from the investigations it has revealed that a conspiracy was hatched by Shri Bhupesh Tyagi (one of the appellant) Proprietor of M/s Swastic Trading Company and Director of M/s Royal Décor India Pvt. Ltd. with Shri Sanjeev Singh Yadav for monetary benefits to illegally import and smuggle into the country restricted items namely firework from China by concealing the same in the container carrying calcium carbonate. For execution of their plan for smuggling of firework and other undeclared items they have approached and roped in Shri Sanjay Gupta, Director of M/s Sanco Industries Ltd. who is a regularly purchaser of calcium carbonate. As per design, the consignment of calcium carbonate alongwith firework and telescopic channels was ordered and imported by Shri Bhupesh

Tyagi from China in the name of his firm namely M/s Swastic Trading Company, when the import consignments was on their way to India, a high sea sale agreement has been entered by these persons with Shri Sanjay Gupta, Director of M/s Sanco Industries Ltd. who is a bonafide user of calcium carbonate in manufacture of PVC compound, PVC pipes etc. The only purpose of entering into the high sea sale agreement with M/s Sanco Industries Ltd. by Shri Bhupesh Tyagi and Shri Sanjeev Singh Yadav was that since M/s Sanco Industries Ltd. being actual user of the calcium carbonate, they were entitled for high level of facilitation and thus there were lower chances of examination of the cargo by virtue of the importer being an actual user of the declared cargo namely calcium carbonate. In the modus-operandi planned by Shri Bhupesh Tyagi and Shri Sanjeev Singh Yadav, Shri Sunil Kumar of the CHA firm namely M/s Mouli Worldwide Logistics was also involved as he has to undertake clearance of the mis-declared cargo. During the course of investigation it has also been noticed that Shri Bhupesh Tyagi has also imported three more consignments which were covered under the bill of lading No. QSAY 6004442 dated 25 October 2015, SHZAD 1510371 dated 27 October 2015 and OOLU 2565964890 dated 20 October 2015 these goods were also to be cleared following the above-mentioned modus operandi, however, since no bill of entry was filed for clearance of same they remained pending for clearance. The examination of the cargo covered by these bills of lading also resulted in detection of mis-declaration by Shri Tyagi and his firms M/s Royal Décor India Pvt. Ltd. in as much as that though as per import general manifest the consignment has been declared to be of calcium carbonate however in two containers it was detected to container fireworks and telescopic channels (drawer sliders) and in third container spectacles (Roy Ban), buffing pads etc. were found.

4. After investigation, a detailed show cause notice dated 3 May 2016 was issued to all the appellants which was adjudicated

by the Commissioner vide his order-in-original No. 32/2018 dated 23 October 2018 whereunder after examination of the role of all the individual appellants the learned Commissioner has passed the following order :

(1) (a) I hereby reject the declared assessable value of Rs. 6,85,829/- of the goods and re-determine the assessable value of Telescopic Channel and Calcium Carbonate in terms of Rule 5 of CVR, 2007 at Rs. 18,63,208/- (as mentioned in chart – A) and the assessable value of fireworks in terms of Rule 9 of CVR, 2007 at Rs. 2,88,96,000/- imported under Bill of Entry No. 3132662 dated 02/11/2015.
(b) I also determine the actual assessable value at Rs. 11,99,184/- (as mentioned in chart-B) and Rs. 20,21,102/- (as mentioned in chart –C) in terms of Rule 5 of CVR, 2007 for the goods excluding Fireworks and Rs. 2,71,55,200/- in terms of Rule 9 of CVR, 2007 for the Fireworks for which bill of entry was not filed ;

(2) The seized goods, i.e. Chinese made Fireworks (26.488 M.T. in 1204 cartons) seized from eight containers numbers BLJU 2750023, BLJU 2750050, BLJU 2751267, BLJU 2751288, and Containers No. HDMU 2619280, TRHU 2250224, SSTU 9002172, SSTU 9002188 which were not declared in the Bill of Entry No. 3132662 dated 02.11.2015/Import General Manifest & Bill of Lading and which were restricted and required a specific license from the Director General Foreign Trade (DGFT)/Chief Controller of Explosives in Form LE-8 having total market value of Rs. 5,60,51,200/- (Rs. 2,88,96,000/- and Rs. 2,71,55,200/-) taken together are confiscated absolutely under Sections 111 (d), 111 (f) & 111 (m) of the Customs Act, 1962 readwith the Provision of Explosives Rules, 2008 ;

(3) The seized goods i.e. mis-declared telescopic channel (16.948 M.T.) having determined value of Rs. 1,90,654/- as per Chart-A and Un-declared telescopic channel (11.900 M.T.) having determined value of Rs. 9,89,663/- as per Chart –B are confiscated absolutely under Section 111 (m) and Section 111 (f) respectively of the Customs Act ;

(4) The seized declared goods i.e., as Calcium Carbonate 56.500 M.T. as per Chart-A and 31.760 M.T. as per Chart-B having determined value of Rs. 3,72,554/- and Rs. 2,09,521/- respectively are confiscated absolutely under Section 119 of the Customs Act, 1962 ;

(5) The seized Un-declared goods i.e., Shoes (7116), Spectacles (Counterfeit Ray Ban – 23800 pcs.), Spectacles Cover(10232 pcs.), Buffing Pad (500 pcs.), Machine (Forobo 1 pc.) having determined total value of Rs. 20,21,102/- taken together as per Chart-C are confiscated absolutely under Section 111 (d) and Section 111 (f) of the Customs Act, 1962 ;

(6) Penalty of Rs. 50,00,000/- (Rupees Fifty Lakh only) is imposed on Shri Bhupesh Tyagi (Proprietor of M/s Swastic

Trading Co. and Director of M/s Royal Décor India Pvt. Ltd.) under Sections 112 (a) of the Customs Act, 1962 ;

(7) Penalty of Rs. 25,00,00/- (Rupees twenty five lakh only) is imposed on Shri Sanjeev Singh Yadav (Proprietor of M/s Sky Park India) under Sections 112 (a) of the Customs Act, 1962;

(8) Penalty of Rs. 50,00,000/- (Rupees fifty lakh only) is imposed on Shri Bhupesh Tyagi under Section 114 AA of the Customs Act, 1962 ;

(9) Penalty of Rs. 10,00,000/- (Rupees ten lakh only) is imposed on Shri Sanjeev Singh Yadav under Section 114AA of the Customs Act, 1962 ;

(10) Penalty of Rs. 50,000/- (Rupees fifty thousand only) is imposed on Shri Sunil Kumar, Proprietor of M/s Mouli Worldwide Logistics (CHA) under Section 117 of the Customs Act, 1962 ;

(11) Penalty of Rs. 5,00,000/- (Rupees five lakh only) is imposed on M/s Royal Décor India Pvt. Ltd. under Section 112 (a) of the Customs Act, 1962 ;

(12) The amount of Rs. 5,00,000/- (Rupees five lakh only) deposited by the CHA on behalf of M/s Sanco Industries during investigation is appropriated and adjusted to the adjudication levies.

5. The learned Advocate appearing on behalf of Shri Bhupesh Tyagi (the appellant) has submitted that the Adjudicating Authority has erred in relying upon the statements of Shri Bhupesh Tyagi which has been retracted by him as same were taken by the Investigating officers under duress. It has further been contended that the Adjudicating Authority should not have taken cognizance of the statement given by Shri Sanjeev Singh Yadav and Sunil Kumar as same are contradictory to each other. The learned Advocate has pleaded that Shri Bhupesh Tyagi was made a scope-goat by Shri Sanjay Gupta of M/s Sanco Industries and Shri Sanjeev Yadav who were involved in bringing into India fireworks and other items by mis-declaring the same. It has further been contended that since M/s Sanco Industries on their own has deposited an amount of Rs. 5 lakhs towards the customs duty and therefore it becomes apparent that Shri Sanjay Gupta of M/s Sanco Industries was involved in the mis-declaration of the consignment.

6. The learned Advocate appearing for Shri Sanjeev Singh Yadav has also contended that the appellant Shri Sanjeev Singh Yadav was not involved into the mis-declaration of the goods as neither he is the owner of import consignments nor or of the mis-declared goods. It has further been added that Shri Yadav came to know about the mis-declaration of the import cargo from Shri Sunil Kumar – CHA after the import consignment was put for examination by the officers of DRI. It has further been added that it is wrong on the part of Shri Tyagi to allege that Shri Sanjeev Yadav had introduced Shri R.K. Agarwal (China based supplier of fireworks) to Shri Bhupesh Tyagi rather it was Shri Tyagi who introduced Shri R.K. Agarwal (exporter of fireworks) to him. It has thus been impressed upon that neither prior to commission of offence nor at the time of the commission of the offence on 2 November 2015 Shri Sanjeev Yadav had any knowledge of the mis-declaration of the import cargo. It has further been added that the amount of Rs. 5 lakhs received from Shri Bhupesh Tyagi was for payment of customs duty/penalty liability and same was deposited to the custom authorities vide TR-6 challan No. 33998 dated 18 November 2015. It has further been added that Shri Sanjeev Singh Yadav is in nowhere concerned with mis-declaration made by M/s Royal Décor India Pvt. Ltd., wherein the consignment was found to contain spectacles fireworks, telescopic channels, shoes etc. because he has neither arranged for clearance of the same nor filed any bill of entry with regard to these consignments.

7. The learned Advocate appearing for Shri Sunil Kumar – Clearing Agent working with M/s Mouli Worldwide Logistics submitted that Shri Sunil Kumar came in contact with Shri Sanjeev Singh Yadav in the normal course of business and it was Shri Sanjeev Singh Yadav who has engaged him for clearance for import consignment which is the subject matter of this appeal. All the relevant documents pertaining to the bill of entry No. 3132662 dated 2 November 2015, such as, invoice, bill of lading,

packing list etc. were handed over by Shri Sanjeev Singh Yadav for clearance of the calcium carbonate to him. When the officers have asked for physical examination of the import consignment covered by afore-said mentioned bill of entry he has informed Shri Sanjeev Singh Yadav who gave him the import documents. He has also added that Shri Bhupesh Tyagi has also informed that Department is going to undertake detailed examination of the cargo as Shri Bhupesh Tyagi was high sea sale seller of the import consignment. It has been the contention of the appellant Shri Sunil Kumar that he has not informed of the custom officers about the presence of the crackers as Shri Rashtra Bandu of the Department is present at the time of the opening of the containers and he has informed Shri Bhupesh Tyagi and Shri Sanjeev Singh Yadav that the consignment of the calcium carbonate is also containing certain prohibited items, such as, fireworks and telescopic channels. It has been impressed that the appellant Shri Sunil Kumar has taken necessary precautions and due diligence with regard to import consignment.

8. We have heard both the sides and have perused the record of the appeal in detail. It's a matter of record that the import consignment covered by bill of entry No. 3132662 dated 2 November 2015 was filed for clearance of calcium carbonate and on physical examination of the cargo it was found to have fireworks and telescopic channels (of various sizes). It is also a matter of record that in all the above-mentioned appeals, the physical recovery of prohibited and mis-declared goods have not been denied. It is also a matter of record that originally the import consignment of both bill of entry No. 3132662 dated 2 November 2015 as well as the containers which were lying in the internal container depot for which no bill of entry was filed consignments were detected to have branded counterfeit spectacles and some other goods were imported by Shri Bhupesh Tyagi of M/s Swastic Trading Company and Director of M/s Royal Décor India Pvt. Ltd. He has been helped in this work by one Shri

Sanjeev Singh Yadav and the work relating to clearance of the cargo was undertaken by CHA namely Shri Sunil Kumar of M/s Mouli Worldwide Logistics.

