(18)

REGISTERED / AD

FAX : 011-26108426

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

Dated: 10/02/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/55023-55024/2014-CU[DB]** dated **17/12/2014**

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/Stay/59508/2013	C/58871/2013	**Buhariwala Logistics** 1310,pragati Tower RAJENDRA PLACE NEW DELHI
2	C/Stay/61125/2013, C/MISC/53716/2014	C/60232/2013	**Vishvas Uday Singh Lad** House No-2990,12th Main Indiranagar BANGALORE KARNATAKA-560038
			Name and Address of Respondent
3			C.C.-New Delhi(import & General) NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI,

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

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

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

Date of Hearing 17.12.2014

Appeal Nos.C/58871 & 60232/2013-CU[DB]
[Arising out of Order-in-Original No.33/NLB/Commr/2013, dated 18.07.2013 passed by the C.C. (I & G), New Delhi]

For Approval &Signature :

Hon'ble Mr. Ashok Jindal, Member (Judicial)
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

M/s. Buhariwala Logistics
Shri Vishvas Uday Singh Laad — Appellants

Vs.

C.C.(Import & General), New Delhi — Respondents

Appearance
Shri Sujay N. Kantawala, Advocate
Shri B.G. Chidananda Urs, Advocate - for the appellants

Smt. Suchitra Sharma, DR - for the respondents

CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order Nos. 55023-55024 **dated 17.12.2014**

Per Mr. Ashok Jindal :

The appellants namely M/s. Buhariwala Logistics and Shri Vishvas Uday Singh Laad are in appeals against the impugned order, wherein penalties under various sections of Customs Act, 1962 were imposed on them.

2. The facts of the case are that an intelligence was received by DRI that one Shri Sumit Walia alias Sunni Walia was importing high end luxury cars from various foreign suppliers by mis-declaring as 'new', whereas in reality, all such cars were old and registered in the country of export prior to export thereof, and thus, fell in the category of second hand cars, thereby attracting high duties of customs than paid by them. It was further revealed that they were also involved in under-invoicing the value of these vehicles at the time of import and thus, evading the differential customs duty on the same. The residential premises of Shri Sumit Walia was searched and various documents were found and it was found that Shri Sumit Wadia imported one Mercedes Benz GL 320 Cdi car bearing Chassis No.WDC1648222A28655 7 in the name of Shri Tarun Kumar. The Bill of Entry was filed in the name of Shri Tarun Kumar having Invoice No.6557, dated 17.03.2008 of Ms/ A.K. International (IE) Ltd. The price was declared as US$47,700.00, the duty was discharged on concessional rate of Basic Customs Duty (BCD) as new car. Statement of Shri Sumit Walia and Shri G.S. Prince, the G-Card holder of the Appellant No.1 were recorded. Statement of Shri Tarun Kumar was also recorded and after conducting the investigations, it was revealed that the vehicle was sold to Shri Vishvas Udai Singh

Laad, the Appellant No.2, a resident of Bangalore. Therefore, on 03.04.2013, the summons were issued to record the statement of the Appellant No.2. The premises of the Appellant No.2 were visited on 04.04.2013 and the car was seized. After seizure of the car, panchnama was drawn and given to Shri Prabhakar G, Personal Assistant to the Appellant No.2, since Shri Vishvas Udai Singh Laad was not available at the residence at that time. Thereafter, a Show cause Notice was issued to Shri Sumit Walia, Shri Tarun Kumar and the Appellant Nos. 1 & 2. On the basis of investigations, it was alleged that the car in question imported was old and used car and was heavily under-valued to evade payment of duty and it was also revealed from the investigations that the appellant before us have aided and abetted avoid Shri Sumit Walia for illegal importation of the car. The matter was adjudicated. The penalties of Rs.10 lakhs each under sections 112(a) and 114AA of Customs Act, 1962 on Appellant No.1 were imposed. On appellant No.2 penalty of Rs.10 lakhs was imposed under section 112(b) of the Act. The vehicle in question was confiscated and allowed to redeem on payment of redemption fine of Rs.22 lakhs. Aggrieved from the said order, appellants are before us.

