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

Customs Appeal Nos. 50516, 50825, 50826, 50849 of 2017
Customs Appeal Nos. 50963, 51268, 51839 of 2017
Customs CO/50976/2017

[Arising out of Order-in-Original No. 01/ 2017 dated 14.02.2017 passed by the Commissioner of Customs (Gen) New Delhi]

Shri Sandeep Rikhi. **Appellant**
Shri Nikhil Dhingra
Shri Rajinder Dhingra
Shri Kshitiz Sharma
Shri Manish Khanna
Shri Neeraj Chaudhary

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri Somesh Arora, Shri V R Sethi, Shri Rishab Nagar, Shri D S Nagi, Advocates for the Appellants
Shri R K Manjhi, AR for the Respondent

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

Date of Hearing : 21.12.2017
Date of Decision : 17.01.2018

FINAL ORDER NO. 50167-50173 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeals have been filed against Order in Original No. 01/2017 dated 14.2.2017.

2. The brief facts of the case are that on 26.4.2011, intelligence report was received that M/s. Naresh Hand Work, a proprietary concern of Shri Naresh Kumar had cleared the goods by mis-declaration from ICD, TKD. On 30.4.2011, in the presence of panch witnesses, goods were examined where it was found that the goods were imported vide Bill of Entry dated 25.4.2011 through CHA M/s. Shivoy Enterprises, have 7495 pieces of Multi Utility Bags. But in the bags, it was found that there were 433 boxes /plastic sacks which were stuffed in the said container with items of cosmetics, ready made garments and mobile phones housing etc. It was found that intentionally, the goods were declared as multi utility bags but other items were imported /smuggled which attract customs duty on import. Statement of concerned persons were recorded. Customs duty was levied on the importer M/s. Naresh Hand Works and various penalties were levied under Section 112(a) as well as under Section 114 AA of the Customs Act, 1962, on appellants and other concerned persons. Being aggrieved, only following appellants have approached the Tribunal.

1	Shri Kshitiz Sharma	Rs.10 lakh under section 112(a)	Rs.5 lakh under section 114 AA
2	Shri Manish Khanna	Rs.10 lakh under section 112(a)	Rs.5 lakh under section 114 AA
3	Shri Nikhi Dinghra	Rs.5 lakh under section 112(a)	Rs.2.5 lakh under section 114 AA

4	Shri Rajinder Dhingra	Rs.5 lakh under section 112(a)	Rs.2.5 lakh under section 114 AA
5	Shri Neeraj Choudhary	Rs.5 lakh under section 112(a)	Rs.2.5 lakh under section 114 AA

Appeal No. 50849/2017 (Shri Kshitiz Sharma)

3. With this background, regarding Shri Shitiz Sharma, his counsel Shri Rishabh Nagar, learned representative mentioned that Shri Kshitiz Sharma had provided the documents pertaining to the container in question to Shri Nikhil Dhingra and Shri Manish Khanna. Learned Counsel submits that his clinet is innocent. Shri Manish Khanna in his statement dated 13.7.11 has stated that he has neither referred the name of the appellant (Shri Kshitiz Sharma) to Shri Naresh Kumar nor he has further mentioned that the appellant had any relation to the alleged offence.

4. At the strength of written submissions, he submits that the appellant is owner of M/s. B B Scooter Club, Rajouri Garden, New Delhi and had no money for a transaction with Shri Nikhil Dhingra and Shri Rajinder Dhingra. He submits that his client did not know M/s. Naresh Hand Works and there was no financial dealings with this firm. His client stated in his statement dated 2.6.2011 that he knew Shri Nikhil Dhingra to whom he has given documents. No evidence is with Department regarding the involvement of his client.

