**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**NEW DELHI**
**PRINCIPAL BENCH, COURT NO. 4**

**CUSTOMS APPEAL NO. 51151 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**VIJAY KUMAR SHARMA** **Appellant**

Vs.

**COMMISSIONER OF CUSTOMS (GENERAL)–NEW DELHI** **Respondent**

**Appearance:**

Present for the Appellant : Shri L.B. Yadav & Ms. Gunjan Tawnar, Advocates

Present for the Respondent: Shri Manish Kumar Chawda, Authorized Representative

**WITH**
**CUSTOMS APPEAL NO. 51152 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**DILIP SINGH JAIN** **Appellant**

Vs.

**COMMISSIONER OF CUSTOMS (GENERAL)–NEW DELHI** **Respondent**

**Appearance:**

Present for the Appellant : Shri L.B. Yadav & Ms. Gunjan Tawnar, Advocates

Present for the Respondent: Shri Manish Kumar Chawda, Authorized Representative

**WITH**
**CUSTOMS APPEAL NO. 51153 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**SATISH KUMAR CHADHA** **Appellant**

Vs.

**COMMISSIONER OF CUSTOMS (GENERAL)– NEW DELHI** **Respondent**

**Appearance:**

Present for the Appellant : Shri L.B. Yadav & Ms. Gunjan Tawnar, Advocates

Present for the Respondent: Shri Manish Kumar Chawda, Authorized Representative

**WITH**
**CUSTOMS APPEAL NO. 51167 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**AJAY KAUSHAL** **Appellant**

Vs.

**COMMISSIONER OF CUSTOMS (GENERAL)– NEW DELHI** **Respondent**

**Appearance:**

Present for the Appellant : None

Present for the Respondent: Shri Manish Kumar Chawda, Authorized Representative

**WITH**
**CUSTOMS APPEAL NO. 51942 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037

**SANDEEP KUMAR** **Appellant**

Vs.

**NEW DELHI (PREV.)** **Respondent**

**Appearance:**

Present for the Appellant : Shri Sandeep (In person)

Present for the Respondent: Shri Rajesh Singh, Authorized Representative

**WITH**
**CUSTOMS APPEAL NO. 51943 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**PRADEEP KUMAR** **Appellant**

Vs.

**NEW DELHI (PREV.)** **Respondent**

**Appearance:**

Present for the Appellant : Shri Sandeep (In person)

Present for the Respondent: Shri Rajesh Singh, Authorized Representative

**WITH**

**CUSTOMS APPEAL NO. 51944 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**BHARAT VIDHURI** **Appellant**

Vs.

**NEW DELHI (PREV.)** **Respondent**

**Appearance:**

Present for the Appellant : Shri Sandeep (In person)

Present for the Respondent: Shri Rajesh Singh, Authorized Representative

**WITH**

**CUSTOMS APPEAL NO. 52504 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**ROHIT SAKHUJA** **Appellant**

Vs.

**NEW DELHI (PREV.)** **Respondent**

**Appearance:**

Present for the Appellant : Shri Ashish Batra, Advocate

Present for the Respondent: Shri Girijesh Kumar, Authorized Representative

**WITH**

**CUSTOMS APPEAL NO. 52514 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**KAMAL VIRMANI** **Appellant**

Vs.

**NEW DELHI (PREV.)** **Respondent**

**Appearance:**

Present for the Appellant : Shri Ashish Batra, Advocate

Present for the Respondent: Shri Munshi Ram Dhania, Authorized Representative

**WITH**

**CUSTOMS APPEAL NO. 52515 OF 2015**

(Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**NARESH KUMAR** **Appellant**

Vs.

**NEW DELHI (PREV.)** **Respondent**

**Appearance:**

Present for the Appellant : Shri Ashish Batra, Advocate

Present for the Respondent: Shri Munshi Ram Dhania, Authorized Representative

**AND**

**CUSTOMS APPEAL NO. 53516 OF 2015**

Arising out of Order-in-Original No. No.04/KAM/COMMR/2015 dated 16.1.2015 passed by the Commissioner of Customs, New Custom House, New Delhi-110037)

**AJIT SINGH CHADHA** **Appellant**

Vs.

**NEW DELHI (PREV.)** **Respondent**

**Appearance:**

Present for the Appellant : None

Present for the Respondent: Shri Munshi Ram Dhania, Authorized Representative

**CORAM :**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**
**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING : 09/08/2023**

**DATE OF DECISION:06.12.2023**

**FINAL ORDER NO.51610-51620/2023**

**DR.RACHNA GUPTA**

The present order disposes of eleven appeals arising out of the same show cause notice and the same Order-in-Original No.04/KAM/COMMR/2015 dated 16.1.2015.

2. The facts of the case as relevant for the impugned adjudication are as follows:

3. The department got specific intelligence about container no.KKFU7222266 to have contained misdeclared goods. Investigations were initiated by the officers of DRI. On 28.5.2012, it was found that the said container alongwith other containers had moved out from ICD, Tukhlakabad (hereinafter referred to as "TKD"). On verification, investigating team observed that the container was removed on 25.05.2012 without filing any Bill of Entry but by using manual customs gate pass. On enquiry, it was found that the signatures and stamps on the customs gate pass were forged. The fact was got confirmed by Central Forensic Science Laboratory (CFSL), Chandigarh. All the officers whose names mentioned on the gate pass were examined. They also denied their signatures on the said gate pass and also denied any knowledge about preparation of those gate pass. Other details of customs gate pass i.e. with respect to bill of entry, duty amount, etc. were also found to be incorrect. The CONCOR gate passes were fraudulently obtained based on these forged customs manual gate

passes. Statement of Shri R.K.Mahapatra, Junior Executive (Commercial Operations) CONCOR,ICD,TKD, New Delhi was recorded. However, he could not re-collect the names as were mentioned in the Bill of Entry which were shown by the CHA concerned. The statements of concerned transporter, shippinglines and other related persons were also recorded by DRI officers including the statement of the appellant herein, alongwith the statements of Shri Chhutan, driver of truck/trailer No.HR55A-9309 of M/s.Bharat Transport Co. and Shri Laxmi Das, driver of truck/trailer of truck No.HR38K-3455 of M/s.K.T. Transport Co., New Delhi. Pursuant to the said statements, the investigating team reached one godown bearing No.76,50 feet Road, Meera Enclave, Village Ranhola, P.O.Nangloi, New Delhi was found locked on 30.5.2012. Since, the godown was found locked, it was sealed under panchnama. Subsequently, the godown was searched under panchanam dated 31.5.2012 in the presence of panchas, Head Police Constable, PS Ranhola and drivers namely, Shri Laxmi Das, Shri Ghulam Mohiuddin and Shri Chhutan and following items were seized under the provisions of Customs Act, 1962:

