IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Customs Appeal Nos. 62 -63 & 2407 of 2012

[Arising out of Order-in-Original No. RT/ACE/158/2011 dated 15.12.2011 passed by the Commissioner of Customs (Export), New Delhi]

Smt. Renu Sharma **Appellant**
Shri Ravi Kiran Singh
R V Fashions

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:
Shri A K Prasad, Advocate for the Appellants
Shri Amresh Jain, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing : 03.1.2017
Date of Decision : 08.02.2017

FINAL ORDER No. 50681-50683/2017

Per: Ashok K Arya:

These three appellants namely, Smt Renu Sharma, proprietor, Ravi Kiran Singh and RV Fashions (RVF) are in appeal against order in original No. 158/11 dated 15.12.11 passed by Commissioner of Customs, New Customs House, Delhi whereunder imported goods were confiscated with an option to release on payment of redemption fine of Rs.75 lakhs; Customs duty of Rs. 39,83,541/- along with interest was also confirmed against the importer appellant namely M/s. RVF, Noida. Further, a penalty of Rs.1,00,00,000/- (Rupees One crore only) was imposed on the appellant Smt. Renu Sharma and penalty of Rs. 75 lakhs was imposed on Ravi Kiran Singh, authorized signatory (RKS in short).

2. The appellants have been represented by Shri A K Prasad, the learned advocate and Revenue has been represented by Shri Amresh Jain, the learned AR.

3. Briefly stated the facts are that:

i. The appellants are a unit located in NOIDA Special Economic Zone (NSEZ) and are engaged in the manufacture of Fashion Designed Ready-made Garments. They imported two consignments of 'Starch' under Bills of Entry Nos. 2331 dated 09.11.2010 and 2450 dated 12.11.2010.

ii. Samples were drawn from two consignments and sent to CRCL, New Delhi, for chemical analysis vide Test Memos Nos. 43 and 44 both dated 18.11.2010.

iii. The report of the CRCL New Delhi on the samples indicated as below:

43 dated 18.11.2010	It is other than starch
44 dated 18.11.2010	It has characteristics of synthetic diamond powder

iv. Whereas the appellants expressed that earlier samples were not drawn properly, samples were again drawn on 12.1.11 and sent to CRCL, New Delhi and second report for these samples of CRCL states that both the samples answered the test for starch.

v. Since there were conflicting reports of the CRCL, the department sent the remnant samples in respect of all the four test reports for re-test to the CRCL. Vide letter dated 06.06.2011, the CRCL reiterated their original findings. Taking these re-test reports and adopting the value of one consignment @ US $ .900 per Kg (1 US$= Rs 44.90) holding them to be 'synthetic diamond powder' and further taking into account 780 Kgs of 'White Colour Powder' which on laboratory test was found to be ' other than starch' (valued at Rs 1,34,414/- involving Customs duty of Rs 1,34,414/-), the total demand was quantified to Rs.39,83,541/-.

vi. The case was adjudicated vide Order-in-original dated 15.12.2011 upholding the charges in the Show cause notice and confirming the total demand of duty of Rs 39,83,541/-. The goods were confiscated and allowed to be redeemed on payment of fine of Rs.75 lakhs. A penalty of Rs.1 crore was imposed on Smt. Renu Sharma, Proprietor of M/s RVF and a penalty of Rs.75 lakhs was imposed on Shri Ravi Kiran Singh, Authorised signatory of M/s RVF.

4. Learned Advocate based on the memorandum of appeal and written submissions mainly submits as under:

(i) The second test report confirms the appellants declaration that the imported goods were 'starch'. Hence the impugned order needs to be quashed. The second test report will prevail over the first report [HKT Mining Pvt. Ltd. vs. CC, Visakhapatnam [2010 (259) ELT 735 (Tri-Bang)].

(ii) In para 24 of his order, the Commissioner has also relied on the letter dated 23.2.2011 from the Hong Kong suppliers stating that he had supplied wrong goods to the appellants. It is submitted that this aspect was clarified vide the appellants' letter dated 27.4.2011 saying that though the goods were those described in the Bills of Entry / invoice but the quality was not up-to-the mark and hence the materials should be allowed to be re-exported to the supplier. Therefore, this cannot be taken as an admission that the goods were wrongly declared, especially when the 2nd test report confirmed the goods to be 'starch'.

5. Learned AR for the Revenue reiterates the findings given in the impugned order. He further emphasized the following:

(i) On first physical examination of the goods conducted on 16.11.10, one sample was found as greenish powder.

(ii) Both the samples drawn vide test memo No. 43 and 44 both dated 18.11.10 were sent to CRCL New Delhi. For both these samples, the test reports of CRCL are against the appellants and indicated that the goods are 'other than starch'.

6. After careful examination of the facts of the case, the submissions of both the sides and the case law cited, it appears that this is a clear case of mis-declaration of goods, where instead of declared goods 'starch', the appellant-importer imported synthetic diamond powder (greenish in colour) and white colour powder, which was found to be 'other than starch'.

6.1 The appellants plead that the report for the second sample drawn is in their favour and they found that goods were starch only. However, the facts on record clearly indicate that the goods had been handed over to M/s. R V Fashions and the same were in their control and ownership. On the request of Smt Renu Sharma, proprietor of R V Fashions, who is also one of the appellants and is proprietor of the importer firm, M/s. R V Fashions, had made a request for drawing the sample second time objecting to the procedure adopted for drawing the sample earlier. There was reasonable suspicion of the Revenue that when the goods were in the custody of the appellant M/s, R V Fashions, they tampered with the goods and the samples drawn were not of the goods, which were originally imported. Therefore, the remnant samples of all the four test reports were got retested at CRCL, and CRCL vide their letter dated 6.6.11 reiterated their original findings, thus confirming the original test report and the material contents of the goods, which were seized from the possession of the noticee appellants after 18 days of import and those of for which test samples were drawn immediately upon import.

7. After careful consideration of the facts on record and the circumstantial evidences, there is right conclusion that the appellant importer mis-declared the goods so imported with an intent to evade customs duty. In this regard, the Commissioner in the impugned order inter alia observes as under:

> *"24. I find that……………… It is on the records Smt Renu Sharma Prop of M/s. RVF vide her letter dated 24.2.2011 also enclosed copy of letter dt. 23.2.2011 of M/s. West Miller Industrial Ld., Hongkong, wherein it has been clearly stated and admitted that some other material were wrongly*

dispatched to her firm. The noticee No. 1 also stated in her statement that she had seen the goods but she had never seen starch of greenish colour. This clearly establishes that goods in question were not "starch" which obviously was in the knowledge of M/s. RVF. Therefore there are reasons to believe and establish beyond doubt that the goods had been misdeclared by M/s. RVF with intent to evade customs duty and are therefore liable for confiscation under section 111(m) &(o) of the Customs Act, 1962. I also find that M/s. R V Fashions, SDF J-9, NSEZ Noida had declared value of 650 Kgs of green colour powder declared to be Starch Synthetic Powder imported vide Bill of Entry No. 2450 dt. 12.11.2010 as Rs. 1,08,565/-. However, subsequently on laboratory test the said goods were found to be Synthetic Diamond Powder falling under CTH 71051000 and the value of the Synthetic Diamond Powder had been determined by Jewellery Appraiser as USD 800-1000 per kg vide his report dated 24.01.2011. Accordingly, taking the average value of Synthetic Diamond Powder @USD 900 per kg (1 USD = Rs. 44.90) the assessable value of the 650 kgs of synthetic Diamond Powder comes to be Rs. 2,62,66,500/- and the Customs duty thereon comes to Rs.39,31,570/-. Further, the said unit had declared value of 780 kgs of White Colour Power declared to be starch which subsequently on laboratory test was found to be "Other than Starch" (exact identity & name not established) imported vide Bill of Entry No. 2331 dated 09.11.1010 as Rs.1,34,414/- and involving Customs duty of Rs. 51,971/-. Thus the total custom duty amounting to Rs. 39,83,541/- alongwith interest at the applicable interest is recoverable from M/s. RVF under Section 28 & 28(AB) of the Customs Act, 1962 read with Rule 34 of the

SEZ Rules, 2006. I find that Sh. Ravi Kiran Singh, authorized by the Proprietor of M/s. RVF who filed the B/Es in this case never came forward to join the investigation. The proprietor of M/s. RVF & noticee No. 1 in her statement dated 25.01.2011 had promised to produce him before the customs, but she also failed to do so. She in her statement had taken full responsibility of any liabilities of any customs duty arise due in respect of goods covered under the above said B/Es. She also stated that she had not seen starch of greenish colour and shown her full confidence on the report of the Jewellery Appraiser. In view of the above, the allegations made against the notices in the show-cause notice are established. The judgements in the matter of ***K.I Pavunny Vs. Assistant Commissioner (1997 (90)ELT.241(SC) and Gulabchand Silk Mills Vs. Commissioner of C.Ex Hyderabad-II (20005 (184)ELT 263(Tri. Bang)*** *that clandestine activity at best can be established only by circumstantial evidence are very relevant herein in the circumstances of the case. Applying the ratio of these judgments, I find that in the present case there is adequate circumstantial evidence of illicit import of goods by mis-declaring the goods so imported, with intent to evade customs duty and only upon a chance detection by the officers and the opportunity made available by the officer for want of a specific intelligence about mis-declaration did the noticee and seize the opportunity flowing to them reversed their earlier stance during adjudication proceedings. Hence the present case is covered under theabove said judgements.*

25. It is well known legal proposition that circumstantial evidence providing reliable basis corroborating the statement made is a valued piece of evidence and cannot be brushed *aside. In the present case too it is also established form circumstantial evidence on record in as much as both the supplier vide letter dt. 23.2.2011 and her recipient notice no. 1 in her statement dated 28.1.2010 and 25.1.2011 have admitted the goods to be not as per specifications. Also the test result vide Test Memo 44 confirm the goods synthetic Diamond Powder {i.e. other than "Starch (Synthetic powder)}" the description indicated on the concerned B/E No. 2450 dat. 12.11.2010. further a slew of case law support circumstantial evidence as the basis of arriving at a given decision. Reference in this regard is invited to the ratio of law laid down by the Tribunal/ High Court and reference is invited to the following:-*

GTC Indus. Vs. CC. Cus [2011 (264) ELT 433 (Tri-Del)]

Siddhacham Exports 2011 (263) ELT 120 (Tri-Del)

***Imperial Trading 2010 (253) ELT 373-Bom**.*

Therefore, there are reasonable grounds to believe that Smt. Renu Sharma, Proprietor of M/s. RVF and Shri Ravi Kiran Singh were instrumental in perpetuating the illegal import of goods."

8. The appellants are also taking the plea that the mis-declared goods were inadvertently supplied by the foreign supplier, therefore, no penalty or redemption fine was imposable. However, there are no reliable evidence to prove that the supplier made the supply of goods inadvertently without there being any order being placed by the importer for the said goods. There are enough consistent evidences

to indicate that the contention of inadvertent supply by the foreign supplier is not based on the facts and circumstances available on record. The case laws cited by the appellants are not applicable to the facts of the present case.

9. In the light of above discussions, we find no reason to interfere with the impugned order and the same is hereby sustained alongwith the reasons mentioned therein.

10. In the result, appeals filed by the appellant are dismissed.

(Pronounced in the open Court on 08.02.2017)

(Justice (Dr.) Satish Chandra)
President

(Ashok K Arya)
Member (Technical)

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