CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.II

Customs Appeal No. 51932/2019
With Customs Early Hearing Application No. 50504/2021

[Arising out of Order-in-Appeal No. CC(A)CUS/D-II/ICD/IMP/TKD/274/2019 dated 07.06.2019 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

Mr Harish Goyal
House No.63, Shere Punjab Colony
Near Barewal Road
Ludhiana, Punjab.

APPELLANT

Vs.

COMMISSIONER OF CUSTOMS
(Appeals), New Customs House
Near IGI Airport,
New Delhi 110037.

RESPONDENT

APPEARANCE:

Shri Anubhav Goel & Preeti Goel, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Department

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

DATE OF HEARING: FEBRUARY 25, 2022
DATE OF DECISION: 04-05-2022

FINAL ORDER No. 50387 /2022

PER RACHNA GUPTA

Present is the appeal to assail Order-in-Appeal No. 274/2019 dated 7.6.19 vide which the order confiscating the firecrackers as well as bicycle parts along with the imposition of penalty upon the appellant along with two others was confirmed. The facts in brief for the present adjudication are as follows:

Based upon the intelligence with the officers of DRI that two containers bearing Nos. OOLU8554789 and OOLU8804131 being imported in the name of M/s. Kirat Sales under the Bill of Lading No.OOLU202310117000 dated 4.8.2016 were examined by the said DRI officers at ICD Tughlakabad, New Delhi under Panchnama dated 05/06.09.2016.

On examination, both the containers were found to contain Chinese Origin firecrackers concealed behind the declared goods i.e. bicycle parts. The said firecrackers were seized under section 110 of the Customs Act, 1962 under Seizure Memo dated 01.03.2017. During the investigation DRI searched various premises including the premises of M/s. Krishna Clearing and Forwarding Agency, the proprietor whereof is the appellant and electrical devices along with certain documents were recovered from the said premises of the appellant. During further investigations, statement of Shri Manish Srivastava, Deputy Manager (Imports), Orient Overseas Line India Pvt Ltd. who had shipped the impugned both the consignments, was recorded. Statement of appellant was recorded on 13.10.2016, who is a Ludhiana based CHA. Statement of Shri Jaskirat Singh, proprietor of M/s. Kirat Sales whose name was mentioned as the consignee in the impugned Bill of Lading, was recorded on 06.01.2017. Statement of two Delhi based CHA, Shri Parshottam and Shri Ajay Sagar was recorded on 14.02.2017. Based upon these statements and the recovery effected that the Show Cause Notice No. 15/2016/1211 dated 02.03.2017 was served upon the appellant proposing the confiscation of the goods in the seized consignments. Penalty was proposed to be imposed upon the present appellant and two other persons, namely Shri Rahul Sehgal and Shri Saurabh Aggarwal (Ludhiana based importer of bicycle parts) close friend of Rahul Sehgal) who did not come forward for any statement. The said proposal was initially confirmed vide Order-in-Original No. 14/2018 dated 28.08.2018.

The appeal thereof has been rejected vide the Order under challenge.

2. I have heard Shri Anubhav Goel and Ms Preeti Goel, learned Counsels appearing for the appellant and Shri Mahesh Bhardwaj, learned Departmental Representatives appearing for the Department.

3. It is submitted on behalf of the appellant that appellant is a small time Ludhiana based CHA. The allegations of abatement in smuggling of prohibited goods by providing IEC of M/s. Kirat Sales has wrongly been alleged against the appellant. Learned Counsel has mentioned that there is no tangible and cogent evidence against the appellant found in the investigations. It is submitted that the statement of Shri Purashottam and Shri Ajay Sagar have been blindly relied upon by the Adjudicating Authority despite that they had no role with the subject consignment. There is no apparent reason disclosed by the investigating agency about recording their statements. It is submitted that the act of mis-declaration was actually arrangement between the said Shri Ajay Sagar and Shri Purashottam with Shri Rahul Sehgal. The findings of the Adjudicating Authority are the result of presumptions. It is submitted that search was from the laptop, mobile files and other documents recovered from the appellants however no documents/ communication showing any link between the appellant with Shri Rahul Sehgal or Shri Saurab Aggarwal could be revealed. The imposition of penalty upon the appellant is outcome of the presumption and surmises of the Adjudicating Authority with no evidence corroborating the said conclusion. Learned Counsel has relied upon the decision of this Tribunal, Chennai Bench decision in the case of **Shri Jaison James vs. Commissioner of Customs, Chennai in Final Order No 42453-42454/2021** dated **26.11.2021** wherein it was appreciated that penalty cannot be imposed on surmises, assumptions and presumptions. It is impressed upon that none

