CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50238 of 2020 [SM]

[Arising out of Order-in-Appeal No.CC(A) – CUS/D-II/ICD/IMP/TKD/221 dated 28.05.2019 passed by the Commissioner of Customs, Ludhiana].

M/s.Rahul Sehgal,
House No.1182, Sector 39,
Chandigarh Road, Ludhiana **...Appellant**

VERSUS

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

APPEARANCE:

Mr. Navneet Panwar, Advocate for the Appellant
Ms.Tamanna Alam, Authorized Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:**17/08/2021**

FINAL ORDER No. 51781/2021

RACHNA GUPTA

Present appeal has been filed to assail the Order in Appeal No.221-222/2019 dated 28.05.2019. The relevant factual matrix for the adjudication there of, in brief, is as follows:-

The Department while acting upon an intelligence regarding smuggling of Chinese origin fire crackers had intercepted two containers having No. OOLU8554789 and OOLU8804131 which arrived at Inland Container Depot, ICD, Tuglakabad, New Delhi imported in the name of M/s. Kirat Sales vide Bill of Ladding No.OOLU2023101170 dated 4th August, 2016. Chinese origin fire crackers were found in the said containers being concealed behind the declared cargo i.e. bicycle parts. Further, intelligence indicated that two Ludhiyana based persons namely, Shri Rahul Sehgal and Shri Saurab Aggarwal have imported the consignments through Custom Broker Shri Harish Goyal. Panchnama dated 5/6.09.2016 to that effect was prepared. After conclusion of investigation, show cause notice No.1206 dated 02.03.2017 was served upon Shir Harish Goyal alleging abatement in smuggling of prohibited goods by providing IEC of M/s. Kirat Sales. It was also served upon Shri Rahul Sehgal and Saurab Aggarwal who have been alleged to have conspired for getting smuggled the prohibited goods as that of Chinese origin fire crackers under wrongly declared bicycle parts to propose recovery of the value of the goods found in those containers alongwith the interest and the proportionate penalties. The said proposal was initially confirmed vide order-in-Original No.14 dated 28.02.2018. The appeal thereof has been rejected vide the Order-under Challenge.

2. I have heard Shri Navneet Panwar, learned Counsel for the appellant and Smt. Tamanna Alam, learned Departmental Representative for the Revenue.

3. It is mentioned on behalf of the appellant that the impugned two containers were imported by importer M/s. Kirat Sales Corporation through Mr. Harish Goyal as their CHA. During the investigation, statement of said Shri Harish Goyal was recorded on 13.10.2016 and it is from said statement that names of Saurab Aggarwal and Rahul Sehgal emerged. It is impressed upon that none of them is either the importer or the CHA/CB. There is no evidence produced by the Department about alleged conspiracy being hatched by both of them to facilitate the importer M/s. Kirat Sales to get smuggled the prohibited goods in the container declared to have bicycle parts. The oral testimony that too has subsequently been retracted is objected to be the sole basis of fastening liability on Shri Rahul Sehgal as well as Shri Saurab Aggarwal. It is further mentioned that Saurab Aggarwal had challenged the findings against him and this Tribunal vide Final order No.50233/2020 dated 11.02.2020 has set aside the order of the adjudicating authority against him. The said order is the common order for as the one against the present appellant Rahul Sehgal. The order under challenge is, accordingly, prayed to be set aside not only for want of the evidence and also the grounds of parity. Order is, accordingly, prayed to be set aside. Appeal is prayed to be allowed.

4. To rebut these contentions, learned DR has mentioned that the present appellant had never cooperated with the Department. He has failed to produce the relevant documents, if any, to his defense. Benefit of doubt has rightly been denied by Commissioner (Appeals) to Rahul Sehgal. The findings with

respect to the present appellant in para 39.2.1 of the impugned order have been impressed upon, denying any alleged infirmity or illegality in the order. The appeal in hand is prayed to be dismissed.

5. After hearing the rival contentions and perusing the entire record, I observe and hold a follows:-

Admittedly the investigation in the present case initiated and the containers were seized at the stage prior to clearance of the goods i.e. at the stage where no bill of entry was filed. The only document available on record is Bill of Ladding. Apparently and admittedly, the said document mentions that the importer of the impugned two containers was M/s. Kirat Sales Corporation. The proprietor whereof is Mr. Jashkirat Singh. Though the statement of said Mr.Jashkirat Singh was recorded on 6th January, 2017, however, no notice was ever served upon the said importer. His oral testimony about his IEC Code to have been mis-utilized by his CHA Shri Harish Goyal has been relied upon. Since there is no apparent evidence in support of the said statement of Jashkirat Singh, it will not be inappropriate to hold that considering said Jashkirat to be innocent was a mere presumption on the part of the Department.

6. Further, it is coming apparent from the statement of the Dy. Manager of Orient Overseas Life India Pvt. Ltd. who has shipped the impugned consignments that the email as was received in respect of the consignments imported through their shipping line was from email ID kiratsales3011@gmail.com. The entire statement about receiving subsequent mails from the same email

ID rather goes against the presumed innocence about M/s. Kirat Sales.

7. Coming to the involvement of the present appellant, the sole evidence on the record is the statement of Shri Harish Goyel as was recorded on 13.10.2016, who has stated about getting consignments of the present appellant cleared but as consignments of bicycle parts. The allegation against the appellant is that he has mis-declared the name of consignee and has tried to clear the consignment from ICD Import TKD New Delhi but except from the said statement there is no substantial evidence to support the said allegation against Rahul Sehgal. The only evidence against the appellant therefore, is nothing but a third party evidence that too an oral statement recorded at the stage of investigation. There is no effort on part of Department to corroborate the said third party statement as against the present appellant.

8. Apparently and admittedly, present appellant is the importer of bicycle products. Admittedly the impugned consignment was not in the name of M/s. Rahul Traders the importing firm of the appellant, but was in the name of M/s. Kirat Sales Corporation. Though the show cause notice recites that the consignment was initially booked in the name of M/s. Rahul Traders but in the light of the statement of Mr. Manish Shrivastava, Dy. Manager of Orient Overseas Life, the shipping agency and in the light of the document as that of Bill of Lading, the said allegations is not sustainable and the confirmation based thereupon is nothing but a result of

presumption. This being a clear cut case of absence of any evidence against Rahul Sehgal, it shall be appropriate to hold that the adjudicating authority below has erred fastening liability upon the present appellant by way of imposition of penalty.

9. Further, the basic allegation against the appellant appears to be that of conspiring with Mr. Saurabh Aggarwal to get smuggled the prohibited goods. As apparent from the Final Order No.50233/2020 that said Saurabh Aggarwal has been given clean chit for want of any evidence to establish his involvement, in the form of conspiracy or otherwise, in the impugned imports. The question of meeting of mind of the present appellant with said Saurabh Aggarwal gets closed with the element of doubt. Conspiracy being a criminal offence principle of criminal jurisprudence gets readily attracted. The foremost principle being that the benefit of doubt has to be extended in favour of the accused. In the present case there is not merely the doubt but the lack of substantial evidence as against Rahul Sehgal that the findings of authorities below cannot sustain.

10. As a result of entire above discussion, the order under challenge is hereby set aside. Appeal stands allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita