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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/317 /2006,379 /2006 - CU[DB] Date 19/08/2009

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

To :
SANJAY AGGARWAL PARTNER
812, BAIRON BAZAR, BELANGANJ,AGARA

SANJAY AGGARWAL PARTNER Appellant

Vs

C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of Final order C/391-392/ 2009 CU[DB] dated 17.08.09 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

C.C.E. KANPUR, 117/7,
SARVODAYA NAGAR, KANPUR 208005.

2. Adv. / Consult HEMANT BAJAJ, AD., A-5 (BASEMENT), LAJPAT NAGAR-III, NEW DELHI -- 24.

R.K. HANDOO, ADV. FLAT-E, FRONT BLOCK, SAGAR APPTS., 6, TILAK MARG, NEW DELHI.

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.
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18. SH.NEERAJ JHANJI. R/O B-40B, GANGOTRI APARTMENT, ALAKNANDA, KALKAJI NEW DELHI

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/317 & 379/2006-Cus

(Arising out of Order-in-Original No.15/Cust/Commr.Adj/15 dt.30.12.05 passed by Commissioner of Customs & Central Excise, Kanpur)

Sh. Sanjay Agarwal Appellant
Sh. Neeraj Jhanjhi

Versus

CCE, Kanpur Respondent

Appearance
S/Sh. Hemant Bajaj & R.K.Handoo, Advs. For Appellant

Sh. L.B.Yadav, SDR for Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of ~~decision~~ order: 21.4.09
Order No. C/391-392/09
Date of Decision: 17-8-09

Per Rakesh Kumar:

The facts leading to these appeals are, in brief, as under:

1.1 On 20.3.01, the Officers of the Directorate of Revenue Intelligence, on the basis of a specific information, visited ICD, Agra and resumed Shipping Documents and samples pertaining to the export of 67,100 pcs. Of "Peter Engine Gaskets" with declared FOB value of Rs.1,17,15,754/- under drawback claim by M/s. Brij Impex International, 25, Shree Ganesh Complex, Sanjay Place, Agra(hereinafter referred to as M/s. BI). The duty drawback involved was Rs.19,33,094/-. The goods had been exported under Shipping Bills No.541-550 & 552-562/DBKS/01 all dt.28.2.01. On the basis of the declared value, the per set value of "Peter Engine

Gaskets" came to Rs.175/- per set. On examination of the samples, the goods were found to be of inferior quality and on market enquiry, their value was ascertained to be around Rs.5/- per cent. The gaskets being exported were bearing brand name DALBROS and supporting manufacture declared by the exporter was M/s. TALBROS Inds. Ltd., Faridabad. Enquiry at the address of the exporting firm revealed that the office premises had been hired at Shree Ganesh Complex, Sanjay Place by one Shri Sandeep Jain; and it was closed for last several months and even the rent for the office premises had not been paid for the last six months. The investigating officers had earlier visited the Indian Overseas Bank, Main Branch, Agra which was the Nodal Bank of the exporter for crediting the drawback and enquiry at the bank revealed that account in the name of M/s. BI had been opened on 7.8.2000, on the basis of Pan card allotment letter to Shri Sandeep Jain. The officers also obtained the photograph of Shri Sandeep Jain available in the bank records. When this photograph of the said Shri Sandeep Jain was shown to the receptionist of Shree Ganesh complex, Sanjay Place, Agra she identified the photograph as of Shri Saneep Jain who had hired the premises in the complex.

1.2. Subsequently it was learnt that the goods exported under Shipping Bills No.541-550 & 552-562/DBK/S/01 dt.28.2.01 are lying at Railway container depot, Bombay Port Trust and accordingly, the goods were detained and placed under seizure.

1.3. Enquiry in the office of the Dy. Commissioner, ICD Agra revealed that prior to this export, some more consignments, a total of 177200 sets of Peter Engine Gaskets with declared FOB value of Rs.3,10,64,982/- had been exported in the months of August, November and Dec'2000 and the drawback amounting to Rs.51,22,596/- had already been sanctioned and paid to M/s. BI.

1.4. From the statement of account of the exporter on Indian Overseas Bank, Main Branch, Agra(A/c. No.CA2983) it was revealed that the exporter had immediately withdrawn all duty drawback amount which had been received, immediately on date of receipt in the bank. During the course of investigation and from a perusal of the counterfoils of duty drawback cheques issued in favour of the exporter from ICD, Agra, it came to light that in Jan'2001, drawback cheques had not been issued in favour of Indian Overseas Bank, Main Branch, Agra as was done earlier in Aug., Sept., Nov. and Dec.,2000 but had been issued in favour of Bank of Punjab Ltd. and the Nodal Bank for the purpose of repatriation of foreign-exchange as mentioned in the GR form was "Punjab Bank Ltd., Chandigarh". On enquiry it was revealed that there was no bank like "Punjab Bank Ltd., Chandigarh" and thus the name of fake bank had been mentioned in GR forms from which it was clear that no remittance had been received against the so called exports. However, the account of the exporter's firm in Bank of Punjab Ltd., Sector 35, Chandigarh was located.

1.5. Though the shipping bills had been signed by a person with name Shri S.Jain, the investigating officers came to know that the shipping bills had been prepared by a CHA M/s. Vaspa Cargo International, Sanjay Place, Agra whose partners are Shri Sanjay Agarwal and Sh. Deepak Lalwani. On enquiry with Shri Sanjay Agarwal and Sh. Deepak Lalwani, they confirmed having prepared the shipping bills for Sh. S.Jain and also identified his photograph and also told that Sh. Sandeep Jain used to come with two other persons called Jasmeet and Pandit ji. He also gave the mobile number of Shri Jain to the investigating officers.

1.6. The Transport companies through whom the consignments of gaskets had arrived at ICD, Agra were located and same were found to be M/s. Rajdhani Goods Carrier and M/s. Shree Bhawani Transport Co. Shri

Raj Narain Sharma, Partner of M/s. Rajdhani Goods Carrier and Shri Raj Kumar Jassa, an employee of Shree Bhawani Transport Co. in their statements confirmed that the consignment of gaskets had been transported by them from Delhi to Agra and the same had been delivered to Shri Deepak Lalwani of M/s. Vaspa Cargo International at Rambagh, Agra. Shri Raj Kumar Jassa of M/s. Shree Bhawani Transport also told the investigating officers that in Agra, one Shri Kuldeep Jhanjhi alias Pinki used to claim to be the owner of the goods and he had given his contact no. at Delhi as 7495695. On enquiry at Delhi, it was found that this telephone no. was installed at the premises of Shri Neeraj Kumar Jhanjhi at 12/32A East Punjabi Bagh, New Delhi. Earlier the investigating officers had also learnt that the trucks of the above mentioned transport company had been arranged by a broker named Sh. Radheyshyam. This person was located and his statement was recorded on 28.4.01 wherein he told the officers that the goods from Delhi were to be lifted from M/s. A.N.Industries's premises located at H-29, Plot No.7, Sahipur Village, near Shalimar Bagh.

1.7. Enquiry was made with Neeraj Kumar Jhanjhi of Delhi whose address was found to be 12/32A, Punjabi Bagh East. On Officer's request, Shri Neeraj Jhanjhi took the officers to his godown/factory, which was M/s. A.N.Industries, located at H-29, Plot No.7, Sahipur Village, near Shalimar Bagh. On search of the factory/godown premises, the finished, packed gaskets with mark "Dalbros" identical to samples of the goods resumed from the office of ICD, Agra were found. Shri Neeraj Kumar Jhanjhi in his statement dt.28.4.01 stated that since last two years he alongwith his brother Kuldeep Kumar Jhanjhi alias Pinki, Jasmeet Kohli and one Shri Rajesh Sharma were collectively exporting the Peter Engine Gaskets through ICD, Agra; that Rajesh Sharma has aliases as Shri

Sandeep Jain and Sudeep Jain, that they had exported gaskets from ICD Agra about four times and had received duty draw back of about Rs.52 lacs; that apart from this the duty drawback to the tune of Rs.20 lacs was pending which related to the export effected in Feb'2001; that on the gaskets brand name "DALBROS" was being affixed, that the value of gaskets was only around Rs.3 to 4 per piece and he knew that the same were not of any use to Peter Engine; that he used to get the gasket made on job work basis and keep in the godown; that Shri Jasmeet Kohli, Rajesh Sharma alias Sandeep Jain alias Sudeep Jain and Kuldeep Jhanjhi alias Pinki used to look after the work relating to export from ICD, Agra.

1.8. Since in the shipping bills M/s. TALBROS Inds. Ltd., Faridabad were mentioned as supporting manufacturers, enquiry was made with with M/s. TALBROS Inds. Ltd., Faridabad and Sh. S.D. Sharma, Dy. Manager(Commercial) of M/s. TALBROS Inds. Ltd. stated that they manufacture 'Talbros' brand gaskets, that they have never supplied or sold any gaskets to M/s. Brij Impex International and that even the invoice of M/s. TALBROS Inds. showing the purchase of Peter Engine Gaskets from their company is a fake invoice.

1.9 Efforts were made to locate Sh. Jasmeet Kohli but he could not be located. However, Sh. Rajesh Sharma alias Sandeep Jain and Sudeep Jain was located and his statement was recorded on 14.5.01 wherein corroborating the statement of Neeraj Kumar Jhanjhi, he stated that he was earlier working in the Bank of America as Marketing Executive and during that period he came in contact Shri Jasmeet Kohli; and that on the suggestion of Sh. Jasmeet Kohli, he decided to open a firm at Agra for export of fake Peter Engine Gaskets under drawback claim. In his statement giving the details as to how he opened a firm at Agra, hired premises for this firm at Sanjay Place Agra and opened a account in the name of this firm in the main branch of Indian Overseas Bank, Agra and subsequently in the Bank of Punjab Ltd., Chandigarh, he stated that during the period from Aug'2000 to Dec'2000, they had exported the goods cleared as Peter Engine Gasket under drawback claim to Canada and Nigeria and received drawback amount of Rs.51 lakhs which was credited in the bank account at Agra, that the drawback amount of about Rs.19 lakhs is due from the consignment export in Feb'01; that the gaskets being procured at Delhi by Shri Kuldeep Kumar Jhanjhi and Neeraj Jhanjhi that in addition to these persons, Shri Jasmeet Kohli and he himself used to look after the work of customs clearance at ICD, Agra; that the gasket exported were junk gaskets made out of leather cutting waste and cardboard sheets which were available at Rs.3/- per piece and the same were being exported under drawback claim at the declared FOB price of Rs.175/- per piece; that he knew that these gaskets are not fit for use in any engine; that no foreign-exchange remittance has been received or is expected and the name of "Punjab Bank Ltd." as Nodal Bank mentioned in the bill is fictitious; that there is no such bank, that the shipping bills used to be got prepared through M/s. Vaspa Cargo, Sanjay Place, Agra, that partners of M/s. Vasapa Cargo one Sh. Sanjay Agarwal and Sh. Deepak Lalwani; that the gaskets arriving at Agra were being stored in a factory of Shri Deepak Lalwani, and from that factory, the gaskets were being taken to ICD; that on the shipping documents wherever the signatures in the name of 'S.Jain' are there, those are his signatures; that he was known as Sandeep Jain at ICD, Agra; that he had also written a letter in the name of 'Sandeep Jain' authorizing 'Sudeep Jain' to be the authorized representative of M/s. BI; that he concealed his real name by assigning aliases so that no agency could reach up to him; that when first consignment of gasket had been taken to ICD, Agra, a sample had drawn and a favourable report about the market price was obtained from some dealers and the same was got accepted with the help of Shri R.K.Saxena, the Custom Inspector; that for export of each consignment, Shri Deepak Lalwani and Sanjay Agarwal of M/s. Vaspa Cargo was paid Rs.50,000/- and Shri R.K.Saxena, Inspector at ICD, Agra was paid Rs.2.5 lakh and the rest of the amount of drawback was being shared between him, Jasmeet, Neeraj and Kuldeep Jhanjhi. On being asked as to whether any samples had been drawn from his export consignments at ICD Agra or whether any market enquiry in respect of the same had been conducted, Shri Sharma in his statement dt.14.5.01 stated that when their first export consignment had been brought to ICD Agra, Shri R.K.Saxena, Customs Inspector had asked him on phone as to who. could provide information about gaskets in Agra and he told him that Jasmeet and Pinki(Kuldeep Jhanjhi) had already talked to M/s. Hercules Sales Corpn., Agra and M/s. Royal Diesel Spares, Agra and trade opinion from these firms can be obtained at whatever rate he liked and that thereafter Sh. Saxena told them that work relating to market enquiry has been completed and the FOB value declared in the shipping bills has been approved.

1.10. An enquiry was made with Shri Deepak Lalwani, Partner of Vaspa Cargo, CHA wherein he stated that he himself and Sanjay Agarwal are partners; that since they do not have CHA licence; they were helping Sh. Rajesh Sharma alias Sandeep Jain alias Sudeep Jain in preparation of shipping documents only; that about a year back one Sh. Jasmeet Kohli from Delhi had met him and told him that he wants to export gaskets under duty drawback and wanted to know whether he can arrange 'setting' with same Customs officers posted ICD, Agra; that he introduced Shri Jasmeet Kohli to R.K.Saxena, Customs Inspector posted at ICD, that he was aware that Shri Jasmeet, Rajesh alias Sandeep Jain, Neeraj and Kuldeep would be exporting only junk gaskets in order to get drawback and that for each export consignment, he was getting Rs.50,000/- per container which was being shared by him with his partner Shri Sanjay Agarwal.

1.11. Subsequent enquiry with Shri R.K.Saxena and other Customs Officers posted at ICD, Agra indicated the involvement of Shri R.K.Saxena, Customs Inspector, Shri Jagdish Singh, Supdt., Shri P.N.Ram, Inspector, Shri L.C.Gajwani, Inspector in this fraud. Shri R.K.Saxena, in his statement dt.7.6.01 corroborated the statement of Shri Rajesh Sharma and Deepak Lalwani.

1.12. After issue of show cause notice to M/s. Brij Impex International, Agra, Shri Rajesh alias Sh. S.Jain, Sh. Kuldeep Jhijhani, Shri Neeraj Jhijhani, Sh. Deepak Lalwani, Sh. R.K.Saxena, Inspector, Shri Jagdish Singh and Shri L.C.Gajani, Inspector, the matter was adjudicated by the Commissioner vide order-in-original No.15-Cus/Adj/05 dt.30.12.05 by which –

(a) the seized goods with declared value of Rs.1,17,15,754/-were ordered to be confiscated under Section 113(i) of the Customs Act,1962.

(b) M/s. BI were directed to immediately pay alongwith interest the drawback amounting to Rs.51,22,596/- fraudulently received by them under Section 75(2) (ab) of Customs Act,1962 read with Rule 16 & 16A of Customs & Central Excise Duties Drawback Rules,1995; and

(c) penalty was imposed under Section 114 on various noticees as under:

M/s. Brij Impex International	Rs.20,00,000/-
Sh. Rajesh Sharma	Rs.10,00,000/-
Sh. Neeraj Jhanjhi	Rs.10,00,000/-

Sh. Kuldeep Jhanjhi	Rs.10,00,000/-
Sh. Jasmeet Kohli	Rs.10,00,000/-
Sh. Deepak Lalwani	Rs. 5,00,000/-
Sh. S.Agarwal	Rs. 5,00,000/-
Sh. P.N.Ram, Supdt.	Rs. 25,000/-

1 13. The adjudicating authority, however, observed that no penalty is imposable on other officers namely Sh. R.K.Saxena, Sh. Jagdish Singh and Sh. L.C.Gajwani.

1.14. It is against the above mentioned order that the present appeals have been filed by Sh. Neeraj Jhanjhi and Sh. S.Agarwal.

