CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 51595 OF 2016

[Arising out of Order-in-Original No. 03/KJ/PR.COMMR./2016 dated 24.02.2016 passed by the Pr. Commissioner of Customs (Preventive) New Delhi]

RAJAT ARORA **Appellant**

69/1, 2nd Floor, Ashok Nagar,
New Delhi-110018

Vs.

PRINCIPAL COMMISSIONER OF CUSTOMS-NEW DELHI(PREV) **Respondent**

New Customs House, IGI Airport
New Delhi-110037

Appearance:

Present for the Appellant : None
Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

AND

CUSTOMS APPEAL NO. 51578 OF 2018

[Arising out of Order-in-Original No. DLI/CUSTOMS/PRE/OPD/PR. COMMR/ 20/2017 dated 04.01.2018 passed by the Pr. Commissioner of Customs (Preventive) New Delhi]

SH. UMESH KUMAR, PROPREITOR **Appellant**

M/s Aromatech
Khasra No. 711/2, Main Bhola Road,
Khadoli, Meerut (UP)

Vs.

PRINCIPAL COMMISSIONER OF CUSTOMS-NEW DELHI(PREV) **Respondent**

New Customs House, IGI Airport
New Delhi-110037

WITH
CUSTOMS MISCELLANEOUS APPLICATION NO. 50978 OF 2018

Appearance:
Present for the Appellant : Shri Jitin Singhal, Advocate
Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 55489-55490/2024

Date of Hearing : 12/10/2023
Date of Decision : 08/04/2024

P V SUBBA RAO:

We have heard Shri Jitin Singhal, learned counsel appearing for Umesh Kumar in Customs Appeal No. 51578 of 2018 and the learned authorised representative for the Revenue and perused the records. No one appeared on behalf of Rajat Arora in Customs Appeal No. 51595 of 2016. After the appeals were heard and the order was reserved on 12.10.2023, written submission dated 31.10.2023 was sent by the learned counsel for Rajat Arora, which was received on 31.10.2023. The factual matrix which leads to these appeals is as follows:

2. On 18.9.2014, a Bill of Entry No. 6807339 was filed with M/s. Aromatech as the importer. On examination, the goods were found to be in excess of the declaration in the Bill of Entry and there were also goods which were not declared at all in the Bill of Entry. Certain essential details such as the details

of the importer, the exporter and the maximum retail price[1] were also missing on the cartons.

3. Further investigation also showed that 15 Bills of Entry had been filed prior to this Bill of Entry by M/s. Aromatech and in all these cases, the appellant had availed the benefit of Customs exemption notification no. 12/2012 dated 17.3.2012 without following the conditions of the notification. After recording statements and completing the investigation, a Show Cause Notice[2] **dated 05.03.2015** was served on Umesh Kumar and Rajat Arora proposing recovery of differential duty under section 28(1) for the imports made in all the Bills of Entry along with interest and proposing to impose penalties on Umesh Kumar and Rajat Arora.

4. By the order-in-original dated 25.2.2016[3]**,** the Commissioner confirmed the proposals in the SCN. This order was assailed by M/s Aromatech before this Tribunal in **Customs Appeal no. 51647 of 2016.** By Final Order dated 9.5.2017, this tribunal remanded the matter to the original authority. Following the directions of this Tribunal, the Commissioner passed Order in Original (denovo) dated 4.1.2018[4] which is now assailed in this **Customs Appeal No. 51578 of 2018.**

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1 MRP
2 SCN
3 OIO
4 De novo OIO

5. The OIO dated 25.2.2016 was also assailed by Rajat Arora in **Customs Appeal no. 51595 of 2016,** but his appeal was dismissed for non-prosecution by Final Order dated 25.1.2017. Thereafter, on an application from Rajat Arora, the appeal was restored on 24.4.2018.Thus, this appeal is against the OIO dated 25.2.2016 insofar as it pertains to Rajat Arora.

6. The facts of the case are that on specific information, goods imported under Bill of Entry No. 6807339 dated 18.9.2014 were examined and the number of cartons was found to be 863 against 741 declared in the Bill of Entry. On further examination, the quantity of four goods was in excess of the declaration and there were six other goods which were not even declared. The goods were seized under section 110 of the Customs Act, 1962[5] and the matter was investigated. Summons were issued to Umesh Kumar, proprietor of M/s. Aromatech the importer and in response, Rajat Arora appeared with an authorization from Umesh Kumar and introduced himself as the sales in charge of M/s Aromatech. He gave a statement admitting that the imported goods were in excess of the quantity declared and the Retail Sale Price as required was not affixed on them. He agreed to pay the Customs duty. Further, he said that they were not registered with the VAT department in Delhi but were registered with the UP VAT department.

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5 Act

7. Further investigation showed that M/s Aromatech had been filing NIL Returns with UP VAT showing that they had not sold any goods at all. By that time, the appellant had already imported 15 consignments before this Bill of Entry. In all these cases, the appellant availed the benefit of exemption notification no. 21/2012 dated 17.3.2012 from Special Additional Duty (SAD) of Customs.

8. It needs to be pointed out that SAD is levied so as to provide a level playing field to the domestic manufacturers whose goods suffer VAT but similar goods, if imported and used do not suffer VAT. However, if the imported goods are not used by the importer but are further sold, such goods will suffer VAT and hence SAD is exempted or refunded. For the goods imported through these Bills of Entry during the relevant period, exemption notification no. 12/2012 was available which exempted the goods from payment of SAD subject to the condition that the importer declares the state of destination where the goods are to be sold after import and his VAT registration number. The importer declared the State as UP and provided its VAT registration number. However, from the VAT returns filed with the UP Government authorities, it was evident that the importer had not paid any VAT at all. Thus, the importer had evaded paying SAD declaring that the goods will be sold in UP but did not pay VAT in UP.

9. Repeated summons were sent to M/s. Aromatech but it did not respond. Even Rajat Arora also did not respond to the summons dated 31.12.2014 and 13.1.2015.

10. M/s. Aromatech, filed a Writ Petition in the Delhi High Court on 9.1.2015 seeking provisional release of the seized goods and the High Court directed Umesh Kumar, the proprietor to appear before the Customs Officer on 4.2.2015 and further directed the department that if any request for provisional release is submitted, to dispose of that application within 10 days after his appearance.

11. Umesh Kumar appeared on 4.2.2015 and gave his statement. The bank statements of M/s Aromatech showed transactions of over Rupees twenty one crores between 2012 and 2014. However, Umesh Kumar said that he had suffered losses during 2009 to 2012 after which Rajat Arora came and offered to use his IEC and pay him for the use. He said that he had handed over all his papers and bank accounts to Rajat Arora who was using his IEC. The Additional Commissioner rejected the application for provisional release by Umesh Kumar.

12. Further investigations showed that Umesh Kumar and Rajat Arora were working as partners. Show Cause Notice[6] was issued on 25.3.2015 which culminated in the Order in Original dated 25.2.2016 as under:

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6 SCN

(i) Rejected the declared assessable value of Rs. 29,59,398/- of the goods imported vide Bill of Entry 6807339 dated 18.09.2014 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 and re-determined assessable value at Rs. 41,48,464/- under Rule 5 of Rules ibid read with Section 14 of the Customs Act, 1962.

(ii) Confiscated the goods totally valued at Rs.41,48,464/- under section 111 (1), (m) & (o) of the Customs Act, 1962. However, an option was given to get the said goods redeemed on payment of redemption fine of Rs.10,00,000/- (Rupees ten lakhs only) under Section 125 of the Customs Act, 1962.

(iii) Confirmed the duty amounting to Rs.11,37,685/- (Rupees eleven lakh thirty seven thousand six hundred and eighty five only) on the goods imported vide Bills of Entry 6807339 dated 18.09.2014 under section 28(1) of the Customs Act, 1962.

(iv) Imposed penalty of Rs.11,37,685/- under section 114A of the Customs Act, 1962 on M/s Aromatech for the duty short paid by reason of collusion/wilful mis-statement/suppression of facts for their various acts of omission and commission as detailed above.

(v) Confirmed demand of Additional duty of Customs on the goods imported vide 15 earlier shipments amounting to

Rs.61,65,224/- (Rupees sixty one lakh sixty five thousand two hundred and twenty four only) which was evaded wilfully and intentionally under section 28(1) of the Customs Act, 1962 alongwith interest under Section 28AA of Act, ibid by invoking extended period of 5 years under section 28(4) of the Customs Act, 1962.

