IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:29.11.2017
Date of Decision:12.01.2018

Customs Appeals Nos. 60465 & 59442/2013 (DB)

[Arising out of common Order-in-Original No.RT/ACE/21/2013 dated 28.03.2013 passed by the Commissioner of Customs, New Customs House, New Delhi]

M/s.Sardana Enterprises Appellant
M/s.Express India Council of India

Vs.

CC, New Delhi Respondent

<u>Appearance</u>:
Rep. by Shri Bharat Bhushan Sharma/Ms.Renuka Singh, Advocates for the appellants.
Rep. by Shri R.K. Manjhi, DR for the respondent.

Coram: Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.50107 to 50108/2017

<u>Per B. Ravichandran:</u>

These two appeals are against common impugned order dated 28.03.2013 of Commissioner of Customs (Export), Airport, New Delhi. The impugned order dealt with role of various noticees with reference to import of Micro SD Chips. However, we have only two appeals before us and accordingly, the findings are restricted to these two appeals only. The first appellant, M/s. Sardana Enterprises, is a proprietory firm owned by Shri Gopal Sardana and they are one of the importers of the impugned goods in the present case. The second appellant, M/s.Express Industry Council of India is a cargo handling agent authorized as custodian of imported cargo in the designated area of Air Cargo Complex, New

Delhi. They have been licensed by the Commissioner of Customs in terms of Handling of Cargo in Customs Areas Regulations, 2009.

2. The brief facts of the case are that based on the certain information, the officers of SIIB of New Customs House, Delhi intercepted a courier shipment at the carrier terminal and examined the said consignment, which arrived from Hong Kong on 23.04.2012. On examination of the said courier consignment, it was noticed that no proper documents accompanied the said consignment. The receiver's name was mentioned as "Raja Traders", "Mr. Tarun (Tel.No.9810087272) " and "Xtra image". No address or other details regarding contents of the cargo were available. The goods were examined and the consignment was found to contain 90000 pieces of Micro SD Card, both branded and un-branded with capacities of 2GB/4GB. 500 pieces of connectors and one set of printed cylinder with cover were also found. Detailed follow up investigation was conducted on the ground that there was an attempt to illegally import these electronic items with mis-declaration of contents as well as value in order to evade proper customs duty. Statements of various persons connected to the shipment were recorded and connected documents were collected by the officers. On completion of the investigation, the following facts /inferences were arrived at by the Revenue:-

> **"**(i) Goods concerned are covered under AWB no.160-2580-4315 dated 22.04.2012 sent by M/s.Taj Express Courier in the name of M/s.Cruze Couriers Pvt. Ltd. vide courier tag No.CX676126 through Cathay Pacific Flight No.CX 695.
>
> (ii) Scrutiny of the documents available with the consignment reveal that they do not reflect complete address of

receiver and also do not declare the description of the goods. Moreover, there was no invoice accompanying the goods. As per HAWB goods are consigned to Mr. Tarun, M/s. Raja Traders and M/s. Xtra Image, the same were placed under seizure vide Seizure Panchnama dated 23.04.2012 upon reason to believe that the same are liable for confiscation.

(iii) On 25.4.2012, Shri Balwinder Singh, Director of M/s. Cruze Couriers Pvt. Ltd. received a mail from M/s.Taj Express Courier containing Export Manifest and invoices, which shows that the goods were sent by M/s. Panash Goup and M/s. Shenzhen Imaging Co. These documents were submitted at the time of recording of his statement.

(iv) As per Export Manifest, consignees are M/s. Sardana Enterprises, M/s. JMS Infotech, Mr. Tarun and Mr. Vikash Kumar.

(v) Copy of HAWBs submitted along with Export Manifest shows the name of the consignee changed from M/s. Raja Traders to M/s. Sardana Enterprises and from M/s. Xtra Image to M/s. JMS Infotech by striking out the earlier names. No logical explanation in this regard was provided by consignor or consignees. It appears that M/s. Sardana Enterprises and M/s. JMS Infotech first tried to smuggle 90,000 (25,000 + 25,000 + 15,000) Memory Cards by mis-declaring and reflecting wrong names in HAWB without any address. When the offended goods were intercepted and seized by Customs, they produced documents and claimed ownership and indicted their willingness to discharge appropriate Customs duty leviable on the goods.

(vi) M/s.Cruze Courier provided the necessary assistance in attempt to smuggle Memory Card, by not following the proper procedure.

(vii) The other two consignees, Mr. Tarun Kumar Nangia and Shri Vikash Kumar denied having made any such import from Hong Kong."

3. Alleging violation of various provisions of Customs Act, 1962, Courier Exports and Imports (Clearance) Regulations, 1998, Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 and Handling of Cargo in Customs Area Regulations, 2009, notice was issued to various persons. Notice essentially alleged that the import consignments which were intercepted by the officers did not contain any clear address or declaration of the contents and there was an attempt to substitute the name of the importers, after interception of the cargo. The goods were not properly declared for contents as well as value and accordingly, apart from proposing confiscation of the goods, enhancement of value, notice also proposed penalties on various noticees. As noted earlier, we are concerned only with two such noiticees in the present appeal.

4. With reference to first appellant (M/s.Sardana Enterprises), it was alleged that they did not produce documents relating to booking of consignments at Hong Kong as claimed by them. No invoice relating to goods was found along with th goods at the time of examination by the officers on 23.04.2012. The Airway bill had shown that the consignment was shipped to one M/s.Raja Traders with no identifiable address or contact, which was later, amended to M/s.Sardana Enterprises. Such substitution, which was much after the interception of cargo by the customs, is only to avoid penal provisions, as an afterthought after attempted illicit import was detected.

5. The appellant submitted explanation on their part in response to the show cause notice. The case was adjudged by the Original Authority, who held that the goods claimed by the appellant viz. 50,000 pieces of Micro SD Memory Cards, which included 12500 2 GB 'Strontratium' brand memory cards are liable for confiscation. The goods were allowed to be redeemed on payment of a fine of Rs.15 lakhs in terms of Section 125 of the Act. The value of the imported goods was re-determined at Rs.57,69,008/- with a duty liability of Rs.5,39,747/-. A penalty of Rs.2 lakh under Section 112(a) with a further penalty of Rs.5,39,747/- under Section 114 AA of the Act were imposed on Shri Gopal Sardana, Proprietor of M/s.Sardana Enterprises.

6. Ld. Counsel appearing for M/s.Sardana Enterprises submitted that the said goods were imported by them on credit basis from Hong Kong. The mistake committed by the courier at shipping end in Hong Kong by not giving proper address or not including the invoice along with the consignment cannot be held against the appellant. When the error was noticed, correction was carried out. They have also submitted proper invoice for the imported goods. It is prayed that as they have already paid the redemption fine, penalty and duty, the goods should be released in good condition to them. The same has not been done by the Customs Authorities in spite of the repeated requests. It appears that the goods have been stolen from the warehouse and the appellant is put to financial loss. The Ld. Counsel also pleaded that the redemption fine and the penalty imposed on the appellant is excessive and not sustainable.

7. Ld. AR contested the appeal. He submitted that the role of the appellant in the transaction of the impugned goods has been brought out by corroborative

evidence and also the statement given by the various persons including the proprietor of the appellant firm. It is a clear modes operandi attempted to misdeclare as sensitive electronic items to avoid huge customs duty. An attempt has been made by not giving proper description or details of importer in the consignment. After the interception of the consignment, the appellant came forward to claim the cargo with a plea that the shipping courier in Hong Kong committed an error. Ld. AR submitted that this is an afterthought, to avoid penalty and the other consequences, the appellant have submitted invoice etc. later. Even the invoice submitted did not carry the full details regarding brand name etc. of the product. He supported the findings of the Original Authority with reference to this appellant.

8. We have heard both the sides and perused the appeal records.

9. It is a fact that the courier consignment did not contain the necessary statutory details on the pack. The details contained were vague and there was a clear attempt in mis-declaration of high value electronic items to avoid customs duty. This much is apparent from the facts as narrated in the impugned order. Much after interception of cargo, the appellant came forward with invoice and other details claiming ownership of the goods. We note that even at that time, the appellant could not produce necessary supporting evidence with reference to booking of consignment at Hong Kong and also the reason for invoice dated 15.04.2012 not having full particulars like name etc. of the imported goods. We note that that the facts and circumstances of the case, as revealed by the investigation, have been examined by the Original Authority before arriving at a conclusion. In this regard, the Original Authority observed as below:-

> " From the statement of Shri Gopal Sardana, Proprietor of M/s. Sardana Enterprises, it is clear that the consignment worth USD 67500.00 was imported from Panash Group on credit basis and the deal was made through his friend Rakesh Chotrani. I also note that Shir Gopal Sardana has also admitted that he had not taken any paper related to the goods from Panash Group as they had told him that the goods would be cleared from Customs by the person of Taj International and the duty was to be paid by the courier company at the time of clearance and at the time of delivery he was to pay duty to the courier company. This statement establishes the complicity of the individuals in the matter. Shri Gopal Sardana also admitted that he got a phone call from Taj International informing that he had to go the Customs Office for clearance of these goods. The said chain of events therefore clearly exposes the unholy intentions of the Noticees."