| Sl No | Item Description | Quantity |
|---|---|---|
| 1 | Sanyo Spilt Air Conditioner (Outer Unit) SAP-C 18 AM.1.5 TON | 155 |
| 2 | Sanyo Spilt Air Conditioner (Outer Unit) SAK-C 18 AM.1.5 TON | 155 |
| 3 | O General Spilt Type (outdoor Unit) AOGR-24-AETH | 310 |
| 4 | O General Spilt Type (Indoor Unit) ASGR-18-AETH | 310 |
| 5 | O General Spilt Type (outdoor Unit) AOGR-24-AETH | 75 |
| 6 | O General Spilt Type (Indoor Unit) ASGA-18-AETH | 75 |

A broken bottle-seal and sticker was found affixed on the goods. The drivers in whose presence the godown was searched acknowledged that the goods were delivered by them from ICD, TKD. They only informed that in addition to the aforesaid air conditioners several gas cylinders were also brought to the said godown.

4. Two more godowns at (a) A-59, Adhyakpak Nagar, Najafgarh Road, Nangloi, Delhi-41 belonging to late Shri Satprakash r/o Trinagar, Delhi; and (b) J-118, Adhyakpak Nagar,P.O. Nangloi, New Delhi-41 belonging to Shri Satyanarayan Mittal were also searched on 31.5.2012 and were sealed under respective panchnama. On 31.05.2012 itself, the Commissioner of Customs, ICD,TKD informed DRI that one Shri Ajit Singh Chadha is the master mind in the import of goods which got cleared based on forged manual gate passes and that his statement has also been recorded. DRI also examined him on 31.5.2012, 01.06.2012 and on 25.07.2012. He admitted for importing air conditioners and LED TVs. Since 2006 in name of the firms which got opened in the name of his relative, (i.e. M/s. Star Aircon and M/s.M.C.Overseas). Mr. Manu, Mr. Naresh Kumar respectively with himself and Mr.Rohit Sakuja as partners. His premises also got searched. From the total searches conducted following goods categorized as below were found to be illegally imported.:

| Category/type of goods | Description and other details of the goods in each category |
|---|---|
| **A.** Goods fraudulently removed from ICD, TKD in the aforesaid eight containers | 1. 6382 pcs. of imported R-22 gas cylinders of 13.6 Kgs each (import 'restricted' in the FTP), seized at gowdon in lane adjacent to Dr.Lakra's clinic, Village Ranhola, Nangloi and later shifted to CWC godown, Saibahad. |

| | |
|---|---|
| | 2. 50 pcs of imported R-22 gas cylinders of 13.6 Kgs each, detained at godown premises of Shri Satish Kumar Chadha, Delhi under panchnama dt.12.06.2012.<br><br>3. 16 pcs of imported R-22 gas cylinders of 13.6 Kgs each, detained /seized at godown premises of Suman Enterprises, C-3/5 and 4/5, Ground Floor, Lal Quarters, Krishna Nagar, Delhi-51 under panchnama dt.10.06.2012.<br><br>4. 62,40,000 cigarettes of Indonesian origin (without statutory health warning) detained/seized at godown A-29, Ground Floor, Krishan Vihar, Delhi-86.<br><br>5. 1055 units of air conditioners of different brands seized at 7, Meera Enclaive, Nangloi Godown. |
| **B.** Imported goods found to be without labeling requirements/MRP stickers. Apparently illegally imported/smuggled and apparently some of the fraudulently removed goods in the aforesaid eight containers | 1. The following goods detained/seized at godown at A-59, Adhyapak Nagar, Nangloi:<br><br>(a) 323 units of 'O' General brand window air conditioners<br>(b) 745 outdoor units of 'O' general brand air conditioners of different models,<br>(c) 718 indoor units of 'O' general brand air conditioners of different models<br>(d) 63 outdoor units of Sanyo brand air conditioners, and<br>(e) 72 indoor units of Sanyo brand air conditioners<br><br>2. The following goods detained/seized at godown at 5575/75, Lower & Upper Ground, Reghar Pura, Karol Bagh, New Delhi:<br><br>(a) 57 indoor/outdoor units of split air conditioners of different models of 'O' general Brand<br>(b) 16 indoor/outdoor units of split air conditioners of different models of Sanyo brand<br>(c) 13 pcs of TVs of different models of Sony brand<br>(d) 2 pcs of TVs of Samsung brand<br><br>3. The following goods detained/seized at godown at WZ-33A, Village Dasghara, P.O. Pusa, New Delhi:<br><br>(a) 183 pcs of window air conditioners of 'O' General Brand<br>(b) 126 indoor/outdoor units of split air conditioners of different models of 'O' general Brand<br>(c) 396 pcs of Oil Heaters<br><br>4. The following goods detained/seized at premises of Shri Ajay Kaushal, E-189, Shastri Nagar, New Delhi:<br><br>(a) 8 pcs of window air conditioners of 'O' General Brand<br>(b) 8 indoor/outdoor units of split air |

| | |
|---|---|
| | conditioners of different models of 'O' General Brand.<br><br>5. 17 sets of (AOGR18AETH/ASGA18AET) of air conditioners detained/seized at the J-118, Adhyapak Nagar, Nanloi godown. |
| | |

5. After further investigations about eight containers as got fraudulently removed without any bills of entry and the forensic investigation of three face book accounts of Mr. Rohit Sakuja, the Department formed opinion that Shri Ajit Singh Chadha and Shri Rohit Sakuja have hatched a conspiracy to remove eight containers clandestinely in a systematic pre-planned manner from ICD, TKD on the strength of forged Customs documents. In addition they also removed contraband goods, but also removed the goods the import of which is restricted under Foreign Trade Policy, in total disregard to national exchequer, national environment as well as the economy. Resultantly show cause notice dated 28.5.2013 was served upon the appellants alleging that the impugned imported goods as tabled above having collective assessable value of Rs.7,71,56,730 and air conditioners having collective assessable of value Rs.2,73,144/- inviting total duty amounting to Rs.2,25,36,349/- were illegally imported and fraudulently cleared by the appellants in eight containers. Hence they were proposed to be confiscated. The said amount of duty was proposed to be recovered:

Penal action in terms of sections 112, 114A and 114AA of Customs Act,1962 for master minding the entire operations of fraudulent removal of goods on the strength of forged documents, evasion of duty, illegal import of restricted goods without valid import licence ,

The total duty amounting to Rs.61,48,024/- alongwith interest, in respect of second category of goods in above table has also to be recovered.

