

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

PRINCIPAL BENCH - COURT NO. II

Custom Appeal No. 50199 of 2020 (SM)

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/Prev./NCH/663/2019-20 dated 07.10.2019 passed by the Commissioner of Customs (Appeals), New Delhi.)

M/s D.J. Import (Prop-Harpreet Singh)

Appellant

A-62, Ground Floor,
Asha Park, Jail Road
New Delhi-110088

VERSUS

**Commissioner of Customs (Preventive),
New Delhi**

Respondent

New Customs House,
Near I.G.I. Airport,
New Delhi-110037

APPEARANCE:

Ms. Reena Rawat, Advocate for the Appellant

Shri Pradeep Gupta, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50279 / 2022

Date of Hearing: 30.09.2021

Date of Decision: 25.03.2022

ANIL CHOUDHARY:

The issue involved in the Appeal is penalty of Rs. 2,00,000/- under Section 112 and Rs. 50,000/- under Section 117 whether have been rightly imposed on the Appellant (importer).

2. Brief facts of the case are:-

2.1. On receipt of a specific information, regarding container No. OOLU8098713 pertaining to the appellant, that the container is stuffed with shoes of various brands like NIKE, ADIDAS etc., the Officers of Commissionerate of Customs (Preventive), New Delhi conducted 100% examination of the goods stuffed in this container on 05.08.2014. It was found that the declaration in Bill of Lading No. 2545557690 dated 12.04.2014 was for '361' cartons whereas actually the same were found '477 cartons'. Also Men shoes of various brands were found whereas the same were declared unbranded. The appellant in his voluntary statement dated '05.08.2014 recorded under Section 108 of the Customs Act, 1962 (hereinafter referred to as 'the Act'), inter alia, admitted that the shoes of reputed brands like NIKE, ADIDAS, REEBOK and PUMA were supplied by the supplier without any order and he has not made payment for the same as the supplier has given him credit 'for 180 days'. Thereafter, letters were issued to the Right holders of the reputed brands and they confirmed that the branded shoes were actually 'counterfeit goods' and were in violation of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (hereinafter referred to as 'the Rules'). Summons were issued to the appellant for joining investigation thrice but he failed to appear. The impugned goods were held as prohibited under Section 11 of the Act read with Rule 6 of the Rules. Penalty of Rs. 2,00,000/- was imposed under Section 112 of the Act and penalty of Rs. 50,000/- under Section 117 of the Act vide OIO.

3. Being aggrieved in Appeal before Commissioner (Appeals) inter alia on the grounds:-

“That the impugned OIO did not indicate under which sub-section of section 111 of the Act the goods are liable to confiscation; that as the appellant did not file the Bill of Entry (BOE), he could not held liable for confiscation of the goods; that appellant's plea that goods were wrongly supplied by the shipper has not been considered; that penalty under section 117 of the Act is imposed wrongly; that the penalty of Rs. 2,00,000/- is highly excessive and incommensurate with the gravity of offence and requested to set aside the impugned OIO.”

4. Learned Commissioner (Appeals) observed that the goods has been shipped by the Overseas supplier *vide* Bill of Lading dated 12.04.2014. Such goods were examined by the Customs Officers on 05.08.2014. On examination, complete mismatch was found as regards the quantity and also as regards the description. Although, no Bill of Entry was filed but the description in the Bill of Lading was ‘unbranded shoes’ whereas branded and shoes of reputed brand(s) were also found. Upon enquiry, the brand/right holders confirmed that the branded shoes were counterfeit and the imported in violation IPR enforcement Rules, 2007. Mr. Harpreet Singh proprietor of D.J. Imports did not join investigation and failed to appear in spite of three summons. Thus, the malafide on the part of the Appellant (Importer) was established. It was also held that mere non-filing of Bill of Entry would not absolve the Appellant of his wrong doings. The Appellant did not *suo moto* come forward to inform the Customs about the mis-declaration. Thus it appeared that the Appellant (Importer) was hand in gloves with the Shipper. Accordingly, he was pleased to reject the Appeal.