of the witnesses was allowed to be cross examined by the appellant which amounts to gross violation of principles of natural justice. Finally submitting that the statement of co-noticees, unless corroborated in material particulars by independent evidence, do not constitute the legal evidence. Hence these statements cannot form the basis for imposition of penalty upon the appellant. Order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. Learned Departmental Representative has impressed upon the findings arrived at by the Commissioner (Appeals) in paragraph 5.3 and 5.4 of the Order under challenge. The decision in the case of **M/s. Switchgear Engg Laboratories vs CCE** in C/57570/2019 decided on 15.11.2021 has been relied upon. While acknowledging that the impugned Show Cause Notice was issued by the officers of DRI, the applicability of Hon'ble Apex Court in the case of **Canon India Ltd. vs. Commissioner of Customs** reported as **[2021 SCC 200 (SC)]** is denied. With these submissions appeal in hand is prayed to be dismissed.

5. After hearing the rival contentions and perusing the entire record, it is observed and held as follows:

The consignment in the present case was intercepted at the stage prior to gate customs clearance. The basic document available at that stage was the bill of lading No. 00LUZO 2310 11 70 dated 4.8.2016. The document reflected that the two containers bearing No. 00LD 855479 and 00LU 8804137 were imported in the name of M/s. Kirat Sales, Ludhiana declaring the goods of the consignment as Bycycle parts. On examination concealed firecrackers of Chinese origin were found. The goods were accordingly seized.

6. From the statement of appellant following are the admitted facts:

1. M/s. Kirat Sales Ld. is Ludhiana based clients who are engaged in importing the bicycle parts from the China. Shri Shri Jaskirat Singh, proprietor of M/s. Kirat Sales has got cleared consignment on 10 and 11 March, consignment of bicycles parts and adhesive tapes for Kirat Sales.

2. M/s. Rahul Traders has also been his clients who were also engaged in the import of bicycle from China. He got clearance on 4th and 5th March consignment of bicycle parts of Rahul Traders.

3. The appellant was solely handling the import related Customs Clearance work of both the said firms at Ludhiana.

4. He visited Delhi in the month of August 2016 [the goods in question are imported under Bill of lading dated 4.8.2016].

5. He received the phone call from Orient Shipping Line, Delhi on his office landline number when one Mr. Bhola from the said Shipping Line inquiry for one shipping bill of M/s. Rahul Traders to whom the appellant requested to give the details of Bills of lading.

7. The appellant was informed from M/s. Rahul Traders that no consignment has been imported in the name of M/s. Rahul Traders which would be pending for clearance. The appellant was shown the panchnama of 5/6.9.2016 whereupon he endorsed his signatures, acknowledging that instead of bicycle parts of Chinese origin fire crackers were found in those consignments.

8. Despite being inquired from the appellant Shri Rahul Sehgal denied importing the firecrackers in the consignment declared for bicycle parts pending clearance at ICD, TKD.

9. Following are the statements in evidence on record:

(i) **Statement of Shri Manish Srivastava,** Deputy Manager (Imports) Orient Overseas Line India Pvt Ltd. He deposed :

a. The procedure for booking the consignment in respect of imports of goods into India from Chennai requires the submission of relevant data i.e. the details of port of discharge, final destination, number of containers, required to be submitted by the representative of the Customer team through their website or online.

b. The consignee approaches along with original bill of lading duly endorsed with necessary KYC details as mentioned in the original Bill of Lading; that the delivery order relevant to the concerned consignee, subject to the necessary Customs clearance.

c. The impugned containers were booked from Shekou China for final destination ICD, Tuglakabad, New Delhi with consignee name as M/s. Kirat Sales, Ludhiana; that initially the consignment was booked in the name of consignee as M/s. Rahul Traders, which later got changed to M/s. Kirat Sales. The said name was changed on the basis of e-mail received from their overseas office, which was done between 12th to 16th August, 2016. M/s. Kirat Sales and M/s. Rahul Traders were the first time customers with the overseas Shipping lines. No one approached in their office in India for release of containers in question.

(ii) Statement of Shri Parshotam friend of Ajay Sagar:

Ludhiana based Shri Harish Goyal, appellant approached him for clearance of consignment having mis declared goods but he refused the proposal.

(iii) Statement of Shri Ajay Sagar:

Ludhiana based Shri Harish Goyal, appellant approached him for clearance of consignment having mis declared goods but he refused the proposal.