The said proposals have been confirmed vide order under challenge. Aggrieved with the said order, the appellants are before this Tribunal.

6. We have heard Shri Shri L.B.Yadav & Ms.Gunjan Tanwar, Sh.Ashish Batra, Advocates on behalf of the the Appellants and Shri Manish Kumar Chawda, Sh.Rajesh Singh, Sh.Girijesh Kumar, Sh.Munshi Ram Dhania, Authorized Representatives for the Department.

7. Ld.Counsel for Bharat Vidhuri, appellant has mentioned that he is held liable for penalty under section 112 & 114AA of the Customs Act, 1962 merely on the basis of some un-corroborated statement made by one Shri Sushil Kumar, a daily wager who allegedly stated that he has handed over some gate pass book having no.0911-9050 to a person whose brother has asked Mr.Vidhuri to transport the goods for the importers. But the same is not justified, legal and fair especially when Sushil Kumar himself has retracted his statement and has become hostile.

8. Ld. Counsel has relied upon the decision of the Hon'ble Supreme Court in the matter of **M/s.Akbar Badruddin Jiwani**

**vs. Collector-1990 (47) ELT 161 (SC)** wherein the Hon'ble Apex Court has observed that "the discretion to impose penalty must be exercised judiciously. A penalty will ordinarily be imposed in case the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct or has acted in conscious disregard of its application but not in case where there is technical or venial breach of provision of Act or where the breach follows from a bonafide failure that the offender is not liable to act in prescribed by Statute.

9. The decision in the matter of **S.Anwanullah vs.Collector of Customs, Madras-1987 (27) ELT 734**, is also relied upon wherein it has been held that "suspicion however grave it might, cannot take place of proof" has been relied.

10. It is submitted on behalf of Shri Sandeep Kumar and Shri Pradeep Kumar that the whole allegations leveled upon the appellant for using the services of his brothers in facilitating the clearance of the goods by abetment in forgery of manual Custom Gate passes by being hand-in-glove with the main accused, Shri Rohit Sakhuja and Shri Ajit Singh Chadha by helping them with the illegal clearance of goods on forged documents, are wrong on face of it and are contrary to the facts and evidence placed on record. It is mentioned that the role of the Appellant admittedly starts when the importer has obtained the valid computerized gate pass from the CONCOR, and thereafter the Appellant has asked the Transporter Mr. Bharat Vidhuri to help the importer to get the imported goods transported to their warehouses as per their wishes. When the goods have been transported on the

basis of the gate pass which appeared to have been issued by proper authority then no wrong can be attributed to the Appellant for illegally removing the goods of the importer in contravention to the laws laid down under Customs Act, 1962. Moreover, no one either being witness or being otherwise related in the present case had named the Appellant.

11. That the whole story of the respondent to connect the Appellant with the alleged clandestine removal of goods from ICD, TKD by procuring illegal and forged gate passé is based upon the Statement given by one daily wager, Sushil Kumar as was under Section 108 of the Customs Act, 1962. He on face of it appears to be a planted witness by DRI to make a wrong case against the Appellant.

12. None of the observations reflects that the answering appellants have committed forgery due to which the alleged consignment have been purportedly to be clandestinely and illegally removed from the jurisdiction of the ICD TKD resulting in revenue loss to the Department.

13. It is submitted on behalf of Shri Pradeep Kumar that the allegation leveled against the Appellant for helping his brother in clearance of the goods by abetment in forgery of manual Customs Gate passes and by being hand in glove with the main accused, Shri Rohit Sakhuja and Ajit Singh Chadha are absolutely wrong and contrary to the facts and evidence on record. Thus Pradeep Kumar is wrongly held liable for any penal action under section 112 and 114AA of the Customs Act, 1962.

14. It is mentioned on behalf of Shri Kamal Virmani that the investigation agency concluded that Rohit Sakhuja and Ajit Singh Chadha to be the masterminds and the defacto importers. That they with the aid of others acquired possession of eight containers which were allegedly cleared from the ICD port without filing Bill of Entry. Furthermore, other goods mentioned in Category-B which pre-dominantly contained air-conditioners were assumed to have been illegally imported in past also, in the same manner. In his statemen, though he has admitted the fact that he was involved in sale of air-conditioners procured from Rohit Sakhuja who was involved in import of air-conditioners through his various firms. Thus, sale of those air-conditioners by the Appellant is neither illegal nor in contravention with any of the provisions of the Customs Act. That it is well settled principle of law, that penalties for infraction of law cannot be imposed based upon assumptions and presumptions. In the instant case, the department has failed to bring on record any cogent evidence to suggest the appellant’s involvement in the alleged act of smuggling.

15. While submitting on behalf of Satish Kumar Chadha, Dillip Singh and Vijay Kumar Sharma, it is mentioned that Mr.Satish Kumar Chadha and Mr. Dilip Singh Jain are small shop keepers of AC parts. Mr.Satish Kumar Chadha had purchased, kept and sold sold 40 cylinders of R-22 (Chlorodifluoromethane), and similarly Mr.Dilip Singh Jain had purchased, kept and sold 160 cylinders from Shri Vijay Kumar Sharma. Said Shri Vijay Kumar Sharma

had purchased the said gas from Shri Rohit Sakhuja. Shri Vijay Kumar Sharma apart from purchasing, keeping and selling of R-22 gas was also engaged in keeping and dispatching the cigarettes through his godowns. He had purchased, kept and sold 600 cylinders of R-22 gas and kept and dispatched 1100 cartons of cigarettes so imported by Shri Rohit Sakhuja.

16. It is further mentioned that penalty under section 112 of the Act was leviable upon the appellants only when they had abetted or they had reason to believe that the goods were liable to confiscation under section 111. But these appellants had no knowledge at all about the smuggled nature of the goods. They had purchased the goods in good faith and in bonafide manner. Even Vijay Kumar Sharma who had sold the goods to Satish Kumar Chadha and Dillip Singh Jain had no knowledge about the instant act of alleged smuggling. In this connection, Shri Vijay Kumar Sharma in his statement dated 11.07.2012 has stated that he had purchased the goods from one Shri Rohit Sakhuja (a person who is main Noticee in the instant matter). Moreover a number of statements of number of persons were recorded but none of them has stated that these Appellants had any knowledge of the alleged illicit act or that they were complicit with that.

17. Ld. Counsels relied upon the decision in the matter of **Commissioner of Customs, Amritsar vs. Kamal Kapoor-2007 (216) ELT 21 (P&H)**,where Hon'ble High Court of Punjab and Haryana has held that penal action is not permissible under

section 112 in absence of *mens rea*. Purchaser of imported goods, having no knowledge of any violation, could not be subjected to penalty.

18. With respect to penalty as has been imposed on these appellants under section 114AA of the Act, Ld. Counsel has relied upon 27th Committee on Finance (2005-06) a report of the standing committee which explains the purpose for which section 114AA has been inserted in the Customs Act. It is mentioned that the purpose is to punish only those people who avail export benefits without exporting anything. It is impressed upon that section 114AA has been introduced to counter serious frauds of export, not every kind of violations under Customs Act.

19. Decision of Tribunal in the matter of **Commissioner of Customs, Sea, Chennai-II vs. Sri Krishana Sounds and Lightings-2019 (370) ELT 594 (Tri.-Chennai)** is relied wherein, it is held that penalty under section 114AA ibid not imposable where goods were actually imported and it was not a case of mere paper transaction or fraudulent export. In present case also goods have actually been imported.

20. Finally, it is submitted that penalty is not leviable on the basis of mere suspicion. It is settled proposition of law that suspicion, however grave, cannot take place of an evidence. In the matter of **State of Rajasthan Vs. Basant Agrotech (I) Ltd.-2014 (302) ELT 3 (SC)** Hon'ble Supreme Court has held that 'equitable considerations, presumptions and assumptions have no role to play in fiscal statute. Court cannot apply

anything which is expressed.' Also Hon'ble Tribunal in the matter of **DP Industries vs. CCE-2007 (218) ELT 242 (Tri.-Del.)** has held that 'suspicion, however, strong cannot take the place of evidence and clandestine clearance has to be established beyond reasonable doubt and not on the basis of preponderance of probability'.

21. It is submitted on behalf of the appellants that the entire case has been made out solely on the basis of the statements as were recorded under section 108 of the Customs Act, 1962. It is mentioned on behalf of the appellants that they have found guilty and are being penalized under the Customs Act merely on the basis of conjectures and surmises and that there is no material and cogent evidence. It is mentioned that the goods have been cleared on the basis of documents handed over by CHA of the importer entire case is concocted rather main link in the investigation is missing, the benefit of doubt must be given to the appellant. The order under challenge is liable to be set aside.

22. To rebut the above submissions, ld.DR has mentioned that the investigations in the present case revealed that Shri Ajit Singh Chadha and Shri Rohit Sakhuja had hatched a conspiracy to smuggle ACs, gas cylinders, cigarettes etc.with the help of Shri Pradeep Kumar, Shri Sandeep Kumar and Shri Raju Kumar. With the help, they procured gate passes from CONCOR and got the goods cleared. The goods were loaded on trucks of Bharat Transport owned by Shri Bharat Vidhuri. The same were

offloaded at godown of Shri Ajit Singh Chadha in the presence of Shri Ajit Singh Chadha and Shri Sanjay Kumar. The goods were destuffed with the help of labour supplied by the labour contractor, Shri Vinod Kumar. Recovery of broken seals and sticker of one of the said eight containers also confirms the alleged act. The alleged acts have been admitted in corroboration to each other by different persons in their statements under section 108 of the Customs Act, 1962.

23. When the whole conspiracy was unearthed by the DRI, then Shri Ajit Singh Chadha and Shri Rohit Sakhuja tried to manipulate the witnesses. They made false statement under section 108 of the Customs Act, 1962. Their names figured out as the main persons from the entire sequence of events starting from the booking, purchase, import and clandestine removal of goods to the subsequent sale in India. These containers were initially imported in the name of the firms namely M/s. M.C. Overseas and M/s.Star Aircon. Shri Ajit Singh Chadha was identified by all the drivers and by Shri Sanjay Kumar as the person who was present at the time of destuffing of the containers. Both Ajit Singh Chadha and Rohit Sakhuja disappeared from Delhi as soon as the conspiracy was unearthed. Their whereabouts were also not known to their relatives. Thus their conduct is sufficient evidence proving their involvement in the case of alleged smuggling.

24. It is mentioned that there is sufficient evidence to show that Shri Bharat Vidhuri had provided transportation for the eight

containers after receiving the gate passes from Sandeep Kumar. From the records of the case it is evident that he with the help of Shri Karandeep Rana, Mr.Bharat Vidhuri tried to mislead the investigation by stating that the gate passes were handed over to Karandeep by Shri Ravi a non-existing entity. Further, it was found that no records were maintained for the transportation of these containers. With respect to Sandeep Kumar it has come on record that he had given these gate passes to Shri Raju for loading the goods on the containers and get them released from the Customs. Both Shri Pradeep Kumar and Shri Raju who stated that it was Sandeep Kumar who advised them to destroy cell phone and disappear from Delhi for some days. He himself absconded to Surajkkund with Rohit Sakhuja. All these facts were admitted by them in their statements and the said statements were never retracted. Shri Sandeep Kumar actively associated in the clandestine removal of the eight containers from ICD,TKD. Both the brothers were working as CHAs for Shri Ajit Chadha's companies. M/s.M.C.Overseas and M/s. Star Aircon and were well versed with the process of clearance of goods from ICD, TKD and with the staff working there. Shri Pradeep Kumar and Shri Sandeep Kumar have not retracted their statements till date. Shri Kamal Virmani is mentioned to have admitted that he was dealing in the sale of imported ACs. He was aware of the fact that Shri Ajit Singh Chadha had imported restricted gases like R-22 several times. He confirmed that the said R-22 gas was sold through Shri Vijay Sharma. The fact of selling R-22 gas was admitted by Shri Vijay Sharma also.