For the purpose, he relied on ratio laid down in the following case laws:

(i) ***Amar Jyoti Packers vs. CCE [2007 (207) ELT 345 (Del)];***

(ii) ***J B Trading Corporation vs. UOI [1990 (45) ELT 9 (Mad)];***

(iii) ***K Sons Overseas (I) P Ltd. vs. CC Mumbai [2001 (132) ELT 93 (Tri-Mum)];***

(iv) ***Hamid Fahim Ansari vs. CC (Import) [2009 (241) ELT 168 (Bom)];***

(v) ***Bimal Kumar Mehra vs. CC (Import) [2011 (270) ELT 280 (Tri-Mumbai)];***

(vi) ***Dhirubhai N Sheth vs. CC (P) Bombay [1995 (75) ELT 697 (Tri)]; and***

(vii) ***Ashwin S Mehta vs. CC Mumbai [2006 (197) ELT 386 (Tri-Mum)]***

5. On the other hand, the representative of the department has relied on the impugned order and submits that Rajinder Dhingra was previously into clearing cargo business and was holding G-Card and he worked as CHA for sometime. Shri Kshitiz Sharma and Shri Manish Khanna have given him some papers for Customs clearance. He submits that on the Bill of Lading relating to the impugned container, the name of the shipper was M/s. Royal Red International Co. Ltd. China, where Shri Kshitiz Sharma was an employee. He submits that Shri Kshitiz Sharma has been the master mind and directly participated the transaction.

Appeal No. 50826 & 50825 /2017 (Shri Rajender Dhingra and Shri Nikhil Dhingra)

6. Both the appellants are relatives. Shri Rajinder Dhingra was into the job of clearing of cargo work and was holding G card and had also worked as CHA for sometime. In his statement dated 26.5.2011, he stated that Shri Kshitiz Sharma and Shri Manish Khanna gave him papers regarding container in question for customs clearance, but since he had left this job, he gave all these papers to his nephew Shri Nikhil Dhingra, who had met Shri Kshitiz Sharma and Shri Manish Khanna in the club run by them in Rajouri Garden, New Delhi. In view of the above, it was observed in the impugned order that Shri Rajinder Dhingra and Shri Nikhil Dhingra were involved in smuggled / imported of the goods.

7. Shri Nikhil Dhingra, who is nephew of Shri Rajinder Dhingra, was working as field executive with M/s. Pankaj Babu Saini. His job involved taking of delivery orders from the Shipping Lines and also miscellaneous work allotted to him. In his statement dated 25.5.2011, he stated that in order to clear the goods in respect of the impugned Bill of Entry pertaining to M/s. Naresh Hand Work, he had come to ICD, Tuglakabad and contacted Shri Sandeep Rikhi, with the documents of the impugned container which were delivered to him. He filed Bill of Entry in respect of said container on the basis of

documents which were handed over by Shri Naresh Kumar and Shri Kshitiz Sharma.

9. Learned Counsel Shri V R Sethi appearing for the appellants, at the strength of written submissions, submits that Shri Naresh Kumar, is the owner of M/s. Naresh Hand Works, New Delhi. His client has prepared Bill of Entry on the basis of documents supplied by Shri Manish Khanna and Shri Kshitiz Sharma through his Uncle Shri Rajinder Dhingra, who passed the same to Shri Nikhil Dhingra. He submits that Shri Manish Khanna and Shri Kshitiz Sharma were master mind, and imported goods by way of using its IEC number for the purpose of Customs clearance. The role of both the appellants in the case was to hand over the papers and a packet containing money for custom duty and shipping line charges as received from Shri Kshitiz Sharma / Manish Khanna, toShri Sandeep Rekhi of CHA firm. He submits that his clients are totally innocent. The role of the appellant is just to pass on the papers , money relating to Customs duty and shipping line charges to ultimate CHA. Shri Nikhil Dhingra in his statement dated 25.5.11 categorically stated that he came to know about mis-declaration only after detection by SIIB. He did not know about the mis-declaration. He just pass over the papers, Nikhil Dhingra, gave to Shri Sandeep Rekhi for clearance. He submits that penalties levied on Shri Nikhil Dhingra and Shri

Rajinder Dhingra are not sustainable in the eyes of law as per the ratio laid down in the following cases:-

- ***(i) J K Syntehtics Ltd. vs. CC [2015 (317) ELT 370 (T)];***
- ***(ii) Pankaj Baba Saini vs. CC [2015 (316) ELT 164 (T)];***
- ***(iii) Solly PErumal vs. CC [2013 (291) ELT 66 (T)];***
- ***(iv) Associated Clearing Agency vs. CC [2010 (258) ELT 395 (T)];***
- ***(v) V K Singh vs. CC [2015 (253) ELT 685 (T)]; and***
- ***(vi) CC vs. M Vasi [2003 (153) ELT 312 (T)]***

10. Lastly, he submits that his clients were not having any knowledge regarding the mis-declaration made by the importer / exporter. The appellants are not even CHA who have passed over the documents to CHA.

