

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

NEW DELHI

PRINCIPAL BENCH

Customs Appeal No. 51130 of 2020 [SM]

[Arising out of Order-in-Appeal No.CC(A)/Customs/D-II/Prev./NCH/346/2020-21 dated 27.07.2020 passed by the Commissioner (Appeals), New Delhi]

M /s. Ferryman Trading Company

...Appellant

Uppli Road, Near Fire Brigade Office,
Sangrur (Pb.) 148001

VERSUS

Commissioner of Customs (Appeals)

...Respondent

New Custom House,
New Delhi.

APPEARANCE:

Mr. A.S. Bisla, Advocate for the Appellant

Mr.Mahesh Bhardwaj, Authorised Representative for the Respondent

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

DATE OF HEARING: 26.08.2021

PRONOUNCED ON : 28.10.2021

FINAL ORDER No. 51910/2021

RACHNA GUPTA

The appellant is an importer having IEC No.301308199 who had imported the cosmetic products through bill of entry No.8300179 dated 03.10.2018 through its CHA firm M/s. R.P. Cargo Handling Services at the declared value of Rs.2288502.77. On the basis of intelligence, the said consignment was put on hold vide letter dated 10.10.2018 and was examined by team of

Preventive Officers, New Custom House at ICD, Tughlakabad on 10.12.2018. The goods were found to be T.Y.A. Plant cosmetic products having individual packing, but packed in large cartons. The manufacturer of goods was shown as M/s. Jaidili Cosmetics Company Ltd., Longhu Industrial Zone, Lain Jiang Road, Shantou, China whereas the invoice reflects that the manufacturer as M/s. Shantou Aldieces Cosmetics Co. Ltd. No.3, Longxin 1st Street, Longxin Industrial District Longhu Shantou City 515000, Gaungdong Province China. The goods were also found to be mis-declared in description as well as quantities, accordingly were seized by seizure Memo dated 12.10.2018 in terms of Section 110 of the Customs Act.

1.1 The Adjudicating Authority vide its order No.191/2018 dated 05.12.2018 had rejected the declared value of Rs.2288502.77 and accepted the re-determined assessable value of Rs.25,45,129/- . The goods of the said value were ordered to be confiscated. However, option was given to the importer to redeem the goods but those having clearance value of Rs.2455289.94 on the payment of redemption fine of Rs.1.00 Lakh. However, the goods having value of Rs.89829/- were ordered for absolute confiscation on the ground that they were not declared in the CDSCO Registration Certificate. The total Customs Duty of Rs.1079350/- in respect of the impugned Bill of Entry No.8300179 was confirmed and a penalty of Rs.73322/- was imposed upon the appellant alongwith the order of recovery of interest. The said

order was challenged before Commissioner (Appeals) who vide order No.17332- 17338 dated 05.12.2018 has upheld the said order. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Mr. A.S. Bisla, learned Counsel for the appellant and Mr. Mahesgh Bhardwaj, learned Authorised Representative for the Revenue.

3. It is submitted on behalf of the appellant that there is no provision ordering the absolute confiscation of the goods. It is impressed upon that goods in question are the cosmetics products (the make-up Kit), hence, were neither prohibited nor restricted for this reason also, the authorities below have committed an error while ordering the absolute confiscation. Learned Counsel has also impressed upon the CDSCO certificate as was produced before the adjudicating authorities incorporating the impugned product. However, the same was not considered. While relying upon the decision of this Tribunal, Chennai Bench in the case of **Shri Natraja Trading Company vs. Commissioner of Customs, Chennai reported in 2009 (236) ELT 681**, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, it is mentioned on behalf of the Department that present is the case where the appellant himself has acknowledged its mistake about the address of the

manufacturer being wrong and also about the products to have been misdeclared. He also admitted to not to have the CDSCO Registration Certificate at the relevant point of time with respect to the T.Y.A. Fashion Make Up/ make-up kit. In the absence of the said Certificate there is no infirmity in ordering the absolute confiscation of the impugned goods. Appeal is accordingly, prayed to be dismissed.

5. After hearing the parties, rival contentions and perusal of record, the sole issue to be adjudicated in the present appeal is observed to be as follows:-

“Whether the absolute confiscation of the goods valued at Rs.89,839/- due to the reason that same were not declared in the CDSCO.. Registration Certificate is permissible or not.”

6. Foremost, we need to know the technicality attached to the CDSCO Certificates. It is the Certificate being issued by Central Drugs Standard Control Organization. All cosmetic products that are imported for sale in India need to be registered with the Licensing Authority, as is defined under Rule 21 of Drugs and Cosmetic Act which regulate the import of cosmetic to ensure safety, quality and performance. For this purpose that the CDSCO Certificates are issued by the afore-mentioned organization in terms of the provisions of Cosmetic Rules, 1945, which stands

amended with Cosmetic Rules, 2020. The certificate is issued by the Central Licensing Authority for registration of cosmetic manufactured for import into India and use in India. This particular perusal makes it abundantly clear that the goods which are not mentioned in CDSCO Certificate are the restricted goods. No doubt section 125 of the Customs Act gives the importer an option to pay fine in lieu of confiscation but the word used in the provision is “may”, hence, the intention of statute is apparently clear that the discretion lies with the Confiscating Officer to either impose fine in lieu of confiscation or to order the absolute confiscation. This particular perusal is sufficient to answer the afore-framed query in affirmative.

Further from the facts of the present case, it is clearly a case of admitted misdeclaration:

- 1) Of the goods which are absolutely confiscated to not have been mentioned in CDSCO Certificate.
- 2) About the details of the manufacturer to have been wrongly mentioned on the consignment and
- 3) About the declared value (2288502.77 INR) which is totally different from the invoice value of the consignment (30727 USD).

7. As per the settled law of evidence admissions have to be accepted and the voluntary admissions need no further proof. This particular perusal is sufficient to distinguish the present case from the case of **M/s. Natraja Trading Company** (Supra). Said

admission also supports the presence of intent to evade the requisite Customs Duty.

8. Resultantly, I do not find any infirmity in the order under challenge where the goods of value of Rs.89,829/- have been ordered absolute confiscation, Customs duty has been demanded with interest and penalty has been imposed. The same is accordingly, upheld. Appeal stands dismissed.

[Order pronounced in the open Court on 28.10.2021]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita