CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

C/A.Nos. 51151-51153, 51167, 51942-51944, 52503-52504, 52514-52515, 53516 of 2015, 53118-53125 of 2016 &
C/Misc. Nos. 50237, 50976 of 2016 in C/A.No. 52504 of 2015

(Arising out of common Order-in-Original No. 04/KAM/COMMR/2015 dated 16.01.2015 passed by the Commissioner of Customs (Appeals), New Delhi**)**

DATE OF HEARING : 04.08.2017
DATE OF DECISION : 19.09.2017

S.NO.	APPELLANT	REPRESENTED BY	RESPONDENT	REPRESENTED BY
1.	Vijay Kr. Sharma	Ms. Reena Rawat, Adv.	CC, New Delhi	Sh. Govind Dixit, DR
2.	Dilip Singh Jain	Ms. Reena Rawat, Adv.	CC, New Delhi	Sh. Govind Dixit, DR
3.	Satish Kr. Chadha	Ms. Reena Rawat, Adv.	CC, New Delhi	Sh. Govind Dixit, DR
4.	Ajay Kaushal	Sh. V.R. Sethi, Adv.	CC, New Delhi	Sh. Govind Dixit, DR
5.	Sandeep Kumar	None	CC, New Delhi	Sh. Govind Dixit, DR
6.	Pradeep Kumar	None	CC, New Delhi	Sh. Govind Dixit, DR
7.	Bharat Vidhuri	None	CC, New Delhi	Sh. Govind Dixit, DR
8.	Rohit Sakhuja	Sh. A.K. Prasad, Ms. Surabhi Sinha & Priyanka Goel, Adv.	CC, New Delhi	Sh. Govind Dixit, DR
9.	Kamal Virmani	-do-	CC, New Delhi	Sh. Govind Dixit, DR
10.	Naresh Kr Sharma	-do-	CC, New Delhi	Sh. Govind Dixit, DR
11.	CC, New Delhi	Sh. Govind Dixit, DR	Ajit Singh Chadha	None
12.	CC, New Delhi	Sh. Govind Dixit, DR	Jagjit Singh @ Bunty	Sh. A.K. Prasad, Ms. Surabhi Sinha & Ms. Priyanka Goel, Adv.
13.	CC, New Delhi	Sh. Govind Dixit, DR	Ajit Singh Chadha	None
14.	CC, New Delhi	Sh. Govind Dixit, DR	R.K. Mahapatra	Piyush Chaudhary, Adv.

15.	CC, New Delhi	Sh. Govind Dixit, DR	S.K. Dubey	Piyush Chaudhary, Adv.
16.	CC, New Delhi	Sh. Govind Dixit, DR	Manu Chopra	None
17.	CC, New Delhi	Sh. Govind Dixit, DR	S.K. Singh	None
18.	CC, New Delhi	Sh. Govind Dixit, DR	K. Line Singapore Pvt. Ltd.	Ms. Shreya Dahiya, Adv.
19.	Ajit Singh Chadha	None	CC, New Delhi	Sh. Govind Dixit, DR
20.	CC, New Delhi	Sh. Govind Dixit, DR	Rohit Sakhuja	Sh. A.K. Prasad, Ms. Surabhi Sinha & Ms. Priyanka Goel, Adv.

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 56617-56636/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

All these appeals have been filed against the common Order-in-Original No.04/KAM/COMMR/2015 dated 16.01.2015 passed by the Commissioner of Customs (Appeals), New Delhi.