2. Heard both sides.

2.1 Shri R.K. Handoo, Advocate, Ld. Counsel representing Sh. Neeraj Jhijhani made the following submissions:

(1) Sh. Neeraj Kumar Jhanjhi was only doing the job work of making the gaskets and supplying to M/s. BI. This position has also been confirmed by Sh. Rajesh Sharma in his statement as mentioned in page 11 of the adjudication order. On the given facts, there is no material to conclude the guilt of Neeraj so as to impose penalty on him under Section 114(iii) of Customs Act,1962 on the ground that he had full knowledge that the gaskets were of junk material and same were being exported at highly inflated prices. Moreover, merely because Shri Neeraj Jhanjhi had knowledge that the goods supplied by him to M/s. BI were made of junk material, does not prove that Sh. Neeraj was actively involved in the illicit import under drawback claim.

(2) The statement given by Shri Neeraj had been retracted on the very next day and hence no reliance can be placed on the same.

(3) It is established on record that the main brain behind this alleged fraudulent export under drawback claim is Jasmeet Kohli who

along with Shri Rajesh operating under alias of Sandeep Jain and Sudeep Jain had organized the clearance of the consignments of fake gaskets with the connivance of the Customs officers at ICD, Agra. The investigating officers did not pursue the matter to apprehend Shri Jasmeet Kohli and have victimized the appellant, even though there is no evidence against him indicating that he was actively involved in this export fraud.

(4) The adjudicating authority has adopted different yardsticks – while in case of R.K.Saxena, the Customs Officer who is alleged to have received Rs.2.50 lakhs per container which he was sharing with other officers, the adjudicating authority has given a clean chit to him stating that there is no corroborative evidence, but in case of the appellant Shri Neeraj Kumar Jhanjhi, even though his statement is proved to be fallacious on the face of it, still the Ld. Adjudicating Authority has not tried even to seek corroboration and has held him to be guilty.

(5) In view of the above, it was pleaded that there is no ground to impose penalty on Sh. Neeraj Kumar Jhanjhi under Section 114(iii) of Customs Act.

2.2 Shri Hemant Bajaj, Advocate, the learned Counsel representing Shri Sanjay Agarwal, partner of CHA firm pleaded that none of the shipping documents had been signed by Sh. Sanjay Agarwal or his partner and that he had only prepared the shipping documents which had been signed by Sh. Rajesh Sharma, Alias Sandeep Jain; that Customs clearance had been arranged by Sh. Rajesh Sharma alongwith his colleagues and neither Shri Sanjay Agarwal nor his partner was involved and as such there is no evidence implicating Shri Sanjay Agarwal in this matter so as to warrant imposition of penalty on him under Section 114(iii) of Customs Act. He also emphasized that though there was evidence indicating that Sh. R.K.Saxena as well as Sh. Jagdish Singh had taken money from exporters for fraudulent export but still the allegation against them was struck down and no penalty was imposed while the appellant Shri Sanjay Agarwal has been held guilty and penalised on the same piece of evidence.

2.3 Sh. L.P.Yadav, the learned DR reiterating the Commissioner's findings in the impugned order, pleaded that there is ample evidence on record showing the involvement of Shri Neeraj Kumar Jhanji and Sanjay Agarwal in this fraud and therefore, the penalty has been rightly imposed on them by the Commissioner.

3. We have carefully considered the submissions from both the sides and perused the records. In this case, there is no dispute about the facts that – (a) the goods exported under drawback claim, DALBROS brand Peter Engine Gaskets with declared FOB value of Rs.175/- per pc. were fake and sub-standard goods of market value of about Rs.3/- per pc. and though in the shipping bills the supporting manufacturers were shown as a well known manufacturer of gaskets M/s. Talbros Industries, Faridabad, enquiry revealed that no gaskets had been purchased by the exporter firm from M/s. TALBROS Inds. and the gaskets exported bearing the name DALBROS had been got manufactured from somewhere else out of sub-standard material; (b) the fraudulent nature of the export is clear from the fact that in the GR form, the Nodal Bank for the purpose of receiving export remittance had been mentioned as Punjab Bank Ltd. while in fact there was no such bank, (c) the export had been started in Aug'2000 and till Dec'2000, 177200 sets of gaskets with declared FOB value of Rs.3,10,64,902/- had been exported and drawback amount of Rs.51,22,516 had been claimed and received by the exporters and subsequently in Feb., another consignment of 67,100 sets of gaskets with declared FOB value of Rs.17,47,594/- involving drawback about Rs.19 lakhs had been exported under shipping bill No.541-550 and 552-

561/DBK/S/01 and it is these goods which were intercepted at Mumbai and placed under seizure and (d) the shipping documents were being signed by one Sh. S.Jain who was later on was identified as Rajesh Sharma of Delhi. There is also no dispute about the fact that while the shipping bills and other related documents had been prepared by M/s. Vassapa Cargo International, Agra with Sh. Deepak Lalwani and S.Agarwal as partners, the shipping bills had not been signed by them. The point of dipute in these appeals is the role of the appellants – Sh. Neeraj Kumar Jhanjhi and S.Agarwal in this case.

4. From the facts of the case, as narrated at page 5,6, and 7 of the adjudication order, it will be seen that the first evidence regarding involvement of Neeraj Kumar Jhanji and his brother Kuldeep Jhanji came from the statement dt.20.4.01 of Sh. Raj Kumar Jassa, employee of M/s. Shree Bhawani Transport which had transported the goods from Delhi to Agra in its truck on 15.8.2000 and subsequently in Feb'01. Shri Jassa at that time was shown a photograph which was of Kuldeep Jhanjhi and he identified him as the person who had come to him in connection with the delivery of the gaskets and had claimed to be the owner of the goods and had given his Delhi contact number as 7495695. The phone No.7495695, on enquiry at Delhi, was found to be installed at 12/32A, Punjabi Bagh East, New Delhi which was a residential premises of Sh. Neeraj Jhanji and his brother Kuldeep alias Pinki. When the officers visited the residential premises of Sh. Neeraj Kumar Jhanji and his brother Kuldeep on 28.4.01 and statement of Neeraj Kumar was recorded on 28.4.01 he admitted that he alongwith his brother Shri Kuldeep Jhanjhi, Shri Jasmeet Kohli and Shri Rajesh Sharma alias Sandeep Jain alias Sudeep Jain were collectively engaged in the export of gaskets from ICD, Agra under drawback claim. He also told the officers about address of the godown premises which was

the premises of M/s. A.N.Inds., House No.29, Plot No.7, Sahipur Village, Near Shalimar Bagh. In course of search of this premises, the gaskets similar to the gasket whose samples had been collected from the office of ICD, Agra were found in packed condition. Besides this, the sheets of the material out of which gaskets had been manufactured, were also found. Shri jhanji in his statement dt.28.4.01 also confirmed that since Aug'2000, in all four consignments have been exported from ICD Agra out of which the drawback amount of Rs.52 lakhs has already been received and the drawback of Rs.20 lakhs is pending. He also admitted that these gaskets were made of sub-standard material and were not fit for use in Peter Engine. The statement of Shri Neeraj Kumar Jhanji is corroborated by the statement dt.14.5.01 of Shri Rajesh Sharma alias Sandeep Jain alias Sudeep Jain. From the statement of Neeraj Kumar Jhanji and also from the fact that his brother Kuldeep, who alongwith Rajesh Sharma and Jasmeet used to go to Agra in connection with export of the consignments of these gaskets, is absconding, it is clear that Shri Neeraj Kumar Jhanji is not an innocent supplier of the gaskets. Moreover in his statement dt.28.4.01, he has clearly stated that his brother Kuldeep, he himself, Jasmeet Kohli and Rajesh Sharma were collectively engaged in the export of gaskets from ICD, Agra under drawback claim and he also disclosed the drawback amount which is pending. Though Shri Jhanjhi has retracted his statement, this retraction, in view of the other evidence, has to be rejected as an after thought - more so, when his statement is fully corroborated by the statement of his accomplish Shri Rajesh Sharma. From statement of Rajesh Sharma narrated at page 17 of the adjudication order, it is clear that what Shri Neeraj Jhanjhi was getting, was a share of the drawback not only the price of the gaskets supplied. In view of this we hold that he has actively abetted the illicit export and therefore, penalty has been rightly imposed.