25. Shri Naresh Kumar Sharma, had an active role in the transactions of cigarettes and it was established from the statement of Shri Umesh alias Renku in which he inter alia stated that he had delivered 120-122 cartons of cigarettes from B-1/36, Budh Vihar, Phase-I godown to a transport company during 30.05.2012 to 01.06.2012. Shri Naresh Kumar was present at the said transport company and he himself got the biliti (bill) prepared for the same. DRI recovered 316 R-22 gas cylinders from the godown of Shri Dilip Singh Jain. As per version the same were purchased in cash from Shri Vijay Sharma without any legal document. He had bought 160 cylinders of R-22 gas from Vijay Sharma. Import of R-22 is restricted as the R-22 is also an Ozone depleting gas. Since license for the same is not available, it becomes abundantly clear that the said gas had been illegally imported.

26. The decision of Hon'ble Madras High Court in the matter of **M/s.ALM Enterprises vs. Commissioner of Customs (Imports)** is also relied upon, wherein it was held that

> *"39. In the instant case, it is recorded in para 49 of the Order in Original that all cosmetic products including air fresheners and other toiletries which are imported for sale in India need to be registered with the licensing authority as defined under Rule 21 of Drugs and Cosmetics Rules 1945. In the instant case, the goods are found imported without obtaining the registration certificate from the Central Drug Standard Control Organization and therefore, it is found that the importer did not possess necessary permission/registration certificate from the competent authority under the Drugs and Cosmetics Rules, 1945. In other words, goods which are liable to be imported subject to fulfillment of certain conditions, when so imported without fulfilling or satisfying such conditions amount to importing prohibited goods in terms of Section 11 read with Section 125 of the Act. Therefore, we find no merit in the contention canvassed that such of those clandestinely imported*

> *cosmetics and toiletries goods should also be permitted to be redeemed by the Commissioner of Customs and failure to do so vitiates the order is without any merit or substance. The Commissioner of Customs has no power to waive the conditions subject to which such cosmetic products can be imported as he is not the Competent Authority but someone else. Hence, the exercise of discretion has been properly carried out by the Commissioner of Customs."*

27. Shri Dilip Jain who is dealing in ACs and parts thereof, is aware of the fact and therefore, did not insist for bills from Shri Vijay Kumar Sharma. Shri Satish Kumar Chadha who is dealing in ACs and parts thereof, was also aware of the fact and therefore, did not insist on bills from Shri Vijay Kumar Sharma. The statement of different persons including that of Satish Sharma has corroborated acknowledgement of fact that Satish Kumar was dealing with the sale of R-22 gas which was illegally imported by Shri Rohit Sakhuja. 600 pcs of R-22 gas were sent to him by Rohit Sakhuja from Nangloi godown to his Budh Vihar godown. He was the person who was dispatching and storing the cigarettes illegally imported by Shri Rohit Sakhua and Ajit Chadha.

28. Ld.DR has relied upon the decision of Hon'ble Supreme Court in the case of **Naresh J.Sukhawani vs. Union of India reported in 1996 (83) ELT 258 (SC)** wherein it was held that it must be remembered that the statement made before the Customs officials is not a statement recorded under section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under section 108 of the Customs Act.

29. Finally, it is impressed upon that present is the case where fraud has been committed to smuggle restricted goods. Here the liability has rightly been confirmed and also there is no infirmity in imposition of penalty on all the appellants. The Apex Court's decision in the matter of M/s.Munjal Showa Ltd. vs. Commissisoner-2022 (382) ELT 145 (SC) is relied upon wherein it was held that

> *"9. In that views of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licences/scrips are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation."*

With these submissions, all the appeals prayed to be dismissed.

30. Having heard rival contentions of the appellants, and after perusing the entire record of the present and the connected appeals, we observe and hold as follows:-

31. That the present matter is the second round of litigation. Common Order-in-Original No04/KAM/COMMR/2015 dated 16.1.2015 was also earlier adjudicated fide Final Order No.55617-56636 of 2017-CU (DB) dated 19.9.2017 However, the said order has been set aside by Hon'ble Delhi High Court vide its order dated 23.07.2018 holding that

> *"There is no gainsaying that in an appeal the person aggrieved has right to address the facts in law. That CESTAT was presented with the arguments on merits undisputed given the tenor of its order, yet it is an unreasoned order as regards the conclusions and why it chose to dismiss the appeals. The impugned orders are accordingly set aside. The matter is remitted for fresh hearing and consideration by the CESTAT which shall address the arguments of all the appellants on their merits and pass a speaking and reasoned order dealing with all contentions."*

32. Pursuant to the said remand order, sufficient opportunity of hearing was given to the appellants and the matter was heard regularly and continuously by the Tribunal on several dates. The allegation in the show cause notice has been confirmed by the Original adjudicating authority as follows:

(1) Shri Ajit Singh Chadha and Shri Rohit Sakhuja had conspired to remove eight containers clandestinely from the ICD, TKD by forging customs document i.e. Customs manual gate pass. The goods in the container included goods import whereof was restricted under Foreign Trade Policy.

(2) Seven of the eight containers were originally booked in the name of M/s.Star Aircon, in which both of them had substantial financial stake and were the de facto owners.

(3) All the drivers who transported the said eight containers were originally identified by Shri Ajit Singh Chadha who himself was present during the relevant time and on whose instructions/supervisions goods were being de-stuffed an stored/shifted.