2. The brief facts of the case are that, in the month of May, 2012, eight containers loaded with imported goods were cleared from ICD, Tughlakabad. The details of the containers are as under :

Table 1

Bill of Lading No. & Date	Container No.	Customs Manual Gate Pass No. & Date	CONCOR Gate Pass No. & Date
KKLUSIN100815 dt. 06.05.12	KKFU7222266	9001/25.05.12	GPCC525739 dt. 25.05.12
KKLUSIN100369 dt. 05.05.12	KKFU7095562	9002/25.05.12	GPCC525730 dt. 25.05.12
KKLUSIN100139 dt. 05.05.12	KKFU7397095 KKFU7655332	9003/25.05.12	GPCC525735 GPCC525736 both dt
KKLUSIN100136 dt. 05.05.12	CAIU8452159 KKFU7692995	9010/25.05.12	GPCC525666 GPCC525667 both dt 25.05.12
KKLUSIN100135 dt. 05.05.12	KKFU7201II3 KKFU7692995	9010/25.05.12	GPCC525666 GPCC525667 both dt 25.05.12

On verification, the Bills of Entry mentioned on Customs Manual Gate Passes were found to be forged. The details were as under:

Table 2

Customs Manual Gate Pass No. & Date	Bill of Entry No. & Date as mentioned on the Customs Manual Gate Passes	Actual date of Bill of Entry	Ports/Customs Location to which the Bill of Entry actually
9001/25.05.12	6905262/23.05.12	23.05.12	ICD, Patparganj
9002/25.05.12	6911305/24.05.12	24.05.12	ICD, Patparganj
9003/25.05.12	6904765/23.05.12	23.05.12	Chennai Seaport
9010/25.05.12	6905538/23.05.12	23.05.12	ICD, Patparganj
9015/25.05.12	6912699/23.05.12	24.05.12	ICD, Patparganj

The containers were found to contain cigarettes, R-22 gas and air conditioners. These containers were cleared on the basis of forged Bills of Entry and gate passes. In other words, the containers were cleared without proper documents and without paying any duty, as mentioned in the impugned order.

3. On enquiry, it was found that the signatures and stamps of the concerned Officers were forged which were confirmed by the Central Forensic Science Laboratory (CFSL), Chandigarh. The concerned Officers stated that the documents were prepared without their knowledge by using the stamp "DUPLICATE B/E DETACHED" which appeared on the Manual Customs Gate Passes. On checking, it was found that the procedure for issuing the gate pass was that, when a CHA approached the authority with MANUAL CUSTOMS GATE PASS, the Officer checked the signatures and stamps of the Inspector and the Superintendent, TR6 Challan No. and Bill of Entry No. and date as mentioned in the gate pass. Thereafter, they entered the date of validity of the Delivery Order received from the Shipping Line in their system and generated two copies of CONCOR Gate Passes and handed them over to the concerned CHA. Then the CHA approached the Import Shed, where details given in the said CONCOR Gate Passes were fed in their system and after verifying the details, the said CONCOR Gate Passes were signed and handed over to the CHA. Thereafter, the CHA approached the exit gate and handed over one copy of the Gate Pass at the CONCOR gate and the second copy of Gate Pass (red colour) at the Customs gate. On enquiry, it was revealed that on the basis of the remarks given by the Customs on the Bill of Entry, job order was issued.

4. The statement of Shri R.K. Mahapatra, Junior Executive, CONCOR, ICD, Tughlakabad, New Delhi, was recorded on 31.05.2012 wherein he stated that three Bills of Entry were filed

at ICD, Patparganj and Chennai Seaport. However, he stated that at the time of issuing job orders, he had seen that the said Bills of Entry were for ICD, Tughlakabad and he had issued job orders for the said three Bills of Entry. Statement of Shri S.K. Dubey, Senior Executive (Commercial & Operation), CONCOR, ICD, Tughalkabad, was recorded on 17.04.2013 wherein he admitted that he had made the gate passes and job orders for Bill of Entry dated 23.05.2012 for proper examination. Further, during the course of investigation by DRI, statement of transporters, drivers, shipping line and other related persons/entities were recorded under Section 108 of the Customs Act, 1962.

5. Based on the statement of Shri Chhutan, driver, search was conducted on one godown which was found locked and under Panchnama dated 30.05.2012 it was sealed. Subsequently, on 31.05.2012, this godown was opened as per law and 540 sets of split air conditioners **[**385 of 'O' General brand of different capacities and 155 (1.5 ton) of Sanyo brand**]** were seized under the provisions of the Customs Act, 1962. Driver Chhutan confirmed that he had transported the goods from ICD, Tughalkabad, to this godown. He also informed that in addition to the air-conditioners, the gas-cylinders were also brought by him. Two more godowns belonging to Shri Satyanarayan Mittal were also sealed on 31.05.2012 by the DRI Officers.