<u>Arguments on behalf of the Appellant No.2</u>

3. Ld. counsel for the Appellant No.2 submits that the appellant is a *bona fide* purchaser of the car as he purchased the car in good faith and have no role on illegal importation of the car by Shri Sumit Walia or Shri Tarun Kumar. He submits that initially the car was imported by Shri Sumit Walia in the name of Shri Tarun Kumar was sold to Mr. Oswal of

Ludhiana, who in turn sold the same to the Appellant No.2. He further submits that no statement of the appellant was recorded as summons were issued on 03.04.2013 and before recording the statement of the appellant, the Show Cause Notice was served on 05.04.2013, since the appellant has no direct connection with the import of the impugned car and has obtained a loan of Rs.60 lakhs from the bank to purchase the car. Therefore, the appellant has *bona fide* belief that the car cleared through customs by the importer and there was no reason to disbelieve the assessment of the said car by the customs. He further submits that the impugned car was an imported new car as per Board circular No.1/2005-Cus, dated 11.01.2005 which classifies that a new imported vehicle for the purpose of this Chapter shall mean a vehicle that has not been registered for use in any country and the same was registered in UK only for its onward exportation. To support his contentions, he relied on the decision of Hon'ble High Court of Mumbai in the case of ***CC Vs. Noshire Moody [2012-TIOL-391-HC-MUM-CUS]*** and the decision of the Tribunal in the case of ***Rahul Bhandare Vs. CC (Imports) [2012 (285) ELT 225 (Tri.)]***.

4. It is further submitted that the value declared with the customs at UK was not discounted by the VAT which would be eligible as refund to the foreign suppliers and the contemporaneous imports are available to the proper officer at the time of importation.

5. For imposition of redemption fine, it is submitted that the appellant is *bona fide* purchaser of the car, therefore, the redemption

fine is not imposable, for this, he relied on the decision of Hon'ble High Court of Karnataka in the case of ***CC Vs. Five Star Shipping Co. [2012 (278) ELT 196 (Kar.)]***, wherein it was held that the car which is cleared by the Customs Department and after such clearance, the purchase was effected by the *bona fide* purchaser, such *bona fide* purchaser is not liable to pay redemption fine even if the car was under valued and the original importer is liable to pay the differenial duty. He further submits that the redemption fine of Rs.22 lakhs was excessively high and not commensurate with the evidence, which clearly established that the appellant is a *bona fide* purchaser. Therefore, he prayed that the penalties under sections 112(a) and 114AA of the Act are not imposable on the appellant without recording the statement of the appellant. In these terms, he prayed that the impugned order *qua* confiscation of the car and imposition of penalties under sections 112(a) and 114AA of the Act against the appellant be set aside.

Arguments on behalf of the Appellant No.1

6. On behalf of the Appellant No.1, the counsel submits that the statements of Shri Sumit Walia and Shri G.S. Prince, Green card holder of the appellant were recorded, but no statement of any of the partners of the appellant firm was recorded nor any summons were issued to them. Shri G.S. Prince, in his statement exposed Shri Sumit Walia and Shri Tarun Kumar, but he has not imputed any knowledge of this activities to his masters, i.e., the appellant. The Show Cause Notice has been issued to the appellant through inculpatory statement of Shri G.S. Prince, but Shri G.S. Prince was not made party to the Show Cause