9. It’s also a matter of record that appellant Shri Bhupesh Tyagi and M/s Royal Décor India Pvt. Ltd. (a company having Shri Bhupesh Tyagi as one of the Director) did not participate in the adjudication proceedings in spite of the fact that more than a ten opportunities of personal hearing were accorded to them. We find that Shri Bhupesh Tyagi has confessed that he has hatch a conspiracy to illegally import fireworks by mis-declaring the same and by concealing the same in the consignment of calcium carbonate. It is also apparent from the proceedings and investigations that the consignment which were imported in the name of M/s Royal Décor India Pvt. Ltd. were lying pending for clearance in the Inland Container Depot were also containing the mis-declared cargo of fire crackers, telescopic channels, spectacles of various brands shoes etc. During investigation Shri Bhupesh Tyagi has failed to produce any authority for legitimate import of fireworks. We also find that he has devised a well thought and meticulous planed modus operandi to smuggle fireworks and other mis-declared goods into the country with a only motive of earning monetary benefits. We find that in this activity Shri Sanjeev Singh Yadav was also part and parcel of the whole conspiracy. We find that it was Shri Sanjeev Singh Yadav who has made arrangements for clearance of the mis-declared import cargo and handed over invoice, packing list, bill of lading, delivery order etc. to the clearing agent Shri Sunil Kumar of M/s Mouli Worldwide Logistics. We also find that it was Shri Sanjeev Singh Yadav who has arranged for a meeting between Shri Bhupesh Tyagi and Shri R.K. Agarwal (China based supplier of fireworks). Shri Sanjeev Singh Yadav since very beginning was involved in this conspiracy as he was also responsible in getting the high sea sale arranged between M/s Swastic Trading Company and M/s Sanco Industries Ltd. He was also monitoring

and overseeing the work of clearance of the mis-declared import cargo alongwith Shri Sunil Kumar – Custom House Agent. It also appears that Shri Sanjeev Singh Yadav and Shri Sunil Kumar also adopted illegally means for getting the clearance of mis-declared import cargo. We find that Shri Sunil Kumar – CHA Proprietor of M/s Mouli Worldwide Logistics (CHA), has not shown due diligence while accepting the clearance work of the import consignment as he has accepted the relevant import documents, such as, invoice, packing list, bill of lading etc. from a third party rather than meeting the importer himself. It appears from the record that Shri Sunil Kumar has never interacted with the high sea sale buyers of the goods namely Shri Sanjay Gupta – Director of M/s Sanco Industries Ltd. We find that when the consignment was undertaken for examination and it was detected that the import consignment has been mis-declared and contains prohibited items, such as, fireworks etc. he has informed Shri Sanjeev Singh Yadav and also spoke to Shri Bhupesh Tyagi, however, he did not inform the customs authorities regarding the mis-declaration of the cargo. We also find that all the above appellants in their various statements have confessed to their involvement or have confessed to their misdoings which is also corroborated with the facts of the case.

10. We find that Hon'ble Supreme Court in case of **Naresh J. Sukhawani versus Union of India** reported under **1996 (83) E.L.T. 258 (S.C.)** has held as follows :-

> "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 the 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".

11. Similarly the Apex court again in case of **Commissioner of Central Excise, Madras versus Systems & Components Pvt. Ltd.** reported under **2004 (165) E.L.T. 136 (S.C.)** has held that:-

> "5. ……. Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved".

12. In this case we find that all the statements of the relevant persons get corroborated by the statements of co-accused persons and with the physical facts as detected by the investigations.

13. In view of above, we find that no new facts or evidences have been adduced before us to impress that the amount of penalties imposed upon the above-mentioned appellants have been imposed in disproportionate to their role in attempted smuggling of prohibited and mis-declared goods into the country.

14. In view of above, we feel that we do not find any infirmity in the impugned order-in-original under challenge. We uphold the same and all the appeals are accordingly dismissed.

(Order pronounced in open court on 06/12/2019.)

**(Anil Choudhary)**
**Member (Judicial)**

**(C.L. Mahar)**
**Member (Technical)**

PK