6. On the basis of the statements and other materials, the DRI had drawn the conclusion that mastermind in this case was

Shri Ajit Singh Chadha, whose statement was recorded on 31.05.2012 under Section 108 of the Customs Act, 1962. In his statement, Shri Ajit Singh Chadha admitted that he was in the business of import of Air Conditioners and LCD TVs since 2006. He had one shop in Karol Bagh, New Delhi, and three godowns in Delhi. The goods were usually imported in the name of M/s Star Aircon and M/s M.C. Overseas – companies opened in the name of his relatives, Shri Manu and Shri Naresh Kumar respectively. He also admitted that he was an active partner in the said two firms and the other partner was Shri Rohit Sakhuja. He and Shri Rohit Sakhuja had around 40% financial stake in each of the business entities but without any written agreement. According to him, the last consignment imported by him consisting of 'O' General brand air conditioners, was unloaded on 11.05.2013 at his godown in Nagloi, Delhi. Another consignment of Sanyo brand air conditioners was received on 16.05.2012 which was also unloaded in the same godown. Three containers were imported through Nhava Sheva, JNPT, Mumbai. All the three containers were imported in the name of M/s Star Aircon where he and Shri Rohit Sakhuja were active partners. The total number of air conditioners imported in the above mentioned containers was 455. The Department ordered release of 850 pairs of ACs subject to Bank Guarantee of Rs. 25 lacs and bond of Rs. 2.65 crores; but the same was not furnished. So, the goods were placed under seizure. In his statement, on 31.05.2012, Shri Ajit Singh Chadha, declined to explain any further details. He did not appear on 02.06.2012 to submit the documents, as stated by him in his statement dated

31.05.2012/01.06.2012. The Department found that the statement of Shri Ajit Singh Chadha was merely a lie and factually incorrect. The addresses of M/s M.C. Overseas and M/s Star Aircon were found to be different. Actual address of Shri Rohit Sakhuja was also different. Search was also conducted at the residence of Shri Ajit Singh Chadha on 04.06.2012 and some documents were seized under Panchnama. Statement of Smt. Navpreet Kaur Chadha, wife of Shri Ajit Singh Chadha, was recorded on 08.06.2012 wherein she stated that she does not know his whereabouts. Statement of Shri Surjit Singh Anand (father-in-law of Shri Ajit Singh Chadha) was also recorded wherein he stated that he was not in touch with Shri Ajit Singh Chadha. On the request of the Department, ACMM, Patiala House, New Delhi, had issued the warrant against Shri Ajit Singh Chadha and Shri Rohit Sakhuja on 17.07.2012 with a direction to appear before the Court on 04.08.2012. In the meantime, both the accused filed the Writ Petition (Criminal) 93 & 94 of 2012 before the Hon'ble Supreme Court seeking relief. The said Writ Petitions were allowed by the Hon'ble Supreme Court on 14.08.2012.

7. On 25.07.2012, Shri Ajit Singh Chadha appeared before the DRI Office and his statement was again recorded.

8. The DRI Officer also recorded the statement of Shri Vinod Kumar, Labour Contractor, who had provided the labourers for unloading of the said eight containers. His statement was recorded on 07.06.2012 under Section 108 of the Customs Act,

1962. In addition, Shri Vinod Kumar identified all the godowns. He also took the DRI Officers to two more godowns situated in the lower and upper ground premises at Glali No. 74, Karol Bagh, New Delhi. These godowns were found locked. The DRI Officers, after completing the legal formalities, seized the indoor and outdoor units of 'O' General brand air conditioners of different models, refrigerators, LCD & LED TVs and voltage stabilizers on 07.06.2012. Similarly, the godown located at Krishan Vihar, Delhi, was also searched on 08.06.2012 from where 580 cartons of cigarettes of Indonesian origin [1,80,000 packs (20 sticks per pack) of "Djarum Black" clove cigarettes and 2,20,000 packs (12 sticks each) of "Gudang Garam International" cigarettes] were recovered.

9. In the above scenario, the Department has made out the case for demanding customs duty and imposition of penalty. The adjudicating authority in the absence of sufficient evidence, dropped the charges against a few persons. Being aggrieved, the assessee-Appellants/Respondent have filed the present appeals.

10. With this background, we heard the learned counsels for the parties and perused the material available on record.

I. CROSS APPEALS

APPEAL OF ROHIT SAKHUJA (C/52504/2015 & C/53119/2016); KAMAL VIRMANI (C/52514/2015); NARESH KUMAR SHARMA (C/52515/2015);

ROHIT SAKHUJA

11. These are cross-appeals regarding Shri Rohit Sakhuja.

12. Shri A.K. Prasad, learned counsel for these assessee-Appellants, submits that eight containers were removed from ICD, Tughlakabad, without proper documents. The goods were recovered on 28.05.2012 from various godowns which includes cigarettes, air-conditioners, gas cylinders etc.. Bills of lading were in foreign names, but nowhere the name of his client, Shri Rohit Sakhuja, appeared. Containers came from Singapore. On query from the Bench, he admits that TR-6 Challans showing the payments were forged. Customs gate passes were genuine but signatures were forged. Statement of Shri Sushil Sharma, Customs Office Boy/Customs Helper was recorded on 08.06.2012 wherein he stated that he was working at ICD, Tughlakabad, for the past eight years. About the manual gate passes, he admits that in the event of any problem in the system, the manual gate passes were issued. He also stated that on several occasions, the book of gate passes was kept by the staff which can be utilized on the demand of CHA staff. The gate passes were issued by the staff on illegal monetary consideration. The CHA staff usually made the gate passes on the blank pass book. The learned counsel further submitted that in the gate passes, issued by the CHA, his client has

nothing to do with it. On a specific query made by the Bench about the record of the goods from the godowns, he admits that the goods were purchased from one Shri Sandeep Kumar, CHA, as stated in para 58 of the impugned order. Learned counsel also submits that the assessee-Appellant (Rohit Sakhuja) had approached the Settlement Commission, but his application was rejected. He also charged the DRI Officers of disposing off the cigarettes without any proper notice to the assessee-Appellants, which is the violation of Section 150 of the Customs Act. He further submits that the shipping line also did not implicate Shri Rohit Sakhuja. Delivery order was taken by one Shri Chattar Pal who resembled one 'Sharmaji', but he was not identified (para 8.3 of SCN). None of the importing firms were in any manner linked to Shri Rohit Sakhuja. Though, initially, the consignees were shown as M/s Star Aircon and M/s M.C. Overseas and later changed to the names of five other companies. There is no evidence of involvement of Shri Rohit Sakhuja in any company. The names of five companies were unauthorisedly taken for which Shri Rohit Sakhuja is not responsible. Shri Sushil Sharma, Customs Office boy admits that he had given blank Customs passes to one Bunty, brother of Shri Sandeep Kumar @ Pradeep Rana. Shri Sandeep admits that he has received the gate passes from one 'Sharmaji' (para 9.2 of the SCN). Shri Rohit Sakhuja, assessee-Appellant has denied knowing any 'Sharmaji'. He further submits that the entire lot of the cigarettes was sold only for Rs. 65,00,000/- (para 90 of the impugned order). The duty on the cigarettes was already paid by his client, but in the order-in-original it has been mentioned that duty was not paid. In any case, the assessee-Appellants was not supposed to pay the duty as he is not the importer. The duty can be recovered only under Section 125(2) of the Customs Act, 1962 at the time of release of the cigarettes, but cigarettes were sold without any proper notice.

13. About the non-availability of the stickers on the ACs, he submits that it can be presumed that assessee-Appellant have removed them to charge higher MRP from buyers, but it cannot be concluded that the ACs were illegally imported. Some goods of 'B' Category were not the imported goods. The Department has failed to prove that these were imported goods. The Department's investigation, in fact, was limited to goods listed in 'A' Category. Penalty cannot be imposed on Shri Rohit Sakhuja under Section 112, 114A and 114AA of the Customs Act, 1962 simultaneously. Since the duty on cigarettes had not been confirmed, the penalty cannot be imposed jointly on both Shri Ajit Singh Chadha and Shri Rohit Sakhuja. His client, Shri Rohit Sakhuja is not the importer, so duty cannot be demanded from him under Section 28 and hence penalty cannot be imposed on them under Section 114A of the Customs Act, 1962.

14. On the other hand, for imposing lesser penalty, Department has filed cross appeals.

AJIT SINGH CHADHA (C/52503/2015, C/53516/2015 & C/53120/2016)

15. All are cross-appeals. None represented the assessee-Appellant, Shri Ajit Singh Chadha. From the record, it appears that he was a close friend of Shri Rohit Sakhuja. Both these persons masterminded the illegal import. His role has been discussed in the statement of Shri Rohit Sakhuja, as stated above. He, along with Shri Rohit Sakhuja, had gone for the settlement of the case before the Settlement Commission where their applications were rejected. He was the partner along with Shri Rohit Sakhuja. His role has already been discussed (supra). By the impugned order, penalty of Rs. 40 lacs was imposed on Shri Ajit Singh Chadha and equal penalty was also imposed on Shri Rohit Sakhuja under Section 112 and 114AA of the Customs Act, 1962. In addition, a penalty of Rs. 2,86,84,273/- was imposed under Section 114A of the Customs Act, 1962 jointly on Shri Ajit Singh Chadha and Shri Rohit Sakhuja.

II. APPEAL BY APPELLANTS :

KAMAL VIRMANI (C/52514/2015)

16. The learned counsel Shri A.K. Prasad submits that Shri Kamal Virmani is the proprietor of M/s Gaurav Enterprises as mentioned in para 115 of the impugned order. Penalty of Rs. 30 lacs was imposed illegally. He nowhere admitted the sale of R-22 gas which was used in air-conditioners and refrigerators. He only mentioned that he knew about import of the gas by Shri Ajit Singh Chadha. He was not having the knowledge that Shri Rohit Sakhuja

has illegally imported the ACs. The observation made in para 64 of the impugned order is incorrect. Hence, no penalty is leviable on Shri Kamal Virmani.

NARESH KUMAR SHARMA (C/52515/2015)

17. The learned counsel Shri A.K. Prasad submits that Shri Naresh Kumar Sharma is a proprietor of M/s Star Aircon. Penalty of Rs. 30 lacs was imposed on him. His role had been discussed in para 118 of the impugned order. His statements were recorded under Section 108 of the Customs Act, 1962 where he stated that he is the Proprietor of M/s Star Aircon which was opened by Shri Rohit Sakhuja in his name. It is the submission of the learned counsel that since no case has been made out against M/s Star Aircon, there cannot be any offence against him. He was merely an employee of Shri Rohit Sakhuja and had acted under the guidance of his master. The Department has mistaken him for another Naresh Sharma, referred to in the statement dated 14.06.2012 – these two were two different persons. The statement of Shri Naresh Kumar Sharma was recorded on 21.06.2012 and 10.09.2012 and he was never confronted with the statement of Umesh @ Rinku.

18. Finally, the learned counsel relied on the ratio laid down in the following cases :

(i) **Weston Components Ltd. vs CC, New Delhi,** 2000 (115) ELT 278 (SC);

(ii) **CC, Amritsar vs Raja Impex Pvt. Ltd.,** 2008 (229) ELT 185 (P&H);

(iii) **CC (Import), Mumbai vs Finesse Creation Inc.,** 2009 (248) ELT 122 (Bom.);

(iv) **Commissioner vs Finesse Creation Inc.,** 2010 (225) ELT A120 (SC);

(v) **Chinku Exports vs CC, Calcutta,** 1999 (112) ELT 400 (T);

(vi) **Commissioner vs Chinku Exports,** 2005 (284) ELT A36 (SC);

(vii) **Shiv Kripa Ispat Pvt. Ltd. vs CCE&C, Nasik,** 2009 (235) ELT 623 (Tri.-LB);

(viii) **Bhagyanagar Metals Ltd. vs CCE, Hyderabad,** 2016 (333) ELT 395 (Tri.-LB);

(ix) **Dejero Logix Pvt. Ltd. vs CC (Imports) Air Cargo, New Delhi,** 2017-TIOL-913-HC-DEL-CUS;

(x) **Escorts Heart Institute & Research Centre vs CC (Import & General), New Delhi,** 2016 (336) ELT 185 (Tri.-Del);

(xi) **CC, Bangalore vs Dinesh Chhajer,** 2014 (300) ELT 498 (Kar.);

(xii) **CC vs Lakhpatri,** 2016 (343) ELT 78 (Del.);

(xiii) **Golden Tobacco Ltd. vs CCE, Delhi-I,** 2015 (324) ELT 721 (Tri.-Del); and

(xiv) **CC (Import & General) vs Care Foundation,** 2014 (302) ELT 181 (Del.)

APPEAL OF VIJAY KUMAR (C/51151/2015); DILIP SINGH JAIN (C/51152/2015); SATISH KUMAR CHADHA (C/51153/2015)

19. The learned counsel, Ms. Reena Rawat, submits that the penalty of Rs. 30 lacs each on Shri Vijay Kumar, Shri Dilip Singh Jain and Shri Satish Kumar Chadha was wrongly imposed under Section 112 and 114AA of the Customs Act, 1962. She submits that Shri Satish Kumar Chadha had purchased the R-12 gas cylinders in cash. She also submits that the said cylinders were purchased without any documents. R-22 gas cylinders were also purchased by Shri Dilip Singh Jain. It is the submission of the learned counsel that her clients were petty shopkeepers and they were not dealing in the imported items. They were not aware that the said items were imported items. She admits that one Shri Ajit Singh Chadha and others have clandestinely removed the eight containers from ICD, Tughlakabad, but her clients had nothing to do with it. It is the case of the Department that the assessee-Appellants had dealt with the sale and storage of the subject goods. The penalty was imposed solely on the basis of the submission of the assessee-Appellants without any corroborative evidence. The assessee-Appellants were not aware about the imported nature of the goods and that storage and sale was not affected in the normal course of business. The assessee-Appellants were neither aware about the smuggled goods nor had reasons to believe at the time of purchase that the same are liable to be confiscated under Section 111 of the Customs Act, 1962. She submits that penalty in the instant case has been imposed solely

on the basis of the statement of the Appellant without any corroborative evidence and hence cannot be sustained. She also submits that the Appellant was not aware of the offending nature of the goods. Without prejudice to the above submissions, she made a request that the penalty of Rs. 30 lacs is on the higher side and incommensurate with the value of the goods. The cylinder of R-22 gas was for a meagre amount.

20. Finally, she made a request that the penalty may kindly be dropped or reduced.

AJAY KAUSHAL (C/51167/2015)

21. The learned counsel, Shri V.R. Sethi, submits that the role of Shri Ajay Kaushal has been discussed in para 103-105 of the impugned order. He is a petty shopkeeper. From his shop, 12 ACs were recovered without documents. He has purchased the said ACs from Shri Kamal Virmani of M/s Gaurav Enterprises, as mentioned in para 46 of the show cause notice. Lastly, he submits that imposition of penalty of Rs. 30 lacs is not desirable in the instant case. On legal aspects, he adopts the arguments of the other counsels.

APPEAL OF SANDEEP KUMAR (C/51942/2015); PRADEEP KUMAR (C/51943/2015); AND BHARAT VIDHURI (C/51944/2015)

22. None has represented the assessee-Appellants, Sandeep Kumar, Pradeep Kumar and Bharat Vidhuri in spite of notice served upon them. A penalty of Rs. 30 lacs each on

Sandeep Kumar and Pradeep Kumar; and Rs. 20 lacs on Shri Bharat Vidhuri was imposed. Their role has been discussed in the impugned order. The statement of Shri Bharat Vidhuri was recorded on 29.05.2012. Regarding the movement of the containers, in his statement dated 30.05.2012, he divulged the details which were not found. He continued to lie about the facts. Shri Sandeep Kumar was hand-in-glove with Shri Rohit Sakhuja and Shri Ajit Singh Chadha who have fraudulently cleared the goods which were illegally transported in connivance with Shri Bharat Vidhuri. He admitted in his statement that, the transportation was arranged at the instructions of his client, Shri Sandeep Kumar. No record i.e. name of the party, address or delivery of goods pertaining to the transportation of the said containers were maintained by Shri Bharat Vidhuri, apparently, to avoid the detection of the trail of the goods.

23. From the record, it appears that Shri Sandeep Kumar was also hand-in-glove with the main accused, Shri Rohit Sakhuja and Shri Ajit Singh Chadha. He helped them with clearance of the goods on forged documents. He had destroyed the SIM card to avoid the call records. He had absconded along with his father who helped in arranging the gate passes. He admitted that he had arranged the transportation on the request of Shri Rohit Sakhuja. He used the services of his brothers in facilitating the clearance of the goods. Similarly, Shri Pradeep Kumar was the first person to whom he had given the gate pass booklet. Gate passes from the said gate pass booklet were used to fraudulently remove the

containers out of ICD, Tughlakabad. Hence, it appears that Shri Sandeep Kumar and his brother abetted in the forgery of manual Customs gate passes. Shri Sandeep Kumar admitted to have known Shri Rohit Sakhuja and Shri Ajit Singh Chadha since the last 2-3 years and had cleared their consignments in the past also. Shri Sandeep Kumar is absconding since the detection of the case.

III DEPARTMENTAL APPEALS :

<u>JAGJIT SINGH @ BUNTY (C/53118/2016)</u>

24. The learned counsel Shri A.K. Prasad submits that the Commissioner (Appeals) has rightly dropped all charges against him. His statement was recorded on 21/12.06.2012. On 30.07.2012, the residential premises of Shri Jagjit Singh @ Bunty was searched and his statement was again recorded under Section 108 of the Customs Act, 1962. Call records of his mobile was also examined which was given by Shri Rohit Sakhuja. His statement was further recorded on 16.08.2012 wherein he has stated that Shri Rohit Sakhuja did not come to Saitel shop from 21.05.2012 to around 07.08.2012. During that period, he claimed that he never met with Shri Rahut Sakhuja. Nothing incriminating was found from his possession. From the statement of Shri Rohit Sakhuja's brother, Shri Punit Sakhuja, and their employee, Shri Naresh Kumar Sharma and Jagjit Singh @ Bunty clearly proved that Shri Rohit Sakhuja was absconding for about two months after the illegal removal of the containers and detection of fraud by the DRI.

MANU CHOPRA (C/53123/2016)

25. The learned counsel Shri A.K. Prasad submits that, similarly Shri Manu Chopra was examined by the Department. He is the owner of M/s MC. Overseas. No reply was filed by him against the proposed action. A search was also conducted at his premises and on 21.06.2012 his statement was recorded. In his statement, he submitted that he worked as Relationship Manager in Vodafone for one year and quit his job. Thereafter, he joined Shri Rohit Sakhuja, son of his mother's elder sister, who offered him the work of mobile repairing in his shop. In the shop, he was selling mobile phones and imported LCDs (Sony) and ACs (O'General) and also entertained customers who required mobile repairing. Three employees were also working in the said shop. He was getting a basic salary of Rs. 7,000/-. He further stated that about a year back Shri Rohit Sakhuja asked him for two photographs, ID proof and copy of PAN card and informed him that he was going to open a new company, M/s M.C. Overseas in his name. In his statement, Shri Manu Chopra submitted that he was not aware about the owner of the said shop. He also stated that he never asked Shri Rohit Sakhuja about the activity to be carried out by the new Company. The account was opened in Standard Chartered Bank. From the above, it appears that whatever he was doing, he was doing as per the instructions of Shri Rohit Sakhuja, who was controlling the firm and is absconding.