(4) Shri Sanjay Kumar, employee of Shri Ajit Singh Chadha and Shri Rohit Sakhuja admitted that he was present at the Ranhola, Nangloi godown along with Shri Ajit Singh Chadha when goods from the said eight containers were being de-stuffed there. It is also on record that both them tried to avoid investigation they lied about their whereabouts even associates, employees and relatives feigned ignorance regarding whereabouts. They remained absconded for almost two months with an intention to avoid investigation. They also alleged that they obtained fake

sim cards/mobile connection in the name of their employees (Shri Arun Lal and Suraj) and he also obtained Mobile connection on the basis of ID proof of (Pritam Singh). It has been found that forged/bogus photo identity card was submitted to the shipping line for obtaining the delivery orders and forged/bogus indemnity bonds were executed had been held forged and bogus.

(5) Penalties on all appellants, who had been held involved in the alleged clandestine removal of the goods from the Customs area on the basis of forged documents and forged illegal import of prohibited goods had been imported under sections 112 and 114AA of the Customs Act, 1962.

33. From the facts of the case, we observe that the department got initially a specific intelligence that container No.KKFU7222266 was contained mis-declared goods. The said container found to had been moved from ICD, TKD without any Bill of Entry by using Customs manual gate pass. While investigating about the said illegal removal of the said container from the Customs area, it was found that the seven other containers had also been cleared in the same manner, however, in the name of different consignees by using the same modus operandi. The details are as follows:

| Bill of Lading No. & Date | Container No. | Customs Manual Gate Pass No.& Date | Concor Gate Pass No. & Date |
|---|---|---|---|
| KKLUSIN100815 dt.06.05.12 | KKFU7222266 | 9001/25.05.12 | GPCC525739 Dt.25.05.12 |
| KKLUSIN100369 dt.05.05.12 | KKFU7095562 | 9002/25.05.12 | GPCC525730 Dt.25.05.12 |
| KKLUSIN100169 dt.05.05.12 | KKFU7397095 KKFU7655332 | 9003/25.05.12 | GPCC525735 and GPCC525736 both dt.25.05.12 |
| KKLUSIN100136 dt.05.05.12 | CAIU8452159 KKFU7692995 | 9010/25.05.12 | GPCC525666 and GPCC525667 both dt.25.05.12 |

| | | | |
|---|---|---|---|
| KKLUSIN100135 dt.05.05.12 | KKFU7201113 KLFU1957220 | 9015/25.05.12 | GPCC525668 and GPCC525669 both dt.25.05.12 |

Variation of these Bills of Entry revealed that they did not pertain to ICD, TKD but to ICD Patparganj and goods of BOE 6904765 dated 23..05.2012 pertained to Chennai port.

34. The officers whose names, signatures and stamp were found appended on the Customs manual gate pass denied their signatures and stamp affixed alleged to be fake. Deposition of the said officers got confirmed from the report of Forensic Science Laboratory, Chandigarh on forensic examination vide their reported dated 1.10.2012. Nothing has been produced on record by any of the appellant to falsify the said report. We hold that there is no illegality in the order under challenge when these Customs manual gate passes are held to be forged documents obtained upon bogus identity. However, CONCOR issued these gate passes seeing the signatures and stamps on manual customs gate passes out of charge basis.

35. For the allegations of smuggling of air conditioners R-22 gas cylinders which are restricted goods, gas being ozone depleting, cigarettes etc. We observe that several statements of concerned people have been recorded including Kranjeet, drivers, shippingline, traders, CHA and all concerned were proceeded by the DRI investigating team:

Shri Bharat Vidhuri, Proprietor of M/s.Bharat Transport admitted that he arranged transportation of eight containers out of ICD TKD on the instructions of his client Shri Sandeep Kumar and his company Supervisor Karandeep Singh and that all of them got destuffed at Nangloi. The information given to him by the respective drivers. Karandeep corroborated the said statement except about the name of the person who handed over the manual customs gate passes. As per Vidhuri, it was Ravi but as per Karandeep it was Raju. But corroboratively it is mentioned that the containers were taken out from ICD TKD on the basis of manual gate passes. As already observed that forensic examination of these manual gate passes has proved that those were bear forged and fake signatures and stamps. Drivers Chutan and Laxmi Das corroborated that containers got destuffed at godown in Nangloi. Based on these statements, godown at Nangloi got searched. Goods seized and godowns sealed vide respective panchnama dated 30.05.2012.

36. DRI further received the information from the office of Commissioner of Customs, ICD,TKD. Om 31.05.2012 that statement of one of the mastermind, Ajit Singh Chadha has been recorded. He admitted that he alongwith Mr.Rohit Sakhuja, both have trading business in Karol Bagh, that they have been importing ACs. LCD etc. in the name of two companies namely M/s.M.C.Overseas and M/s. Star Aircon, both being jointly owned by said Ajit Singh Chadha and Rohit Sakhuja. Shri Sandeep Kumar S/o of Shri Rampal Singh acknowledged to be hand in glove with Shri Rohit Sakhuja in the fraudulent clearances. He admitted to have destroyed his SIM card and mobile thereby admitted to have destroyed crucial evidence. He admitted to be

in regular touch with Shri Rohit Sakhuja prior to fraudulent clearance of the goods. We observe that Shri Sandeep Kumar remained absconded with Shri Rohit Sakhuja since detection of the case till his appearance before DRI officers on 03.06.2012. He also stated that his relatives Shri Pradeep Kumar and Shri Raju Kumar were deeply involved in the conspiracy and forging Customs gate passes leading to the fraudulent removal of goods.

37. From the statements of Shri Suraj Kumar and Anil Sakhuja were relatives of Ajit Singh Chadha and Rohit Sakhuja they were found helping Shri Ajit Singh Chadha in fraudulently obtaining SIM cards in the name of Shri Pritam Singh's using fake photographs and photo ID. The said SIM cards were used to facilitate and guide the entire operation of clandestine removal of the said eight containers.

38. Shri Sushil Sharma from the department acknowledged to have abetted and facilitated the fraud by providing the said gate pass booklet.

39. Shri Manu Chopra and Shri Naresh Kumar Sharma are found facilitating in the opening of front companies, in the name of M/s.M.C.Overseas and M/s. Star Aircon which were used by Rohit Sakhuja and Shri Ajit Singh Chadha. They were involved in misdeclaration and undervaluation.

40. Shri Jagjit Singh alias Bunty was actively involved in the sale of the air conditioners which were illegally imported was also proposed for penal action under section 112 112 of Customs Act, 1962.

