

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 07/10/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/53036-53044/2015-CU[DB] dated 07/09/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.


 Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
¹ C/MISC/50767/2015	C/50992/2015	Buhariwala Logistics 1310, Pragati Tower, Rajendra Place CENTRAL NEW DELHI-110008
² C/MISC/50768/2015	C/50993/2015	Buhariwala Logistics 1310, Pragati Tower, Rajendra Place CENTRAL NEW DELHI-110008
³ C/MISC/50769/2015	C/50994/2015	Buhariwala Logistics 1310, Pragati Tower, Rajendra Place CENTRAL NEW DELHI-110008
⁴ C/MISC/50770/2015	C/50995/2015	Buhariwala Logistics 1310, Pragati Tower, Rajendra Place CENTRAL NEW DELHI-110008
⁵ C/MISC/50850/2015	C/51182/2015	Buhariwala Logistics 1310, Pragati Tower, Rajendra Place DELHI-110008
⁶ C/MISC/51129/2015	C/51562/2015	Buhariwala Logistics 1310, Pragati Tower, Rajendra Place NEW DELHI-110008
⁷ C/MISC/51130/2015	C/51563/2015	Buhariwala Logistics 1310, Pragati Tower, Rajendra Place NEW DELHI-110008

⁸ C/MISC/51161/2015 C/51751/2015 **Buhariwala Logistics**
1310, Pragati Tower, Rajendra
Place
NEW DELHI-110008

⁹ C/MISC/51795/2015 C/52856/2015 **Buhariwala Logistics**
1310, Pragati Tower, Rajendra
Place
NEW DELHI-110008

**Name and Address of
Respondent**

¹⁰ C.C.-New Delhi(air Cargo
Export)
NEW CUSTOM HOUSE,
NEW DELHI,

¹¹ C.C.-New Delhi(air Cargo
Export)
NEW CUSTOM HOUSE,
NEW DELHI,

¹² C.C.-New Delhi(air Cargo
Export)
NEW CUSTOM HOUSE,
NEW DELHI,

¹³ C.C.-New Delhi(air Cargo
Export)
NEW CUSTOM HOUSE,
NEW DELHI,

¹⁴ C.C.-New Delhi
New Customs House,Near I.G.I.
Airport,
New Delhi,

¹⁵ C.C.-New Delhi(import &
General)
NEW CUSTOM HOUSE,NEAR
IGI AIRPORT,
NEW DELHI,

¹⁶ C.C.-New Delhi(import &
General)
NEW CUSTOM HOUSE,NEAR
IGI AIRPORT,
NEW DELHI,

¹⁷ C.C.-New Delhi(import &
General)
NEW CUSTOM HOUSE,NEAR
IGI AIRPORT,
NEW DELHI,

C.C.-New Delhi(import &
General)
NEW CUSTOM HOUSE,NEAR
IGI AIRPORT,
NEW DELHI,

Other Appellants and Respondents as per Annexure

Copy To

19 Advocate(s) / Consultant(s):

Sujay. N. Kantawala, Advocate
301,302,303 VARMA
CHAMBERS,11,
HOMEJI STREET,
HORNIMAN CIRCLES
FORT,
MUMBAI,
MAHARASHTRA-400001

20 Additional Party's Name & Address :

21 Bar Association, CESTAT, Delhi

22 Director Publications, Customs, Excise. I.P. Estate, Delhi

23 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

24 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

25 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

26 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

27 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

28 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

29 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

30 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

31 C.D.R. 32 Office Copy 33 Guard File



Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.**

Date of Hearing 07.09.2015

For Approval & Signature :

**Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Application No.C/MISC/50767/2015-CU[DB]

Appeal No.C/50992/2015-CU[DB]

[Arising out of Order-in-Original 68/2015/SRB/Commr/Imports, dated 12.02.2015 passed by the C.C. (Imports), New Delhi]

Application No.C/MISC/51795/2015-CU[DB]

Appeal No.C/52856/2015-CU[DB]

[Arising out of Order-in-Original 06/2015/SRB/Commr/Imports, dated 30.06.2015 passed by the C.C. (Imports), New Delhi]

Application No.C/MISC/51129/2015-CU[DB]

Appeal No.C/51562/2015-CU[DB]

[Arising out of Order-in-Original 75/2015/SRB/Commr/Imports, dated 26.03.2015 passed by the C.C. (Imports), New Delhi]

Application No.C/MISC/50768/2015-CU[DB]

Appeal No.C/50993/2015-CU[DB]

[Arising out of Order-in-Original 71/2015/SRB/Commr/Imports, dated 16.02.2015 passed by the C.C. (Imports), New Delhi]



Application No.C/MISC/50769/2015-CU[DB]

Appeal No.C/50994/2015-CU[DB]