(vi) Imposed penalty of Rs.61,65,224/- (Rupees sixty one lakh sixty five thousand two hundred and twenty four only) under section 114A of the Customs Act, 1962 on M/s Aromatech for the duty short paid by reason of collusion/wilful mis- statement/suppression of facts for their various acts of omission and commission as detailed above.

(vii) Imposed penalty of Rs. 10,00,000/- (Rupees ten lakhs only) on Rajat Arora under section 112(a) of the Customs Act, 1962."

13. On appeal by M/s Aromatech, this Tribunal passed Final Order dated 9.5.2017 remanding the matter to the original authority with a direction to provide relied upon documents to him. The appeal by Rajat Arora challenging the penalty of Rs. 10,00,000/- imposed on him was initially dismissed and later restored.

14. Pursuant to the Final Order, the impugned denovo OIO was passed by the Principal Commissioner. It deals with only the part of the order insofar as M/s. Aromatech and its

proprietor Umesh Kumar were concerned. The operative part of this order is as follows:

"(i) I reject the declared assessable value of Rs. 29,59,398/- involving duty of Rs. 6,66,986/- on the goods imported vide Bill of Entry 6807339 dated 18.09.2014 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 and re-determine the same at Rs. 41,48,464/- under Rule 5 of Rules ibid read with Section 14 of the Customs Act, 1962 and consequently confirm the demand of Customs duty amounting to Rs.11,37,685/ on the goods imported vide Bills of Entry 6807339 dated 18.09.2014 under Section 28(8) of the Customs Act, 1962 which should be paid forthwith by them alongwith interest in terms of Section 28AA of the Act.

(ii) I confiscate the goods totally valued at Rs. 41,48,464/- involving customs duty of Rs. 11,37,685/- under section 111 (1), (m) & (o) of the Customs Act, 1962. However, I give an option to M/s Aromatech, Khasara No. 711/2, Main Bhola Road, Khadoli, Meerut, U.P., (Proprietor Sh. Umesh Kumar, B-186, Shardapuri, Phase 2, Kanker Khera, Meerut Cantt., U.P.) to get the said goods redeemed on payment of redemption fine of Rs. 10,00,000/- (Rs. Ten Lakhs Only) in terms of Section 125 of the Customs Act, 1962.

(iii) I impose a penalty of Rs. 11,37,685/- under Section 114A of the Customs Act, 1962 on M/s Aromatech, Khasara No. 711/2, Main Bhola Road, Khadoli, Meerut, U.P., (Proprietor Sh. Umesh Kumar, B-186, Shardapuri, Phase 2, Kanker Khera, Meerut Cantt., U.P.) in respect of evasion of duty under Bills of Entry 6807339 dated 18.09.2014, which should be paid forthwith.

(iv) I confirm the demand of Additional duty of Customs on the goods imported vide 15 earlier shipments amounting to Rs. 61,65,224/- (Rs. Sixty One Lakhs, Sixty Five Thousands, Two Hundred and Twenty Four only) as detailed in para 5.2 of this order, under Section 28(8) read with Section 28(4) of the Customs Act, 1962 which should be paid forthwith alongwith interest under Section 28AA of the Act;

(vi) I impose a penalty of Rs. 61,65,224/- (Rs. Sixty One Lakhs, Sixty Five Thousands, Two Hundred and Twenty Four only) under Section 114A of the Customs Act, 1962 on M/s Aromatech, Khasara No. 711/2, Main Bhola Road, Khadoli, Meerut, U.P., (Proprietor Sh. Umesh Kumar, B-186, Shardapuri, Phase 2, Kanker Khera, Meerut Cantt., U.P.) which should be paid forthwith.

This order is issued without any prejudice to any other action that may be taken against the present noticee or any other person connected with these proceedings."

15. The prayer of Umesh Kumar before us in this appeal is to set aside the impugned denovo OIO dated 4.1.2018. The main contention of Umesh Kumar is that he had only lent his IEC to Rajat Arora and was in no way concerned with the imports at all and therefore, the impugned order needs to be set aside. The specific grounds listed in the appeal are:

(a) The impugned order is bad in law, unjust and unfair.