5. As regards Shri Sanjay Agarwal, from the statement dt.18.5.01 of Shri Deepak Lalwani, it is seen that Shri Deepak and Sanjay Agarwal were aware of the intention of Shri Jasmeet Kohli and his other colleagues of illucit export of sub-standard gaskets but still they helped him by arranging their meeting in his office with Shri R.K.Saxena, Customs Inspector posted at ICD and also prepared the shipping bills and other related documents. This statement of Shri Lalwani is also corroborated by the statement dt.17.6.01 of Shri R.K.Saxena. It is also seen from the records that they had also arranged the storage of the gaskets received from Delhi in a godown at Agra prior to their export through ICD and for these services, they were receiving an amount of Rs.50,000/- per container, which was being shared equally by Sh. Sanjay Agarwal and Deepak Lalwani. Rs.50,000/- per container being received by Shri Sanjay Agarwal and Shri Deepak Lalwani is clearly a share of fraudulent experts – it is not the bonafide payment for preparing the shipping bills and other logistic assistance. From the statement dt.18.5.01 of Deepak Lalwani, it is clear that both Deepak and Sanjay Agarwal were in telephonic contact with Rajesh Sharma, Jasmeet Kohli and Kuldeep Jhanjhi and Neeraj Jhanjhi. In view of this, we hold that Shri Sanjay Agarwal has also actively abetted this illicit export and therefore, he has been rightly penalized by the Commissioner under Section 114(iii) of the Customs Act.

6. Both the appellants Shri Neeraj Kumar Jhanjhi and Sanjay Agarwal have pleaded that the Commissioner has adopted double standards while deciding the question of penalty on the Customs Officers involved and the penalty on the other notices and that all the Customs Officers except for

P.N.Ram have been exonerated inspite of evidence against them, but the appellants have been penalised on the basis of similar evidence.

6.1 On going through the statement of

(a) Shri Rajesh Sharma recorded on 14.5.01and discussed at page 9 to 13 of the adjudication order;

(b) Shri Deepak Lalwani, recorded on 18.5.01 and discussed at page 13,14 and 15 of the adjudication order and

(c) Shri R.K.Saxena, the Customs Inspector recorded on 7.6.01 and discussed at page 24,25 & 26 of the adjudication order.

We are of the view that after the main culprits – Sh. Jasmeet Kohli, Sh. Rajesh Sharma, Sh. Kuldeep Jhanjhi and Sh. Neeraj Kumar Jhanjhi, it is Shri R.K.Saxena who has played a major role in this fraud. A series of serious lapse like –

(a) no objection being raised by any officer when while the export goods were affixed with brand name "Dalbros" the supporting manufacturer declared on the shipping bills was M/s. Talbros Industries Ltd., Faridabad, the manufacture of well known "Talbros" brand gaskets;

(b) in the GR form accompanying the shipping bills, "Punjab Bank Ltd., Chandigarh" being written in hand as the name of the Nodal Bank for remittance, without any objection being raised, by any officer who checked those shipping bills;

(c) not raising any objection to splitting up of a consignment into a number of shipping bills with same exporter and same consignee, so that the drawback involved does not exceed rupees one lakh – the sanction limit for Superintendent and

(d) not writing to Punjab Bank Ltd. when in respect of the consignments exported, the BRCs were not produced by the exporter even after two months from the date of export, clearly indicate the involvement of other officers also mentioned in the adjudication order. We, therefore, fail to understand as to how except for Shri P.N.Ram, the then Inspector ICD, all other officers specially Shri R.K.Saxena, have been exonerated by the Commissioner for the lack of evidence. When the statement of Sh. Deepak Lalwani and Shri Rajesh Sharma, which are corroborated by statement of Shri R.K.Saxena have been treated as their (i.e. Deepak Lalwani's and Rajesh Sharma's) true statements and on this basis they have been penalised, those statements cannot be discarded for deciding the question of penalty on Shri R.K.Saxena. In any case, this exoneration of Shri R.K.Saxena and other officers does not help the Appellants in any manner in their appeals, as one wrong cannot be the basis for another wrong.

6.2 In view of the evidence against the appellants, as discussed, in para 4&5 above, we are satisfied that both the appellants were actively involved in this drawback fraud and have abetted the fraudulent exports under drawback claim and hence they have been rightly penalised under Section 114(iii) of the Customs Act.

7. In view of above discussion, both the appeals are dismissed.

Pronounced in the open Court on..........17/8/09

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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