[Arising out of Order-in-Original 70/2015/SRB/Commr/Imports,
dated 13.02.2015 passed by the C.C. (Imports), New Delhi]

Application No.C/MISC/50770/2015-CU[DB]

Appeal No.C/50995/2015-CU[DB]

[Arising out of Order-in-Original 69/2015/SRB/Commr/Imports,
dated 13.02.2015 passed by the C.C. (Imports), New Delhi]

Application No.C/MISC/50850/2015-CU[DB]

Appeal No.C/51182/2015-CU[DB]

[Arising out of Order-in-Original 74/2015/SRB/Commr/Imports,
dated 27.02.2015 passed by the C.C. (Imports), New Delhi]

Application No.C/MISC/51130/2015-CU[DB]

Appeal No.C/51563/2015-CU[DB]

[Arising out of Order-in-Original 78/2015/SRB/Commr/Imports,
dated 31.03.2015 passed by the C.C. (Imports), New Delhi]

Application No.C/MISC/51161/2015-CU[DB]

Appeal No.C/51751/2015-CU[DB]

[Arising out of Order-in-Original 77/2015/SRB/Commr/Imports,
dated 31.03.2015 passed by the C.C. (Imports), New Delhi]

M/s. Buhariwala Logistics

Appellant

Vs.

C.C.(I & G), New Delhi

Respondent

Appearance

Mr.Sujay N Kantawala, Advocate - for the appellant

Mr. Amresh Jain, DR - for the respondent

CORAM: Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order Nos.53036-53044/2015, dated 07.09.2015



Per Mr. R.K. Singh :

Appeals have been filed against the respective Orders-in-Original passed by C.C.(I&G), New Delhi in terms of which penalty of Rs.2 lakhs was imposed on the appellant vide the respective orders-in-original.

2. The facts of the case are that DRI booked a case of import of high end luxury cars from foreign suppliers by mis-declaring them as new, although they were old and registered in the country of export prior to their import into India and thus were second hand cars. It was also found that the cars were under invoiced. These cars were being imported by one Shri Sumit Walia. In this case, the appellant was the CHA on whom penalty has been imposed on the ground of facilitating the said illegal imports in violation of the provisions of the Customs House Agents Licensing Regulation, 2004.

3. The appellant has contended that (i) it was not concerned with the activities of Shri Sumit Walia and his associates and the fraudulent activities attributed to it were undertaken by Shri G.S. Prince (who was its employee and G card holder) in his personal capacity and without its

G2

knowledge. (ii) In another case involving identical/similar facts, the appeal has been allowed vide CESTAT ***Final Order Nos.55023-55024, dated 17.12.2014*** essentially on the ground that the appellant was unaware of the activities of its G card-holder Mr. G.S. Prince, who was acting in his personal capacity for his personal benefit. (iii) The appellant's statement was never recorded. (iv) There is no evidence that the appellant was aware of the activities of Mr. G.S. Prince.

4. Ld. Departmental Representative, on the other hand, stated that (i) Mr. G.S. Prince was a 'G' card-holder of the appellant and therefore, the appellant cannot escape its responsibility regarding the action of Mr. G.S. Prince. (ii) It has been held by the High Court of Delhi in the case of ***Jasjeet Singh Marwaha Vs. Union of India [2009 (239) ELT 407 (Del.)]*** that in the circumstances penalty on the CHA can be imposed and that similar view has been held by Karnataka High Court in the case of ***Clear Fast Services Pvt. Ltd. Vs. JCC, Bangalore [2011 (272) ELT 58 (Kar.)]***.

5. We have considered the contentions of both sides. In this regard, we find that Mr. G.S. Prince admitted in his statement that he acted in his personal capacity and the



appellant. CHA was not aware his activities in this regard. It is also seen that the appellant's statement was never recorded and there is no evidence to suggest that the appellant was aware of the activities of Mr. G.S. Prince. In this regard, we find that in respect of Appeal Nos. C/58871 & 60232/2013-Cus(DB), the CESTAT allowed the appellant's appeal vide Final Order No. 55023-55024 dated 17.12.2014 and set aside the penalties imposed upon it on similar grounds and on the basis of similar evidence. CESTAT in that order came to a finding that there was no evidence to prove the involvement of the appellant, that its employee had *suo motu* acted for his personal greed and beyond the scope of duty and therefore the employer (i.e. the appellant) cannot be penalised. Para 12 of the said order is reproduced below:-

"12. We find that in the case of Appellant No.1, no statement of the appellant was recorded. Moreover, during the course of hearing, the appellant has submitted that Shri G.S. Prince is a G card holder and has acted in his own capacity to get the monetary benefits from the business dealings with Shri Sumit Walia and the appellant was not having any knowledge of such importation. We further find that in subsequent proceedings on the same investigation in other imports of car by the same persons on the request of the appellant, Shri G.S. Prince was made the party to the

43

Show Cause Notice and in those cases, the adjudicating authority has observed as under:-

"(F) Coming on the question of penalty on noticee No.(vi) M/s. Buhariwala Logistics I observe that in the show cause notice MN/s. Buhariwala Logistics have been charged through their G-Card Holder G.S. Prince that by virtue of their action of facilitating the fraudulent imports in violations of the provisions of CHALR, 2004 they have made themselves liable for Penalty under Section 112 and Section 117 of the Customs Act, 1962 as applicable.