26. Under these circumstances, the Commissioner (Appeals) has rightly held that there is no evidence against M/s M.C. Overseas or its Proprietor Shri Manu Chopra.

R.K. MAHAPATRA (C/53121/2016); S.K. DUBEY (C/53122/2016); S.K. SINGH (C/53124/2016); AND K. LINE SINGAPORE PVT. LTD. (C/53125/2016)

27. All these appeals are filed by the Department against the impugned order wherein the Commissioner had refrained from imposing penalties on the assessee-Respondents. The learned counsel for the assessee-Respondents Shri Piyush Chaudhary, submitted that Shri R.K. Mahapatra, Junior Executive and Shri S.K. Dubey, Senior Executive (Commercial), employees of CONCOR, had followed the entire procedure while shipping containers out of ICD, Tughalkabad, New Delhi. He also submitted that in the instant case, Shri Ajit Singh Chadha and Shri Rohit Sakhuja hatched a conspiracy to remove containers on the strength of forged Customs documents. There is no mechanism to verify and authenticate the genuineness of the signatures/stamp/seal of Customs Superintendent & Inspector. The goods were cleared on the basis of forged Bills of Entry, TR-5 Challans, manual customs gate passes etc. The forged and bogus photo identity was submitted to the shipping line for obtaining the delivery order and forged/bogus indemnity bonds were executed. He also submitted that the Commissioner (Appeals) has reasoned that once the set of documents are fabricated and forged, the CONCOR officials cannot be blamed for non-detection thereof.

28. The learned counsel for the assessee-Respondents, Ms. Shreya Dahiya, submitted that M/s 'K' Line Singapore Pte. Ltd., had not done any act or omitted to do any act in contravention of the statutory duty. While justifying the impugned order, she submitted that there is no allegation that the assessee-Respondents have not furnished statutory information to the Singapore Customs and there is no allegation of any fraudulent conduct or any action taken by the Singapore Customs.

29. None is present for Shri S.K. Singh, the then Superintendent (SIIB). From the record, we find that the Commissioner has dropped the penalty imposed on him by giving benefit of doubt for the reasons mentioned therein.

30. We have heard all the parties and gone through the material available on record.

31. Regarding the sale of cigarettes, it may be mentioned that cigarette is a perishable items which was rightly sold by the Department as there was no claimant for the same. It is claimed that the duty was paid on cigarettes, but in the impugned order it is mentioned that duty was never paid. Further, the Appellant claimed that he was not the importer.

32. The liberty was granted to the Appellants to submit the bank guarantee for releasing the goods, but the same was not furnished. In these circumstances, the Department has rightly sold the cigarettes being perishable item.

33. Further, it appears that there was a syndicate of smugglers where the Departmental persons were also involved. It is surprising that eight containers have been removed from the Tukhalabad Dry Port on forged documents without paying any duty, even duty payment challan was forged. This is a glaring example of smuggling. Smuggling is a cancer impacting national economy for which all the Appellants were making their contribution directly or indirectly, as briefly discussed above. The forged ID was used, false documents were prepared.

34. When it is so, then we feel no hesitation in sustaining the impugned order where the goods were confiscated and penalties were rightly imposed. In fact, the Department has taken a lenient view by imposing lesser penalty/punishment. Unfortunately, the Tribunal has no power to enhance the penalty/punishment. So, we uphold the impugned order in toto for the reasons mentioned therein.

35. Regarding the Departmental appeals, it is evident that there was no sufficient evidence against the persons concerned as their role could not be established. They cannot be blamed in the absence of sufficient evidence. Benefit of doubt was rightly provided. Hence, the adjudicating authority has rightly dropped the

penalties/punishment on them. So, the Departmental appeals have no merit and are also hereby dismissed.

34. In the result, all the appeals are dismissed.

(Pronounced in the open court on 19.09.2017)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

Golay