Appeal No. 50963/2017 (Shri Manish Khanna)

11. Shri D S Nagi, learned Advocate, at the strength of written submissions, submits that his client has declined to own the goods as he is not the owner. It is the allegation that Shri Kshitiz Sharma and Shri Manish Khanna have given the papers to Dhingra as stated earlier. Shri Naresh Kumar, Proprietor in his statement dated

28.4.11 and 6.1.12 stated that the import was made on behest of Shri Manish Khanna who has used his IEC number. He submits that regarding the statement of Shri Naresh Kumar, Proprietor, during cross examination in the presence of Shri Rahul Khanna younger brother of Minish Khanna, it was confirmed that Shri Manish Khanna was not present. Regarding the allegation that Manish Khanna was intoxicated by Rahul Khanna, he submits that later, this statement was denied. He further stated that his client is innocent. He has not participated in fraud to the exchequer.

12. Shri D S Nagi, learned Advocate further submits that his client was not involved in said smuggling of goods. He had not imported the goods or paid for it. There is absolutely no documentary evidence against him. The appellant was penalized solely on the statement of three co-accused. Except the statements, there is no evidence to corroborate the statement of co-accuse.

13 He further submits that both the co-noticee (Rajinder Dhingra (Noticee No. 7); and Shri Nikhil Dhingra are uncle and nephew to each other. No cross examination of these noticees were provided. In support of his statement, he relied on the ratio laid down in the following cases :

(i) Ram Lal Mehta vs. Dte of Enforcement 2016 (343) ELT 21 (Del)];

(ii) Mohd Tahir vs. CC, Lucknow [2012 (286) ELT 586 (Tri-Del)];

(iii) ***Vinay Aggarwal vs. CC Jaipur 2016 (344) ELT 1024 (Tri-Del)]; and***

(iv) ***Suketu Jhaveri vs. CC, Nhava Sheva [2014 (314) ELT 828 (Tri-Mum)]***

Lastly, he submits that penalty against the appellant may kindly be dropped.

14. On the other hand, learned departmental representative submits that Shri Manish Khanna has acted as a master mind to smuggled goods and evaded payment of duty thereon. The statement of co-noticee indicated that Shri Manish Khanna is corroborating and playing the architect of fraud to exchequer.

Appeal No. 50516/2017 (Shri Sandeep Rikhi)

15. Shri Sandeep Rikhi was an employee of M/s. Weiss Rohlig India (a freight forwarding company) and had friendly relationship with Shri Neeraj Chaudhary, who had requested him to assist Shri Nikhil Dhingra for the imported consignment. Statements of various persons involved were recorded including Shri Sandeep Rikhi, who in his statement dated 30.5.11 stated that he has handed over the documents and amount of duty and shipping line charges in cash to Shri Neeraj Chaudhary, who had further handed over the documents to Shri Sunil Yadav, G-card holder of M/s. Shivoy Enterprises for filing the Bill of Entry. The cash received by him was shipping line

charges given to Shri Neeraj Choudhary for getting the customs clearance done. He had acted only with Shri Nikhil Dhingra.