(iv) Statement of Shri Jaskirat Singh , properitor of M/s. Kirat Sales:

a. He obtained the IEC code to import bicycle parts from China. 15 consignments have been imported till date. All cleared from ICD Ludhiana.

b. The main supplier in China are Hebei Bicycle Guangfeng Co. Ltd. and Guangfeng Fine Industrial Co. Ltd. Initially their CHA was Shri Jaswinder Singh of Unique International since June, 2015, i.e. for last year Shri Harish Goyal of M/s. Krishna Clearing and Forwarding, the appellant was working as CHA.

c. M/s. Kirat Sales never imported firecracker in their firm.

d. The supplier in Bill of Lading is Shenzhen Xin Huayi International Trading Co. Ltd. from whom Shri Jaskirat has never imported bicycle parts.

e. For clearance of consignment KYC documents of firm were required which were never given by him to anybody except the appellant and one Dinesh Yadav, forwarding agent of M/s. Kirat Sales.

f. Shri Harish Goyal also works as CHA for M/s. Rahul Traders.

g. The e-mail ID of Kiratsales3011 @gmail.com from which documents were sent to Shipping lines is denied to be e-mail of M/s. Kirat Sales. It is mentioned to be as Jaskirat14u @gmail.com.

10. M/s. Kirat Sales has no relation with Orient Overseas Shipping Lines. In addition to the above statements, there have been the print outs of retrieved data from electronic devices, recovered seized from the premises of appellant, i.e. print outs

reveals conversation about imported consignments from China about the firecrackers from one phone number to another and from the aforementioned e-mail ID which has been changed by Shri Jaskirat to be the ID for Kirat Sales. From all the above mentioned statements as have been relied upon by the Adjudicating Authority, it becomes clear that the present appellant had full knowledge of the impugned consignment. He has been clearing the consignment for M/s. Rahul Traders and for M/s. Kirat Sales. He was the person having all the relevant documents of both these firms which are to be used while getting the clearance of any imported consignments. He only is engaged as CHA requesting the clearance of the impugned consignment Another important deposition from Shri Manish Srivastava is for telephone number from which their counter parts in China was receiving requests and required information was found to have no relevance with Rahul Traders. These depositions are sufficiently corroborating the allegations against the appellant. Not only this, the facts admitted by the appellant corroborates the deposition of these witnesses. Hence I am of the opinion that no illegality has been committed when witnesses have not been cross examined by the appellant. Otherwise also there has been no requests of the appellant for the cross examination of such witnesses based whereupon the Adjudicating Authority issued the order. Since appellant is found to have admitted his involvement, the admissions are best evidence which need no proof in terms of section 52 of Indian Evidence Act. The appellants admission that he was the Customs Broker for Orient Overseas Shipping Line and Rahul Traders and the admission about visiting Delhi in the month of August, the relevant time for the clearance of the impugned consignment rather are sufficient admission to accept the entire above testimony as evidence against him; that he has tried to level allegation on Shri Rahul Sehgal. Though allegations does not falsify about his involvement as Customs Broker, for said Shri Rahul Sehgal to get clearance of impugned consignment. M/s. Rahul Traders already been given the clean chit. From the entire record, it is observed that this Tribunal has already set aside the order of imposition of penalty upon **Shri Saurabh Aggarwal vide Final Order No. 50233/2020 dated 11.02.2020** in Customs Appeal No. 50147/2020. And again **M/s. Rahul Sehgal vide Final Order No. 51781/2021 dated 17.08.2021** in Customs Appeal No. 50238/2020. Shri Jaskirat has already been discharged at investigating stage itself. Otherwise also none of the persons interrogated at the investigation had named any conversation with Shri Jaskirat. There is no other circumstantial evidence which may point out the guilt of any one else than the appellant himself. There also has been the admission of appellant for acknowledging the contents of panchnama 05/06.09.2016.

11. From the above discussion, it is clear that appellant being CHA of M/s. Kirat Sales as well as of M/s. Rahul Traders had access to all their documents, consignments etc. No proceedings got initiated against M/s. Jaskirat. Proceedings against Rahul and Saurabh has been dropped. Purashottam and Ajay have clearly deposed about appellant only to have approached them at Delhi for getting cleared a mis-declared consignment. As a result of entire above discussion, I do not find any infirmity in the findings arrived at by Commissioner (Appeals). Order under challenge is accordingly upheld. The appeal stands dismissed.

(Pronounced in the open Court on 04-05-2022)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

ss