41. Shri Arjun Lal and Sanjay Kumar admitted to help Shri Rohit Sakhuja and Shri Ajit Singh Chadha in the clearance and disposal of the fraudulently removed goods. Shri Arjun Lal admitted about procuring different mobile SIM cards in his own name and handing over to Bunty (Jagjit Singh) for taking direction about destuffing imported goods along with Sanjay Kumar in the godown.

42. Shri Kamal Virmani, Prorietor of M/s.Gaurav Enterprises and Vijay Kumar Sharma, Proprietor of M/s.Vijay Trading Co. admitted for facilitated in the storage, distribution and sale of illegally imported R-22 cylinders and air conditioners.

43. Shri S.K.Singh acknowledged about using mobile number was obtained fraudulently by Shri Ajit Singh Chadha in the name of Shri Pritam Singh to facilitate clandestine removal of the goods.

44. Shri R.K.Mahapatra, Junior Executive, CONCOR, ICD,TKD and Shri S.K.Dubey, Senior Executive (Commercial & Operation), CONCOR, ICD, TKD, New Delhi had issued the CONCOR 'job orders' without verifying the particulars of the bills of entry, most importantly the port to which the bills of entry pertained to. Though he pleaded it to be bonafide mistake made on the basis of Customs gate passes shown

45. K Line Singapore Pte Ltd. is observed to have colluded with shipper and abetting the impugned import of goods.

46. Shri Vinod Kumar, Labour Contractor, admitted that he provided labourers for unloading of said eight containers at Nangloi at instance of Mr.Rohit Sakhuja as he was doing

business of loadinig and unloading for him for last 10-12 years. From his statement, it is clear that he had knowledge that these containers had air conditioners and R-22 gas cylinders which were destuffed by his labour at Nangloi godowns. Rohit and Ajit had godown at Todapur, New Delhi also.

47. We also observe that several summons were issued to Shri Ajit Singh and Rohit Sakhuja but they did not appear in response to the same. On account of their non-compliance of summons issued under section 108 of Customs Act, 1962, complaints for offences punishable under section 174 and 175 of Indian Penal Code were filed in the Court of ACMM, Patiala House, New Delhi on 17.07.12. Cognizance was taken in these cases and the Hon'ble Court issued notices to Shri Ajit Singh Chadha and Shri Rohit Sakhuja instructing them to appear before the Court on 04.08.12. In the mean time, the said two persons filed Writ Petitions (Cr.) No.94/2012 & 93/2012 in the Hon'ble Supreme Court of India inter alia seeking relief in the form of presence of their advocate at a visible distance during the recording of their statement before the DRI officer. The said Writ Petitions were allowed by the Hon'ble Supreme Court on 14.08.12. However, Shri Ajit Singh Chadha appeared before DRI officer on 25.07.2012 and his statement under section 108 of Customs Act, 1962 was recorded wherein he reiterated his statement dated 31.05.2012/01.06.2012 and inter-alia further stated that his father purchased a shop in Karol Bagh and asked to work there; that in this shop, he started trading of electronic goods like cameras, i-pods, speakers etc.; that during this period, he came

in contact with Shri Rohit Sakhuja who offered to do import business which he and Shri Rohit Sakhuja started in 2007. Thus it is clear that both of them did not cooperate the investigating team.

48. It is also apparent on record that they generally appeared late/without their advocate and evaded replies to queries/gave contradictory and incorrect replies. When confronted with key evidence/questioned, the two aforesaid persons often took recourse to state that they were tried or not feeling well and would not be able to record their statements any further. They deliberately avoided appearing together before DRI officers in response to summons. Shri Rohit Sakhuja requested for release of air conditioners, LED, oil heaters, etc. detained/seized by DRI at their various godowns. Vide the said letter, Shri Rohit Sakhuja represented that Air Conditioners, LEDs and oil heaters were legally imported by him from time to time.

49. Vide the said letter, Shri Rohit Sakhuja also submitted that a chart purportedly showing correlation of detained/seized goods with bills of entry pertaining to M/s.Star Aircon and M/s.M.C.Overseas. Scrutiny of the said chart reveals that in most of the cases, the model nos.declared in the invoices and the corresponding bills of entry are incomplete and hence cannot be correlated with the goods detained/seized in the godowns. For example, in bill of entry no.6771348 dated 09.05.2012 and its invoice, the model no. of split O General air conditioner has been declared as "AOG18A". In the related packing list, the outdoor and indoor unit model nos. have been mentioned as

"AOGR18AETH/ASGA18AET and AOGR18AAT/ASGA18ABCW detained/seized at the various godowns. Hence, it appears that in the bills of entry of M/s.M.C.Overseas and M/s.Star Aircon the complete model nos. of the air conditioners were not declared presumably to undervalue/misdeclare the goods. Hence, these cannot be correlated with the goods detained/seized at the various godowns wherein the complete model nos. have been found to be mentioned. Moreover, as already discussed above, in detail, majority of the detained/seized air conditioners were found without mandatory labeling requirements in respect of consignments imported through the legal Customs channels. Hence, such goods cannot be correlated with the bills of entry submitted by Shri Rohit Sakhuja and appear to have been removed in contravention of the legal provisions in this regard.

50. We do not find any evidence from both of them to falsify such deposition rather there is evidence on record that Ajit Singh Chadha had taken two godowns on rent from Shri Shamsher Singh though without any rent agreement since not only the goods but procured seal/sticker of the container, torn pieces of cardboard packing material also got recovered from the godown that there is no infirmity when allegation of clandestine removal of the container de-stuffing of goods in their godown have been confirmed.

51. We also observe that the original adjudicating authority in para 48 of the order under challenge has categorized the goods under two category has meticulously quantity as well as nature

of the goods alongwith specific godown from where those goods were recovered. We do not find any evidence in the form of documents titled with either Shri Ajit Singh Chadha and Rohit Sakhuja with respect to the said goods. The goods included prohibited goods i.e. R-22 cylinders which were concealed in the air conditioners and the goods were imported in the name of M/s. M.C.Overseas and Star Aircon. Proprietors thereof were Shri Manu and Naresh in their statement have denied any of their role in the impugned import and in subsequent clearance including alleged clandestine removal of goods of eight containers from ICD, TKD. They rather deposed that both firms were got opened by Shri Rohit Sakhuja for his own use. He was handed over all the affairs of the firms. Said Shri Rohit Sakhuja as well as Shri Ajit Singh Chadha in their statements, had admitted that they were active partner of the aforesaid two firms. They only used to manage aforesaid two firms. The admission has never been retracted by any of them. In view of section 50 of Indian Evidence Act, the admissions need not to be proved. Hence the said statements in the form of admission/confession in our opinion is more sufficient to hold that the findings arrive at against Rohit Sakuja and Ajit Chadha have no legality. Otherwise also as observed above, there is corroborative evidence on record to hold that the correctness of finding in the order under challenge.