16. Learned Counsel for the appellant, Shri Somesh Arora, at the strength of written submissions submits that his client is innocent, the cryptic order was passed by the adjudicating authority. He also submits that there is violation of principles of natural justice. Penalties are unwarranted. He submits that no documents relied upon by the department was also provided to them. There was undue delay in passing the impugned order. From the flow chart which is attached with the written submissions, he tried to prove that appellant was in touch and got all instructions, documents etc. from Shri Nikhil Dhingra and had not got in touch with any of the persons in the chain prior to that. Therefore, his knowledge even by preponderance of probability could not have been better than that of Shri Nikhil Dhingra, who is concerned person. He further submits that Shri Nikhil Dhingra was having the knowledge. He also submits that in the smuggling of goods, there were 9 to 10 persons. But in the instant case, such connection has not been proved by the Department. Lastly, he also relied on the ratio laid down in the following cases:

(i) Anil Products Ltd. vs. CCE, Ahmedabad [2010 (257) ELT 523 (Guj)];

(ii) CCE Indore vs. Engineers Combine [2009 (15) STR 473 (Tri-Del)];

(iii) ***Anil Rai vs. State of Bihar [2009 (13) STR 465 (SC)]; and***

(iv) ***Commr of Customs (Import), Mumbai vs Vivencio Bartiloni Degollacion [2010 (258) ELT 49 (Bom)]***

17. On the other hand, learned DR has relied upon the impugned order by mentioning that he was the operating Manager in M/s. Weiss Rohlig India where he was engaged in freight forwarding business. In his statement Shri Sandeep Rikhi stated that he has received the copy of invoice along with other documents from Shri Nikhil Dhingra . He came to know Shri Nikhil Dhingra through Shri Neeraj Choudhary. After receiving the documents, he handed over them to Shri Sunil Kumar Yadav, G card holder of M/s. Shivoy Enterprises. He know Shri Sunil Kumar Yadav for last one year; that entire amount was paid through Punjab National Bank for customs duty. The same was given to him by Shri Neeraj Choudhary. He received the amount from Shri Nikhil Dhingra.

18. So, the department is of the view that Shri Sandeep Rikhi was actively involved in clearance of impugned consignment and that the statement of various witnesses corroborated one another to sustain the chain of events.

19. We have heard all the parties at length and perused the material available on record, from which it appears that M/s. Naresh Hand Work, a proprietary concern of Shri Naresh Kumar had imported the

bags in which cosmetics, readymade garments, mobile phone housing etc. were stored. The present case, undoubtedly is a case of smuggling / mis-declaration, which was committed by Shri Naresh Kumar, proprietor of firm, who had imported the goods. In this attempt, all five persons have played their own vital role.

20. Shri Kshitiz Sharma and Shri Manish Khanna have given some papers for customs clearance to Shri Rajinder Dhingra and Shri Nikhil Dhingra. Before handing over all the papers, they have not examined the contents. If there was some doubt, they might have asked and examined the sample of the goods, but they have just passed on the papers. Shri Nikhil Dhingra who is nephew of Shri Rajinder Dhingra had handed over these papers to Shri Sandeep Rikhi for clearance, who in his statement dated 30.5.11 has stated that he had handed over the documents and duty amout to Shri Neeraj Choudhary, who further handed over the documents and money to Shri Sunil Yadav, G-card holder of M/s Shivoy Enterprises for filing the Bill of Entry.

21. From the whole episode, it appears that none of the appellant has tried to know what is the real content in the impugned consignment, they just passed on the documents and money from one hand to another hand without knowing its contents. It shows their carelessness and casual attitude on their part, for which they are entitled for punishment.

22. But in the instant case, as stated above, the penalty awarded upon them is looking on the higher side, especially when they were merely part of the chain. As stated above, the main culprit is Shri Naresh Kumar, proprietor of M/s. Naresh Hand Work, who was having the full knowledge. The present appellants have just facilitated in a mechanical way the attempt of smuggling the goods. To meet the ends of justice, for their casual approach and careless attitude and by taking a sympathetic view, we modify the impugned order and impose penalty of Rs.1,00,000/- (Rupees One lakh only) under Section 112(a) and Rs.1,00,000/- (Rupees One lakh only) under Section 114AA. Thus, each appellant will be liable equally to pay total penalty of Rs.2,00,000/- (Rupees Two lakh only). For the purpose, impugned order is modified.

23. In the result, all the appeals are partially allowed.

(pronounced in the open Court on 17.01.2018)

(V. Padmanabhan)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

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