(b) Rajat Arora was the real importer and he (Umesh Kumar) had sought his cross examination which was allowed on 5.12.2017 and 15.12.2017 but Umesh Kumar had not appeared. Next time on 29.12.2017, the Rajat Arora's advocate had not appeared. The impugned order was passed without offering any further cross examination and hence should be set aside;

(c) He neither imported the goods nor signed any of the Bills of Entry as can be verified from the records;

(d) He had not even filed the Writ Petition before the Delhi High Court and was also unaware of the order passed by the High Court but on being informed by Rajat Arora, he had appeared before the Customs officer on 4.2.2015.

(e) He had also given his bank details to Rajat Arora who has been operating it and he was not even aware of the details of the transactions in the AXIS Bank in the name of the his firm through which all transactions took place.

(f) He had not even authorised Rajat Arora to appear and the authority letter dated 29.9.2014 purported to be signed by him was forged.

(g) The Bills of Entry were filed by the CHA M/s. Venstar Shipping and not by him.

16. For the above reasons, Umesh Kumar prayed that the impugned order may be set aside.

17. Learned authorised representative for the Revenue supports the impugned order and asserts that it calls for no interference.

18. We have considered the submissions. According to Umesh Kumar, he had nothing to do with the imports at all and had not filed the Bills of Entry nor had he imported the goods. He had simply lent his IEC to Rajat Arora who imported the goods. He had also given his bank details to Rajat Arora.

19. The question which must naturally arise is, if it is true, why should Umesh Kumar be bothered about the goods being seized or confiscated. When the goods were seized, Writ Petition (C) 644/2015 was filed in Delhi High Court seeking provisional release of the goods. The affidavit in this regard was signed by Umesh Kumar on 3 January 2015 and his signature was verified by the Oath Commissioner before whom he had signed it. The Writ Petition was also signed by Umesh

Kumar on 9.1.2015 and was filed through a law firm Deepak Gandhi and Associates.

20. When the Writ Petition came up for hearing on 30.1.2015, Shri Deepak Gandhi, Mr. Ritesh Chaudhary and Mr. Mayank Singh, advocates appeared on behalf of Umesh Kumar while Shri Kamal Nijhawan, Standing Counsel and Shri Sumit Gaur advocate and Mr. Harvinder Singh, Superintendent of Customs appeared on behalf of the department.

21. Shri Gandhi stated before the High Court that a representative of the petitioner (Shri Umesh Kumar) would appear before the Superintendent of Customs on 4.2.2015 and a fresh application for provisional release of goods will be filed on 2.2.2015. The High Court was pleased to dispose of the Writ Petition with an order that if an application for provisional release of goods is filed, it should be disposed of within ten days of the petitioner appearing before the authority.

22. Thereafter, as assured by the learned counsel before the High Court, Umesh Kumar did appear before the officer and gave his statement.

23. The entire basis of arguments of Umesh Kumar in this appeal before us is that he is in no way concerned with the imports or the Writ Petition or the Bills of Entry. Insofar as appearing before the Customs Officer on 4.2.2105 is concerned, he says that he was told by Rajat Arora that there

was an order of High Court and he had to appear and therefore, he did.

24. We find no force in these submissions. If these submissions have to be accepted, it would mean that:

a) The Oath Commissioner who had attested his affidavit filed before the High Court had falsely verified the signature although it was not made before him by Umesh Kumar;

b) M/s. Gandhi and Associates, the law firm, without even being hired by Umesh Kumar, somehow learnt about his case and filed a Writ Petition before the High Court;

c) Mr. Gandhi, Mr. Ritesh Chaudhary and Mr. Mayank Singh, learned advocates, without being engaged by Umesh Kumar, had appeared before the High Court and made submissions including a statement that his authorised representative will appear before the Superintendent of Customs on 4.2.2015 at 11 AM;

d) Umesh Kumar, without knowing anything about the case or the proceedings in the Writ Petition, appeared before the Customs on exactly 4.2.2015 on being advised by Rajat Arora;

e) Even after learning about the Writ Petition having being filed in the name of his firm (without his knowledge or consent), he took no action to apprise the High Court or the advocates who represented his firm that he had never filed the Writ Petition and was not even aware of it.