5. Being aggrieved, the Appellant is in Appeal before this Tribunal. Learned Counsel Ms. Reena Rawat appeared for the Appellant, *inter*

alia urges that the Appellant had visited China in the month of March, 2014 and had placed order for unbranded men's shoes on M/s Global Trading Ltd., Hongkong, China. Thereafter, the Overseas supplier had dispatched the goods alongwith some additional goods (including branded shoes) which were not ordered, *vide* Bill of Lading No. 2545557690, loaded in Container No. OOLU8098713 accompanied with the invoice no. HK1281, packing list and photograph of stuffed container. The Appellant as per arrangement, was to pay for the goods after six months from the date of receipt. On 15.04.2014, the Appellant came to know about the wrong dispatch on explanation/clarification from the overseas supplier. Appellant had also informed that, he did not accept the goods which were not ordered and thus did not file Bill of Entry for taking clearance. It is further urged that the Commissioner (Appeals) have heard in observing that this Appellant did not join the investigation which is factually wrong. This Appellant had appeared before Customs Officers on 05.08.2014 and his statement was recorded, wherein he *inter alia* stated that he is in the business of importing shoes mainly from China, the details of goods as per invoice and packing list is Men's Shoes Unbranded. The Supplier have packed the goods as per his convenience and thus there is mismatch in the quantity as well as the declaration in the shipping documents. On coming to know about the mistake in dispatch by the Shipper, the Appellant (Importer) under information to the Shipper, have not filed the Bill of Entry. The consignment also contained shoes of reputed brands for which he had not placed order, also informed that he has not made any payment so far, as shipper extended credit for 180 days. It is further urged that

this Appellant is not the 'Importer' as defined in the Section 2(26) of the Customs Act, which defines an importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself ought to be the importer. Admittedly, this Appellant had not filed any Bill of Entry for the goods under dispute. Further, relies on the Ruling of this Tribunal in the case of **Nalin Z. Mehta vs. Commissioner of Customs, Ahmedabad [2014 (303) E.L.T 267 (Tri.-Ahmd)]** where it has been held-where a person has not file any Bill of Entry, he cannot be held as an importer.

6. It is further urged that Appellant had cooperated with the investigation and appeared. In his statement recorded by the Customs, he had categorically stated that he did not order for any branded goods. On coming to know from the Supplier that they have dispatched also some branded goods which were not ordered, he did not file Bill of Entry. Thus, the allegation of attempting to import branded shoes, which were counterfeit, is not corroborated by any evidence on record. Admittedly, Appellant have not made any payment for the goods dispatched by the Supplier. Further, reliance is placed on the ruling in the case of **Pradeep Arora vs Commissioner of Customs, Chennai [2002 (150) E.L.T. 1301 (Tri.-Del.)]**, wherein under similar facts and circumstances that the importer did not file any Bill of Entry for clearance of the goods, it was held that the department has not been able to make out a case against the Appellant that they are the importers, and since no duty can be demanded from any other person, other than the importer, the order demanding duty etc. was set aside. Thus, only for the

reason that the Appellant was named as consignee in the Bill of Lading, than cannot be subjected to penalty. Thus, none of the violation as stipulated in Section 111 of the Act are attracted, and in absence of violation of any provision of Section 111, no penalty is imposable under Section 112 of the Act. Further, assails relying on the impugned order, no particular Section has been identified, which have been violated.

7. It is further urged that the penalty provision under Section 117 is applicable in case any person contravenes any provisions of the Customs Act or abets any such contravention or who fails to comply with any provisions of Customs Act, with which it was his duty to comply, and where not express penalty is elsewhere provided for such contravention or failure. Evidently, the Appellant had abandoned the title to the goods by not filing any Bill of Entry. Accordingly, she prays for allowing the Appeal.

8. Learned Authorised Representative for Revenue Mr. Pradeep Gupta relies on the impugned order.

9. Having considered rival contention, I find that admittedly the Appellant had not filed any Bill of Entry and thus he is not the importer, as defined in Section 2 (26) of the Customs Act. Thus, the Appellant cannot be said to have violated any provision of Section 111 of the Customs Act, and thus not liable to any penalty under the provisions of Section 112, as he has not done or committed any act which would render the goods liable to confiscation.

10. So far as penalty under Section 117 is concerned, I find that the conduct of the Appellant is also dubious, and not clean. In spite of having knowledge that the goods dispatched by the Shipper *vide*

aforementioned Bill of Lading, being not as per order and containing counterfeit goods, being a regular importer it was his duty to cooperate with Customs and inform *suo moto* regarding the nature of the goods dispatched by the Shipper, and also of his intention of having abandoned the same goods. The goods were lying in the port after unloading by the shipping line for about three months, and neither the Appellant had filed any Bill of Entry nor had given any intimation of his decision to abandon the goods. It was only when physical examination was taken by opening the seal of container on 05.08.2014, the Customs department found regarding the mis-declaration, both as regards quantity and description. In the circumstances, I uphold the penalty under Section 117 of the Act. However, the quantum of penalty is reduced from Rs. 50,000/- to Rs. 20,000/- (Rupees twenty thousand).

11. Thus, the impugned order stands modified and the Appeal is allowed in part.

(Order pronounced in the open court on 25.03.2022)

(ANIL CHOUDHARY)
Member (Judicial)

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