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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/250-251, 279 /2006 - CU[DB] Date 04/08/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To : 1. SHRI SACHIN TAMBI
2. SHRI KRISHNA TAMBI,
140, KAILASHPURI, TONK ROAD, JAIPUR

SHRI KRISHNA TAMBI & OTHERS Appellant

Vs

COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/332-334/ 2009 CU[DB] dated 27.07.09

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
COMMISSIONER OF CUSTOMS, N.C.R. BUILDING,
STATUE CIRCLE, 'C' SCHEME, JAIPUR - 302005

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25, LAJPAT NAGAR-III, N.DELHI – 24.

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kuni. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Puniabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(Customs Appeal Branch)

18. ASHOK KUMAR KHANDELWAL,
PROP. M/S GAURAV EXPORTS,
R/O 130, VISHWESHARIA NAGAR EXTN.,
GOPALPURA BY-PASS , JAIPUR.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Custom Appeal No. 250 of 2006-Cust. Br.

(Arising out of Order-in-Original No. 16/2005 dated 30.12.2005 passed by the Commissioner of Customs, Jaipur)

Shri Krishna Tambi Appellant

Vs.

CC, Jaipur Respondent

Custom Appeal No. 251 of 2006-Cust. Br.

(Arising out of Order-in-Original No. 16/2005 dated 30.12.2005 passed by the Commissioner of Customs, Jaipur)

Shri Sachin Tambi Appellant

Vs.

CC, Jaipur Respondent

Appearance

Appeared for Appellant : Shri Piyush Kumar, Advocate

Appeared for Respondent : Shri Sansar Chand, DR

Custom Appeal No. 279 of 2006-Cust. Br.

(Arising out of Order-in-Original No. 16/2005 dated 30.12.2005/25.1.2006 passed by the Commissioner of Customs, Jaipur)

Ashok Kumar Khandelwal Appellant

Vs.

CC, Jaipur Respondent

Appearance

Appeared for Appellant : None

Appeared for Respondent: Shri Sansar Chand, DR

Date of Hearing: 9.7.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. C/332-334/08 dated............

Per D.N. Panda :

All the three Appeals arose out of Order-in-Original No. 16/2005 dated 30.12.2005 passed by the learned Commissioner of Customs, Jaipur. Ld. Counsel Shri Piyush Kumar appearing in Appeal case No. 250 & 251 of 2006 submits that Krishna Tambi was the CHA who has been implicated to the case when the Authorities found that precious and semi precious stones imported from M/s Kalyan Gems trading Co. of Bangkok (Thailand) through a Post parcel bearing No. 55654/8/04 on 6.8.2004 remained unclaimed and the goods imported was also undervalued and this Appellant was acting as CHA. According to the ld. Counsel, the Authorities have acted arbitrarily against the Appellants Shri Krishna Tambi in Appeal Case No. C/250/2006 and Shri Sachin Tambi in Appeal Case No. C/251/2006 and imposed penalty of Rs.5,00,000/- on Shri Krishna Tambi and penalty of Rs.2,50,000/- was imposed on Shri Sachin Tambi.

2. Shri Krishna Tambi was implicated for the reason that he was authorised to make clearance of the import in terms of letter dated 6.8.2004 issued by proprietor of M/s Gaurav Exports, who is Appellant in C/279/2006. This letter appears in page 1 of paper book. Shri Krishna Tambi is the Director of CHA concern viz. Shri Krita Cargo Pvt. Ltd. This is also very clear from page 1 annexed to the paper book. This document also shows that Shri Ashok Kumar Khandelwal was the proprietor of M/s Gaurav Exports who had issued authorisation to the ld. Dy. Commissioner of Customs showing Shri Krishna Tambi as CHA.

3. Shri Piyush Kumar, Ld. Counsel further submits that Shri Krishna Tambi had never claimed release of the goods in his favour nor intimated to that Authority that he is owner of the goods before the Custom Authority. There is no bank account found in the name of Shri Krishna Tambi titled as M/s Gaurav Export. So also this Appellant is no way connected to M/s Gaurav Exports except in the manner appearing in letter dated 6.8.2004 above. There is no evidence on record to show that he placed order for the impugned goods with the exporter M/s Kalyan Gems Trading Co. There was no enquiry made by Revenue with the exporter to establish the identity of importer of impugned goods. Shri Krishna Tambi has no passport to go to Bangkok to deal import for any party. There is also no evidence on record to prove that the Shri Krishna Tambi was in Thailand at any point of time.

4. Ld. Counsel for Shri Krishna Tambi places para-36 of the order to show that merely because Shri Ashok Kumar Khandelwal named the Appellant Shri Krishna Tambi, that cannot be used as a piece of evidence to implicate him unless surrounding circumstances prove against this Appellant. There is no full proof case of Revenue to establish that Shri Krishna Tambi was in any way connected with the import in question when no materials were discovered from him.

5. Ld. Counsel relies on page No. 66 to 69 of appeal folder exhibiting business deals of M/s Gaurav Export which is engaged in the precious and semi-precious stones and Proprietor thereof is Shri Ashok Kumar Khandelwal. At page 71 and 72, statement of Shri Ashok Kumar Khandelwal appears. Placing reliance on these documents, ld. Counsel submits that evidence established that Shri Ashok Kumar Khandelwal was the owner of M/s Gaurav Export and he was making foreign tours for importing precious and semi-precious stone being engaged in that business. The document also shows that Shri Ashok Kumar Khandelwal is an importer under IEC No. 1302004514 with PAN No. ACDPK 44754. All these material facts establish that M/s Gaurav Export belongs to Shri Ashok Kumar Khandelwal without connecting ~~this~~ the Appellant Sri Krishna Tambi to the import in question.

6. So far as the Appellant Shri Sachin Tambi is concerned, Ld. Counsel Shri Piyush Kumar submits that this Appellant has a passport and he had also gone to Bangkok for his business. There

is no dispute about that since he is also engaged in precious and semi-precious stone business. But the impugned import has not connected this Appellant by any cogent evidence nor his visit was to import goods from M/s Kalyan Gems Trading Co. nor the export by that concern was an outcome of deal with Shri Sachin Tambi.

7. In respect of both the Appellants, ld. Counsel submits that when there is no even any iota of evidence against them beginning from the placement of the order till the import was made, they cannot be implicated to the charge on the basis of mere statement of a co-noticee Shri Ashok Kumar Khandelwal who disclaimed the goods in spite of authorising Shri Krishna Tambi to clear the goods on his behalf.

8. Ld. DR Shri Sansar Chand supports the order of the learned Authority below. He submits that when the department found that the goods imported were under-valued by the importers not only Shri Ashok Kumar Khandelwal but also Shri Krishna Tambi the CHA and the other Shri Sachin Tambi, who were connected to the deal were brought to record for examination. The Authorities found that the consignment was in the name of M/s Gaurav Export. But the goods in question were imported by all three in connivance with each other. Value of the goods was enhanced on testing of the goods. Upon such enhancement, goods were unclaimed by all the three since undervaluation was there. Shri Krishna Tambi has admitted in his statement that the goods belonged to him. So also Shri Sachin Tambi admitted that goods were imported by him from M/s Kalyan Gem Trading Co. Shri Piyush Kumar strongly objected

to this argument of the ld. DR submitting that neither Shri Krishna Tambi nor Shri Sachin Tambi had ever admitted that the impugned consignment belong to them or imported by them.

9. None appeared for the Appellant Shri Ashok Kumar Khandelwal in Appeal Case No. C/279/06.

10. Heard both sides and perused the record.

11. Rival~~ly~~ submissions of both the sides in Appeal Case No. C/250 and 251/2006 called for thorough examination of weight of evidence to appreciate the charges made by Revenue against them and strength of their defence i.e. Shri Krishna Tambi and Shri Sachin Tambi in Appeal Case No. C/250 and 251 of 2006 respectively. In para-33 of the order in original, ld. Authority below has found out that the import was made in the name of M/s Gaurav Exports and that particular concern belonged to Shri Ashok Kumar Khandelwal. It was also found by that Authority that a letter of authorisation for clearance of the goods was issued by Shri Ashok Kumar Khandelwal on 6.8.2004 in favour of Shri Krishna Tambi. This is the document Shri Piyush Kumar ld. Counsel relies. There were no evidence gathered by Revenue to establish that signature of Ashok Kumar Khandelwal was forged on the letter dated 6.8.2004 or the document was fabricated. This proof thus does not deny that the importer was Shri Ashok Kumar Khandelwal for his concern to M/s Gaurav Exports. ~~But~~ There is also no doubt of this fact when we looked into page 66 to 69 showing that Shri Ashok Kumar Khandelwal was engaged in

the business of precious and semi-precious stones. This rules out ownership of goods by Shri Krishna Tambi as alleged by Revenue. There is also no evidence on record to show that either Shri Krishna Tambi or Shri Sachin Tambi had placed order with M/s Kalyan Gem Trading Co. of Bankok for the impugned consignment. Allegation of Revenue in para 13 of the order, that there was connivance for the import, that remained unproved against Shri Krishna Tambi without any cogent reason and evidence on record. As it has been noticed that Sh. Krishna Tambi was an authorised person by Shri Ashok Kumar Khandelwal at page 1 of paper book in terms of letter dated 6.8.2004 issued by Shri Khandelwal, nothing can be held against Shri Krishna Tambi.

12. There is no evidence on record to show that Shri Sachin Tambi had made the impugned import making foreign tour or placing order with M/s Kalyan Gems Trading Co. for the impugned import. Also there is no evidence on record to show that before and after the impugned import, either Sh. Krishna Tambi and Shri Sachin Tambi were implicated into any charge by Customs. They are not on record as habitual offenders nor they are found to be behind curtain or having their hand in glove against any illicit import. Finding no cogent evidence against Shri Sachin Tambi, the charge of connivance against him is unsustainable.

13. Even though the imported goods remained unclaimed, valuation thereof has relevance for other consequences of law.

14. In view of aforesaid finding and observations, benefit of doubt goes in favour of both the Appellants and penalties levied on them i.e. Shri Krishna Tambi and Shri Sachin Tambi are waived setting aside the impugned order to this extent only.

Appeal Case NO. C/279/2006

15. In Appeal Case No. C/279/2006, Shri Ashok Kumar Khandelwal is Appellant. This Appellant was heard on the earlier occasion i.e. on 2.6.2009. Ld. Counsel Shri U.K. Sharma appeared on his behalf. On that day, a specific direction was issued to him to file English translated copy of Hindi version documents relied upon by this Appellant for arguing the matter. Time was allowed and the matter was fixed to be called on 9.7.09 i.e. today.

16. Today nobody has appeared on behalf of the Appellant Shri Ashok Kumar Khandelwal. Since this matter is rolling on board for several years and the matter being very old and relating to the year 2006, it is no more desirable to keep the same pending when the Appellant prefers to remain absent without any cogent reason advanced by the Appellant or any adjournment sought by the Appellant assigning any reason to appear.

17. We have gone through the case record and had advantage of hearing Revenue. While hearing the Appeals of Shri Krishna Tambi and Shri Sachin Tambi as aforesaid, we have categorically noticed

that both these Appellants were not liable to charges. When we noticed that the goods became unclaimed there is no point to keep the matter pending further. We have found that the letter dated 6.8.2004 was issued by Shri Khandelwal authorising Shri Krishna Tambi to clear the impugned imported consignment. This has proved his nexus with the goods as well as his ownership. But the goods being unclaimed that was confiscated. Shri Ashok Kumar Khandelwal has therefore faced penalty of Rs. 2,50,000/-. Our observations in the Appeals of Shri Krishna Tambi and Shri Sachin Tambi make clear that Shri Ashok Kumar Khandelwal was the importer. Therefore there is no need to interfere to the penalty of Rs.2.50,000/- imposed on him under Section 112 (a) of Customs Act, 1962 for which we dismiss his Appeal.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

RM