I find that in this case the show cause notice dated 24-04-2012 was earlier issued to M/s. Buhariwala Logistics through their G-Card Holder G.S. Prince. Subsequently through Addendum / Corrigendum to the Show Cause Notice dated 08-10-2013 Shri G.S. Prince, G-card holder of the CHA, M/s. Buhariwala Logistics was specifically put to notice as to why penalty should not be imposed on him for various acts of omission and commission for facilitating Sh. Sumit Walia in fraudulent import of Aston Martin Rapide car in the name of Commercial Attache of the Embassy of Vietnam and mis-declaration/ suppression of proper value of the said car.

I have gone through the written & oral submissions of M/s. Buhariwala Logistics that they were not involved in the said violation since, actually it was Shri G.S. Prince who facilitated and handled the clearance of the imported vehicle without the knowledge of the CHA M/s.

G

Buhariwala Logistics. Even during the investigation stage, none of the persons involved had made any inculpatory statement regarding the role of M/s. Buhariwala Logistics. However, since Sh. G.S. Prince was acting on behalf of M/s. Buhariwala Logistics. Therefore, it appears that M/s. Buhariwala Logistics failed to perform their duty obligations under the CHALR, 2004 for which proceedings can be initiated under the said Rules. As far as violations under the Customs Act, 1962 are concerned, I do not find any role of M/s. Buhariwala Logistics in the present matter. In view of this fact, I refrain from imposing any penalty on M/s. Buhariwala Logistics in the present case."

Thereafter the penalty on the appellant has been dropped but the penalty on Shri G.S. Prince was imposed. Further we find that in the case of CC Vs. Vaz Forwarding Ltd.(supra), wherein the penalty was dropped on the CHA in absence of evidence of the knowledge of the CHA. Further, in the case of S.Y Ranade (supra), it was held that there is no evidence to prove the involvement of the CHA and an employee has suo moto acted for his personal greed and beyond the scope of his duty, therefore the employer, i.e., CHA cannot be penalised. In this case also, it is not in the knowledge of the appellant that Shri G.S. Prince is involved in illegal importer and Shri G.S. Prince acted in his personal capacity for monetary gains. We also find that in subsequent proceedings Shri G.S. Prince no penalty has been imposed on the appellant. Therefore, we hold that no penalty is imposable on the appellant

G

consequently, we set aside the penalty imposed on the appellant."

As regards the judgement of Karnataka High Court cited by Id. Departmental Representative in the case of ***Clear Fast Services Pvt. Ltd. Vs. JCC, Bangalore*** (supra), we find that in that case the High Court merely held that there was no substantial question of law which arose for its examination. Thus, the judgement would not adversely hit the CESTAT Final Order cited above. As regards the judgement of Delhi High Court in the case of ***Jasjeet Singh Marwaha Vs. Union of India*** (supra), we find that in para 6.2, the High Court observed as under:-

"6.2 Furthermore, if the owner or importer of goods acts through an agent, then, under Section 147, the owner or the importer shall be deemed to have not only knowledge but also presumed to have given his consent to any such thing done by an agent unless the contrary is proved for the purposes of proceeding under the Act, thus making the owner or importer being liable for any infraction of law the agent who is authorized, impliedly or expressly by the owner of exporter shall also be liable. Under the proviso to sub-section (3) of Section 147 as noticed hereinabove, in so far as, it is a case of duty not levied or short-levied or erroneously refunded then except where the such an eventuality had occurred on account of any wilful act, negligence or default of the agent it is provided that the duty shall not be recovered

D

from the agents unless the concerned authority as indicated under the provision comes to the conclusion that the duty cannot be recovered from the owner or the importer."

As may be observed, the judgement stated that where the agent ^{was} authorised expressly or impliedly by the owner, the owner shall also be liable for the actions of agent. In the present case, no evidence has come on record that the appellant authorised Mr. G.S. Prince expressly or impliedly.

6. In view of the foregoing and following the precedent in the appellant's own case vide CESTAT Final Order dated 17.12.2014, we set aside the penalties imposed on the appellant and allow the appeals.


(Justice G. Raghuram)
President


(R.K. Singh)
Member (Technical)