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

Customs Appeal No. 51032 & 51075 of 2017

[Arising out of Order-in-Appeal No. 04-07/2016 dated 6.2.2017 passed by the Commissioner of Central Excise (Appeals) Jaipur II]

M/s. Anil Kumar, Proprietor Preet Mohinder Singh — **Appellant**

Vs.

Commissioner of Customs, Jaipur, Rajasthan — **Respondent**

Appearance:

Ms. Reena Rawat, Advocate for the Appellants
Shri Govind Dixit, AR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 6.09.2017
Date of Decision : 19.09.2017

FINAL ORDER NO. 56581-56582 /2017

Per: V. Padmanabhan:

These appeals are filed against the order in appeal No.04-07/2016 dated 6.2.2017.

2. Brief facts of the case are that the Delhi Zonal Unit of DRI initiated investigation against certain syndicates operating in Delhi and engaged in the transfer of remittances to Hong Kong based entities, for under invoiced imports of various importers using banking channels in the name of front/ bogus firms including one M/s Samay International, B-8A, Janta Flats, Shivaji Enclave, New Delhi [IEC: 0511069324]. The modus operandi of the syndicates was that they used to submit bogus import proforma invoices in order to remit advance payments against imports to be made at a later date. However, no imports were made by them and these advance remittances were actually adjusted against the payments for undervalued imports undertaken by the importers. Pursuant to this information, searches were conducted at various premises related to M/s. Samay International on 04.01.2013 and thereafter statements of various members of the syndicate associated with the transfer of illegal remittances were recorded under section 108 of the Customs Act, 1962.

3. Upon conclusion of investigation, DRI issued show cause notice alleging that M/s. Samay International, New Delhi, with proprietor Shri Anil Kumar, was a front / bogus firm used by certain syndicates operating in Delhi. Shri Mukesh Arora and Shri Ankur Gupta and Preet Mohinder Singh entered into a conspiracy to import goods in the name of M/s. Samay International. Shri Anil Kumar proprietor signed

the documents for the imported consignments in the name of M/s. Samay International. The DRI further found that Shri Ankur Gupta imported four consignments of mobile phones and declared value of Rs.1.52 crores. This import was done using the import / export code IEC of M/s. Samay International. When the goods were examined, it was found that in place of mobile phones, some tablet PCs were found. In addition, it was found that MRP stickers were either not fixed or showed incorrect value to evade customs duty. Therefore, the above consignments were seized on the ground of misuse of IEC of M/s. Samay International and evasion of customs duty. DRI further found that M/s. Samay International, with proprietor Shri Anil Kumar was a front firm created by Shri Mukesh Arora and Shri Preet Mohinder Singh which sent illegal remittances abroad amounting to more than Rs 9.8 crores as advance using bogus performa invoices and IEC of M/s. Samay International.

4. The show cause notice issued by DRI dated 28.1.2014 was adjudicated vide order-in-original dated 17.11.14 in which the value of imported goods was enhanced to Rs.1.64 crores and all the imported goods were ordered for absolute confiscation under section 111(d) and (m) of the Customs Act. Penalties amounting to Rs.8 lakh and Rs.one lakh were imposed on Shri Anil Kumar, Proprietor of M/s. Samay International under section 112 (a) (i) and section 114 AA of the

Customs Act, 1962. Further, penalty of Rs one lakh each was imposed on Shri Preet Mohinder Singh as well as Shri Mukesh Arora under section 112(a)(i) ibid. Shri Ankur Gupta was also imposed penalty of Rs.8 lakh under section 112(a)(i) ibid. Commissioner (Appeals) vide his impugned order dated 6.2.2017 upheld the order-in-original. Aggrieved by the order, appeals have been filed by Shri Anil Kumar proprietor of M/s. Samay International as well as by Shri Preet Mohinder Singh. Both these appeals are being decided through this common order.

5. With the above background, we have heard Ms. Reena Rawat representing the appellants and Shri Govind Dixit and Shri Manjhi, DRs representing the Department.

6 Ms. Reena Rawat, learned advocate argued that there is no justification for ordering absolute confiscation of the imported goods since mobile phones are freely importable without restriction. She further submitted that since Shri Anil Kumar has imported the consignment in the name of M/s. Samay International, the goods may kindly be released in his favour, since the differential duty on account of the value enhancement is only of the order of Rs. 50 lakh. She further submitted that Shri Anil Kumar had approached the Settlement Commission claiming ownership of the goods, but the Commission did

not entertain the application which was dismissed *in limine* on the ground of threshold being less than monetary limit.

7. Shri Govind Dixit and Shri Manjhi submitted on behalf of the Revenue that the during the course of investigation, Shri Anil Kumar, in his statement has categorically admitted that the goods imported did not belong to him but the import was ordered in the name of his firm. The investigation has further established that money sent in the name M/s. Samay International was not received by the exporter abroad but by third persons. The learned DR further argued that this is a clear case of misuse of import IEC code of M/s. Samay International by Shri Preet Mohinder Singh and Shri Mukesh Arora along with Shri Ankur Gupta, for importing goods as well as making payments abroad. Accordingly, he submitted that goods were rightly confiscated and penalties imposed. In any case, goods cannot be released to Shri Anil Kumar since he has admitted that he was not the owner of the goods.

8. The case of the Revenue is that the goods imported in the name of Shri Anil Kumar proprietor of M/s. Samay International did not belong to him though his IEC code was used for import. The investigation carried out by DRI has established that this IEC code number was misused by certain unscrupulous persons namely, Shri Mukesh Arora, Shri Preet Mohinder Singh and Shri Ankur Gupta. In the various statement recorded from Shri Anil Kumar, he has admitted

that the goods were imported in his name by using his IEC code number by Shri Ankur Gupta and Shri Preet Mohinder Singh for monetary consideration of Rs. 25 thousand per month. Investigation has further established that amount of more than Rs.122 crores was remitted as advance from the account in ICICI bank in the name of M/s. Samay International. The above fact leads to the inevitable conclusion that Shri Anil Kumar, proprietor of M/s. Samay International was not the owner of goods but allowed his firm's IEC code to be used by S/Shri Ankur Gupta, Preet Mohinder Singh and Mukesh Arora. Hence for violations of the Foreign Trade Act, 1992 and rules made thereunder by allowing the IEC code number misuse stand established. Further, it is established that there was mis declaration of the goods in terms of description as well as value. In view of the above, the imported goods are liable for confiscation under section 111 (d) and (m) of the Customs Act. Further, Shri Anil Kumar is liable for penalty under section 112(a)(i) read with section 114AA of the Act. Consequently, confiscation of goods as well as penalty imposed on Shri Anil Kumar by the lower authorities are upheld.

9. On behalf of the other appellant Shri Preet Mohinder Singh, none has appeared. The main ground under which penalty has been imposed on him is that his inculpatory statement was recorded by DRI under acute pressure and threat of arrest. He has denied any hand in

the smuggling activity and hence, prayed for setting aside the penalty under both sections.

10. The investigation carried out at DRI established that Shri Preet Mohinder Singh along with Shri Mukesh Arora and Shri Ankur Gupta have conspired in misusing IEC code number of Shri Anil Kumar, Proprietor of M/s. Samay International for a monetary consideration of Rupees 15000/- to Rs.20,000/- per month. Shri Preet Mohinder Singh along with others ordered importation of mobile phones. Investigation has further established that the goods have been mis-declared in terms of description as well as value. From the above, we find that Shri Preet Mohinder Singh has played a vital role in illegal import of mobile phone using the IEC code number of M/s. Samay International. Consequently, we hold that violation of Foreign Trade (Development & Regulation) Act, 1992 as well as rule made thereunder stand established against him. Consequently, we find no reason to interfere with the penalty imposed on Shri Preet Mohinder Singh,

11. In view of the above, the impugned order is upheld. and appeals filed by these two are rejected.

(Pronounced in the open Court on 19.09.2017)

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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