Notice. He further submits that the car was allowed for clearance after examination and submission of documents by Shri G.S. Prince after assessment. Shri G.S. Prince was handling Delhi office over the years and earned trust of the appellant, so there was no reason to doubt him. Just on learning of these activities, he was immediately removed. In the impugned order, a penalty of Rs.10 lakhs was imposed under Section 112(b) of the Act on the appellant mainly on the fact that the appellant being CHA has not verified the antecedents of the importer diligently and has not informed to the Customs Department. It was also observed that the appellant failed to established that Shri G.S. Prince got monetary benefits from the business dealings with Shri Sumit Walia and concluded that there was omission on the part of the appellant at the time of importation of the car, which rendered imposition penalty under section 112(b) of the Act. He further submits that there is no material on record in the form of statement or any other documentary evidence to impose penalty under section 112(b) of the Act. He further submits that in fact after realising the fact at a later stage, the adjudicating authority on the prayer of the appellant was pleased to order addition of Shri G.S. Prince to subsequent Show Cause Notice and was pleased to impose severe penalty on Shri G.S. Prince vide Orders in Original No.51 & 52/NLB/Commr./I&G/2014, both dated 31.07.2014 and no penalty was imposed on the appellant, after considering the material on record. This proves the innocence of the appellant.

7. He submits that in the case of ***CC Vs. Vaz Forwarding Ltd. [2011 (266) ELT 39 (Guj.)]***, the Hon'ble High Court of Gujarat dismissed the Revenue's appeal against the order passed by the Tribunal wherein

penalty was dropped on the CHA since there is no direct evidence on record that CHA was aware of the Advance licence being bogus and forged. He also relied on the decision of Hon'ble High Court of Mumbai in the case of ***Raj Cleaning Agency [2006 (199) ELT 602 (Mumb)]***, in the case of ***Mahender Shah [2010 (261) 497 (Tri. – Mumb.)]*** and the decision of the Tribunal in the case of ***S.Y. Ranade [2009 (248) ELT 495 (Tri. – Mumb)]***, wherein 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 cannot be responsible and penalised under section 112 of the Act.

8. On the other hand, Ld. Departmental Representative supported the impugned order and submitted that in this case car has been imported by Shri Tarun Kumar through Shri Sumit Walia, who is the master mind behind the smuggled nature of the imported car and during the course of investigation it was found that the car was highly under-valued and shown as new instead of old. The car was found in the possession of Appellant No.2 and the employee of Appellant No.1 was actively involved in the activity. In these circumstances, he prayed that confiscation of car and imposition of penalties on the appellants were proper.

9. Heard the parties and considered the submissions.

10. On perusal of the record and facts of the case, we find that initially the car was imported by Shri Sumit Walia in the name of Shri Tarun Kumar on 04.04.2008. We find that initially the car was imported for sale to M/s. Oswal in Ludhiana and the same was later on purchased by the Appellant No.2 on 21.04.2008. The appellant has purchased the car after the clearance from the customs as a *bona fide* purchaser of the car and has taken the loan of Rs.60 lakhs for purchase of the car. In these circumstances, we hold that the appellant is a subsequent purchase of the car after importation in India and *bona fide* purchaser of the car. Further, we find that Appellant No.2 has contended the valuation of the car and submitted that the car is not an old car is not acceptable as the impugned order has not been challenged by Shri Sumit Walia and Shri Tarun Kumar, therefore, the said part of the order has attained finality. In these circumstances, we are not agreeing with the contentions of the ld. counsel of the Appellant No.2 that the car is new one and the value of the car is declared correctly.

11. We further find that the contention that the car cannot be confiscated as appellant is a *bona fide* purchaser. We hold that the car has been confiscated for under-valuation and mis-declaration and the said part of the order has not been challenged by the importer. In these circumstances, the impugned car is liable for confiscation. We also find that the redemption fine imposed is highly excessive. Therefore, we reduce the redemption fine to Rs.5 lakhs. On payment of such redemption fine, the car shall be released to Appellant No.2. Further we

find that the appellant is the *bona fide* purchaser of the car and no statement of the appellant has been recorded and no role of the appellant has been discussed. Therefore, we hold that penalties under sections 112(a) and 114AA were not imposable on the appellant. In these circumstances, the appellant is entitled to take the possession of the car on payment of redemption fine of Rs.5 lakhs.

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

13. With these terms, the appeals are disposed of.

4/2/15

(Ashok Jindal)
Member (Judicial)

(R.K. Singh)
Member (Technical)

SSK