10. Regarding valuation, we note that the invoice submitted by the appellant did not carry the brand name of the product and also the country of origin. The goods have been made in China, Korea and Thiawan.

11. We are in agreement with the Original Authority regarding rejection of value declared by the appellant and re-determination of value based on the contemporaneous imports of similar goods. We also note that the appellant did not make any substantial or specific submission contesting the valuation of the imported goods. In fact, as pleaded by them, on payment of customs duty, fine and penalty, they are requesting for release of the goods seized by the Authorities.

12. With reference to the plea made by the appellant regarding imposition of excessive redemption fine and penalties, we note that the value of the goods was

redetermined and fixed at Rs.57.69 lakhs. The duty involved is Rs.5,39,747/-. The redemption fine of Rs.15 lakh is excessive and not justifiable. As per the normal practice, the redemption fine so fixed for release of the confiscated goods, which should generally wipe out profit that could accrue to the importer in pursuance of the such improper transaction. In the present case, we note that the redemption fine works out to more than 26% of the re-determined value. We note that the same is excessive and accordingly, reduce the redemption fine to Rs.7.5 Lakhs.

13. An amount of Rs.2 lakhs has been imposed on the appellant as penalty under Section 112 (a). The said penalty is with reference to improper importation of the goods on person, who does or omits to do any act which, act or omission has been render such goods liable to confiscation under Section 111 of the Act. In the present case, as discussed above, there is clear justification for such penalty on the appellant. Accordingly, we do not find any reason to interfere with the same.

14. We note a further penalty of Rs.5,39,747/- (equal to the duty amount) was imposed on the appellant in terms of Section 114 (AA). Considering that already a penalty of Rs.2 lakhs has been imposed on the appellant, we find that penalty under Section 114 AA can be reduced to Rs.1 lakh. Such reduction is justifiable keeping in mind that the total duty involvement in the present consignment itself is only Rs.5.39 lakhs.

15. In view of the above discussion and analysis, we dismiss the appeal filed by M/s.Sardana Enterprises except for reduction of redemption fine and panalty under Section 114 AA, as mentioned above.

16. The second appeal is by M/s. Express Industry Council of India against imposition of penalty of Rs.50,000/- under Section 117 of the Act. We have heard the ld. Counsel for the appellant and ld. AR for the Revenue. The impugned order held against the appellant, who is authorized to handle cargo in the customs area, only on the ground that they have been allowed another person as a sub-contractor to do the activity of handling cargo. This was held to be in violation of Regulation 6 (1)(h) of 2009 Regulations. The said Regulation stipulates that the custodian shall not permit for import cargo to enter the customs area or to be unloaded therein without the import report or import manifest having been filed by the proper officer. We note that the provisions of Section 117 can be invoked against any person, who contravenes any provisions of Customs Act or fails to comply with any provisions of the said Act with which it was his duty to comply. Section 117 is a miscellaneous provision for imposition of penalty, where no other provisions will apply. In the present case, the impugned order records that the loose administration by the appellant, who is a custodian of import cargo resulted in the attempt to improper import of the impugned goods. We note that the consignment from Hong Kong has landed in New Delhi through courier. The courier consignment did not contain the required particulars of recipient's name and full address and also declaration regarding its content. No documents for clearance of such cargo have been filed with the customs. The goods have been intercepted based on a prior information by the Customs Authorities. We find that the custodian had no prior information about any possible attempt of improper importation of goods through courier service. In any case, the impugned order did not bring out the exact violation committed by the custodian

with reference to the present cargo, which will attract penalty under the provisions of Customs Act. The custodian did not file any documents containing improper particulars nor abetted any such improper importation or subsequent clearance. As already noted the goods have been intercepted much before the customs clearance process could be completed. With reference to the sub-contracting of work by the custodian , we find that the appellant have provided certain explanation. We are not going into such facts or merits of the said submissions. We note that the facts and evidences as noticed by the impugned order did not bring any act or omission on the part of the custodian in order to attract a penalty under Customs Act, 1962. Any violation of 2009 Regulation are to be dealt with separately based on the factual finding.

17. In view of the above discussion and analysis, we dismiss the appeal filed by M/s. Sardana Enterprises except for reduction of fine and penalty mentioned hereinabove and allow the appeal by M/s. Express Industry Council of India.

[Order pronounced on 12.01.2018.]

[S.K. Mohanty]
Member (Judicial)

[B. Ravichandran]
Member (Technical)

Ckp.