52. We further observe there is no denial by the appellant to following facts also:

(1) Shri Rohit Sakhuja and Shri Ajit Chadha were engaged in the

business of import and sale of air conditioners, LED and sale of refrigerators under the name and style of M/s.Saitel, Karol Bagh, New Delhi.

(2) In the above investigation, DRI recorded statement of 120 persons and collected voluminous documents.

(3) Five godowns got searched and examined by the DRI on 30.05.2012, 31.05.2012 and 7.6.2012. Searches lead to the recovery of such number of cylinders of R-22 gas, cigarettes and air-conditioners as has been tabled meticulously by the adjudicating authority below.

(4) Live consignment of Rohit Sakhuja as were examined by ICD, Bhalbhgarh and cleared on provisional basis were also found to havfe air conditioners and TVs imported in the name of M/s. M.C.Overseas and Star Aircon with Shri Manu Chopra as representative proprietor. As observed above, both of them (Rohit Sakuja and Ajit Chadha) acknowledged him to be dummy proprietor of the company opened by them for illegally importing and clandestinely removing the goods from Customs area on the basis of forged customs gate passes.

53. All the above observations about evidence collected these are sufficient to hold that there is meticulous investigation wherein voluminous documents obtained which corroborated testimony recorded during investigation proving the correctness of adjudication. Thus, we hold that we have no different opinion than the finding of original adjudicating authority while confirming allegation leveled against them and confirming proportionate liability.

54. Coming to the imposition of penalty, we observe that penalties have been imposed on the appellants under section 112, and 114AA of Customs Act, 1962:

| Sl. No. | Appellant | Penalty Rs. |
|---|---|---|
| (a) | Shri Ajit Singh Chadha | 40,00,000/- (Rupees forty lakhs only) |
| (b) | Shri Rohit Sakhuja | 40,00,000/- (Rupees forty lakhs only |
| (c) | Shri Ajit Singh Chadha and Shri Rohit Sakhuja | 2,86,84,373/- (Rupees two crores eighty six lakhs eighty four thousand three hundred seventy three only |
| (d) | Shri Vijay Kumar Sharma | 30,00,000/- (Rupees thirty lakhs only |
| (e) | Shri Kamal Virmani | 30,00,000/- (Rupees thirty lakhs only |
| (f) | Shri Diilip Singh Jain | 30,00,000/- (Rupees thirty lakhs only |
| (g) | Shri Satish Kumar | 30,00,000/- (Rupees thirty lakhs only |
| (h) | Shri Ajay Kaushal | 30,00,000/- (Rupees thirty lakhs only |
| (i) | Shri Bharat Vidhuri | 20,00,000/- (Rupees twenty lakhs only |
| (j) | Shri Sandeep Kumar | 30,00,000/- (Rupees thirty lakhs only |
| (k) | Shri Pradeep Kumar | 30,00,000/- (Rupees thirty lakhs only |
| (l) | Shri Naresh Kumar | 30,00,000/- (Rupees thirty lakhs only |

55. Penalties under section 112 is for commission or omission which may result in improper importation of goods and penalty under section 114AA is to penalize persons who knowingly and intentionally make or use or whatsoever means, any declaration, statement or documents which is false or incorrect any material.

56. From the entire evidence on record, it is clear that all the

above names persons have acknowledged that they knew about Customs manual gate passes have been forged by Shri Rohit Sakhuja and Shri Ajit Singh Chadha for clandestine removal of containers from ICD,TKD. They knew that the goods are illegally imported by Shri Rohit Sakhuja and Shri Ajit Singh Chadha by adopting such *modus operandi* so as to defraud the competent authority.

57. All the concerned i.e. employees, transporters, the labourers/contractors, CHA the dummy proprietors of firms Shri Rohit Sakhuja and Shri Ajit Singh Chadha have acknowledged that they knowingly indulged in impugned fraudulent act of removing illegally imported goods from customs area. Their statements have already been appreciated above. We do not find anything which may falsify testimony of any of these witnesses. We do not find any infirmity in the findings where all these people are held responsible for abetting and facilitating impugned fraud committed for clandestine removal of the goods and improper importation of such goods also. Shri Kamal Virmani also has acknowledged about knowingly storing, distributing and selling illegally imported air conditioners and prohibited R-22 gas cylinders. Shri Satish Kumar also acknowledged about knowingly purchasing R-22 gas cylinders that those restricted goods have been illegally imported. Similarly Mr.Dilip Singh Jain and Vijay Kumar Sharma were found in possession of illegally imported goods with full knowledge in that respect.

58. Penalty upon Shri R.K.Mahapatra, Junior Executive

(Commercial Operations) CONCOR,ICD,TKD, New Delhi and and Shri S.K.Dubey, Senior Executive (Commercial & Operation), CONCOR, ICD, TKD, New Delhi are also found rightly imposed for issuing the CONCOR 'job orders' without verifying the particulars of the bills of entry.

59. We have no reason to differ from the finding of the adjudicating authority. There is sufficient evidence even against shipper, K Line Singapore Pvt. Ltd. for colluding and abetting the impugned illegal import of goods.

60. In the light of above entire discussion, we do not find any infirmity in the order demanding differential duty from Shri Rohit Sakhuja and Shri Ajit Singh Chadha nor with the order penalizing all the other appellants for the reasons mentioned above. Hence the order under challenge is hereby upheld. Consequent thereto all the appeals as mentioned above are order to be dismissed.

(Order pronounced in the open court on 06.12.2013)

**(Dr. Rachna Gupta)**
**Member (Judicial)**

**(Hemambika R. Priya)**
**Member (Technical)**

mk