f) Despite not being engaged by him, the CHA M/s. Venstar, without conducting any KYC checks, somehow, has been filing Bills of Entry in all the imports by his firm;

g) The AXIS bank opened a bank account in the name of his firm and over years, remitted over Rs. 21 crores in the name of his firm without ever conducting the KYC checks;

25. Even at this stage before us in this appeal, he is still challenging that part of the order which confiscates the imported goods of which he claims to be not even the owner. In short, we do not find any evidence to support the submission of Umesh Kumar that he is telling the truth and nobody else is telling the truth from the Oath Commissioner who certified his affidavit, the lawyers who filed the Writ Petition in the High Court on behalf of his firm and made submissions before the High Court, the CHA who filed the Bills of Entry and the bank which opened an account in the name of his firm and remitted large sums abroad on account of his firm. No evidence has been put forth to support such wild claims by Umesh Kumar. These arguments which form the grounds of **Customs Appeal no. 51578 of 2018** filed by Umesh Kumar cannot be sustained and accordingly, the appeal deserves to be dismissed.

Customs Appeal No. 51595 of 2016

26. Rajat Arora filed this appeal assailing the OIO 24.2.2106 passed by the Principal Commissioner. It was dismissed for

non-prosecution by Final Order dated 25.1.2017. Rajat Arora filed an application for Restoration bearing No. 50126 of 2018 which was allowed and the appeal was restored to its original number by order dated 24.4.2018 and it was directed to be listed on 24.5.2018. After the restoration, the following proceedings took place:

1	24.5.2018	On request of both sides, adjourned to 11.6.2018.
2	11.6.2018	Copies of some statements were sought and Revenue was directed to supply them in two weeks. Adjourned to 3.7.2018.
3	3.7.2018	Registry was directed to put up the file of Shri Umesh Kumar/Aromatech which was already disposed and allow its inspection to both parties. Adjourned to 9.7.2018.
4	9.7.2018	Learned DR was directed to obtain a copy of the re-adjudication order and also provide a copy to Shri Rajat Arora or his counsel. Adjourned to 30.7.2018.
5	30.7.2018	Directed to tag this appeal with the appeal no. C/51578/2018 filed by Shri Umesh Kumar after re-adjudication and list on 21.8.2018.
6	21.8.2018	Learned counsel for the appellant sought an adjournment. Adjourned to 27.9.2018.
7	27.9.2018	Adjourned to 10.10.2018.
8	10.10.2018	Adjourned to 17.10.2018 Top of the Board.
9	23.5.2019	Listed. Learned counsel sought an adjournment. Adjourned to 2.7.2019.
10	2.7.2019	Listed. Learned counsel sought an adjournment. Adjourned to 13.7.2019.
11	13.8.2019	Listed. Learned counsel sought an adjournment. Adjourned to 22.8.2019.
12	22.8.2019	Listed. Learned counsel sought an adjournment. Adjourned to 24.9.2019.
13	24.9.2019	Listed. Learned counsel sought an adjournment. Adjourned to 5.11.2019.
14	5.11.2019	Listed. Learned counsel sought an adjournment. Adjourned to 18.12.2019.
15	18.12.2019	Adjourned to 6.2.2020
16	6.2.2020	The matter could not be taken up. Adjourned to 23.3.2020.
17	1.3.2021	None appeared for the appellant but a written request for adjournment was sent by the learned counsel for the appellant. Adjourned to 26.3.2021.
18	26.3.2021	There was no court on this date. Hence adjourned to 20.4.2021.
19	24.5.2021	On request of the appellant, adjourned to 28.6.2021
20	28.6.2021	On request of the appellant, adjourned to

		29.7.2021
21	29.7.2021	On request of the appellant, adjourned to 20.9.2021
22	20.9.2021	On request of the appellant, adjourned to 9.11.2021
23	9.11.2021	On request of the appellant, adjourned to 20.12.2021
24	20.12.2021	On request of the appellant, adjourned to 24.1.2022
25	24.1.2022	On request of the appellant, adjourned to 17.3.2022
26	17.3.2022	On request of the appellant, adjourned to 26.5.2022
27	26.5.2022	On request of the appellant, adjourned to 4.8.2022
28	4.8.2022	Adjourned to 20.9.2022.
29	20.9.2022	On request of the appellant, adjourned to 28.11.2022
30	28.11.2022	On request of the appellant, adjourned to 25.1.2023
31	25.1.2023	As anti dumping bench continued, this bench could not be constituted. Adjourned to 15.3.2023.
32	15.3.2023	On request of the appellant, adjourned to 27.4.2023
33	27.4.2023	On request of the appellant, adjourned to 13.7.2023
34	13.7.20232	On request of the appellant, adjourned to 24.8.2023
35	24.8.2023	The appellant engaged a new counsel who sought time to prepare. On request of the appellant, adjourned to 12.10.2023 as the last opportunity.
36	12.10.2023	None appeared on behalf of the appellant.

27. As can be seen from the above dates, this appeal which was initially dismissed for non-prosecution was restored on an application by the appellant. Thereafter, it was listed on 36 occasions over a period of five years and five months. While some adjournments were on account of other exigencies, the main reason for the adjournments were the requests of the appellant either in writing or in person or through proxy counsel. On 24 August 2023, on the request of the counsel, the matter was adjourned to 12 October 2023 as a last

opportunity. Even on this 36th listing of the appeal, none appeared for the appellant. Needless to say that 36 adjournments is more than a reasonable opportunity of being heard given to the appellant.

28. The directions of the Supreme Court in **Balaji Steel Re-rolling Mills** vs **Commissioner**[7] is that CESTAT should decide the matter on merits even if the counsel is not present when the appeal is taken up for hearing. Relevant portion of this judgment is as follows:

> "13. Applying the principles laid down in the aforesaid case to the facts of the present case, as the two provisions are similar, we are of the considered opinion that the Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and **it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing**. The High Court also erred in law in upholding the order of the Tribunal."

29. This matter was listed on 12.10.2023 and the submissions of the learned authorised representative for the Revenue were heard and the records were examined and the order was reserved. Thereafter, on 30.12.2023, learned counsel for the appellant submitted an application seeking an opportunity to address on final arguments. It is stated that although the matter was listed on 12.10.2023, learned counsel noted it as 30.10.2023 instead and therefore, the matter may be listed and the matter may be heard. We find that not only was the date pronounced in the open court but the ordersheet

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7 2014 (36) S.T.R. 1201 (S.C.)

fixing the date of hearing on 12.10.2023 was also uploaded on the website as is the practice. We, therefore, proceed to decide the matter on merits based on the submissions in the appeal.

30. In his appeal, Rajat Arora made the following submissions:

(i) Rajat Arora is the director of M/s. Pharotrans Logistics Pvt. Ltd and proprietor of M/s. Galaxy Logistics.

(ii) He is not concerned with M/s. Aromatech or its proprietor Umesh Kumar and the goods imported by them from China to India. He had not been involved in sale/purchase of any goods whatsoever at any point of time of any nature with the goods imported by M/s. Aromatech or Umesh Kumar, proprietor of the firm.

(iii) He had only provided assistance to M/s. Aromatech with respect to freight forwarding and customs clearance.

(iv) M/s. Aromatech had handed over the papers of the goods imported by them to him and he had filed the papers without verifying the declaration made by M/s. Aromatech. Thereafter, the appellant learnt that the quantity of the goods imported was more than what was declared.

(v) Section 112(a) of the Customs Act does not apply to the appellant as he had not done anything which rendered the imported goods liable to confiscation under section 111 nor has he abetted doing or omission of such an act.

(vi) The proprietor of M/s. Aromatech said in his statement given under section 108 that he (Rajat Arora) was providing logistics services.

(vii) Nothing was recovered in the searches of Rajat Arora on 12.2.2015 and 13.2.2015.

(viii) The Commissioner passed the order mechanically without considering the facts, circumstances, statements and documents filed by the appellant.

(ix) Therefore, the appeal may be allowed and impugned order may be set aside.

31. Although Rajat Arora prayed in his appeal to set aside the entire order, the relief claimed in Form CA 3 at S.No. 23 is as follows:

> "The mentioned penalty to be withdrawn u/s 112(a) as the penalty imposed is baseless and without facts."

32. As far as the rest of the order qua M/s. Aromatech is concerned, it was already remanded to the original authority who passed the de-novo order the challenge against it has been dealt with in Customs Appeal No. 51578 of 2018 above.

33. We, therefore, only confine ourselves to deciding if the penalty under section 112(a) imposed on Rajat Arora can be

sustained or not in the light of the submissions made in this appeal.

34. Learned authorised representative supports the impugned order and the imposition of penalty on Rajat Arora under section 112(a).

35. The first submission of Rajat Arora is that he had nothing to do with the business of M/s. Aromatech and that he was merely a freight forwarder and that he had received the documents from the proprietor of M/s. Aromatech (Umesh Kumar) and submitted them for customs clearance.

36. We find from the records, when the goods were examined by the Customs and discrepancies were found, they were seized under a panchnama under section 110 in the presence of Deepak, G card holder of CHA M/s. Venstar Shipping Services and two independent witnesses. Quite logically, summons were issued to the proprietor of M/s. Aromatech and to the CHA for appearance on 29.9.2014.

37. In response to the summons to the proprietor of M/s. Aromatech, Rajat Arora appeared on 1.10.2014, before the Customs officer with an authorization from the proprietor, introduced himself as Sales Incharge of M/s Aromatech, and gave his statement. It is to be noted that the summons were not issued to Rajat Arora but to M/s. Aromatech but Rajat Arora representing himself as the sales incharge gave a statement. Therefore, the submission in this appeal that Rajat

Arora has nothing to do with the import of goods or sales by M/s. Aromatech and that he was merely a freight forwarder holds no water. Having obtained an authorization from the proprietor of M/s. Aromatech and having appeared on his behalf in view of the summons issued to M/s. Aromatech, Rajat Arora cannot now turn around and say that he had nothing to with Aromatech. It is not the officers, but it is Rajat Arora who introduced himself into this case. Otherwise, a pure freight forwarder would have neither anything to do with the goods which are imported nor anything to do with the Customs clearance (which is the responsibility of the CHA).

38. In his statement, Rajat Arora provided details from IEC of M/s. Aromatech to the status of its registration with VAT departments of Delhi and UP and even the bank account details of including the bank, branch and the account number of M/s. Aromatech. These details turned out to be correct during further investigation and enquiries. Needless to say that a person who has nothing to do with the importer will not have these details. This also buttresses the fact that Rajat Arora was quite intricately involved in the business of M/s. Aromatech and as per his statement, in the capacity of sales incharge.

39. The position of being a sales incharge is significant in this case because the case of the Revenue is that M/s. Aromatech claimed exemption notification from the SAD which would be available if the importer was registered with and

pays VAT. While M/s. Aromatech was registered with the VAT in UP, it had filed NIL returns indicating that it had not paid any VAT and thereby it had violated the conditions of the exemption from SAD. Nobody can know better about the sales than the sales in charge.

40. Another submission of Rajat Arora is that Umesh Kumar, proprietor of M/s. Aromatech had mentioned that he was providing freight forwarding services. A perusal of the statement of Umesh Kumar shows that according to him, Rajat Arora was the importer and that he (Umesh Kumar) had only lent him his IEC and provided him the password of his bank account and that he did not know what Rajat Arora did with the consignments after they were imported. Thus, the statement of Umesh Kumar does not help the case of Rajat Arora. On the contrary, it shows that Rajat Arora was the importer.

41. In this factual matrix, the conclusion in impugned OIO is that M/s. Aromatech had mis-declared the imported goods which were liable to confiscation under section 111(m) and (o) of the Act. Consequently, penalty was imposed on Rajat Arora under section 112(a).

42. Rajat Arora introduced himself as the sales incharge of M/s. Aromatech in his statement made representing Umesh Kumar, proprietor of M/s. Aromatech with an authorization from him. He provided to the department such details of the

business as the IEC, VAT registration with different states and the bank account details of M/s. Aromatech which are most unlikely to be available with anyone not intricately connected with the business of the importer. Therefore, we find no reason whatsoever to interfere with the penalty.

43. **Customs Appeal No. 51595 of 2016** is rejected and the impugned order dated 24.2.2016 is upheld insofar as the penalty on Rajat Arora is concerned.

44. **Customs Appeal No. 51578 of 2018** is rejected and the impugned order dated Order in Original (denovo) dated 4.1.2018 is upheld.

[Order pronounced on **08.04.2024**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Tejo