

In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.C/51015-51018,51235,51350,51366-51368,51550/2017
(Arising out of Order-In-Original No.DLI/Custom/Pre/MKV/PR Commr/10/2017 dt.
28.04.2017 passed by The Principal Commissioner of Customs (Prev.), New Delhi)

M/s Him Logistics P Ltd
Sh Ashok Sharma, Director
M/s HLPL Global Logistics P Ltd
Sh Prakash Chand Sharma, Director
Sh Daulat Ram, Director
M/s Dex Logistics P Ltd
M/s Shriniwasa Roadways P Ltd
Shri Nagendra Mishra
Shri Shriniwas Bansal
Shri Pawan Kumar Ralli ...Appellant

Vs

Commissioner of Customs (Prev), New Delhi ...Respondent

Appearance:

Present for the Appellant : S/Sh Ashish Batra, Dr Prabhat Kumar,
Jaydeep Maheshwsari, B. Bhushan,
Advocates

Present for the Respondent : S/Sh A.K. Singh, Amreesh Jain, DR

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

Date of hearing: 05.04.2018

Date of decision: 24.04.2018

Final Order No.51601-51610/2018

Per V. Padmanabhan,

All the present appeals have been filed challenging the Order-in-Original
No.10/2017 dated 28.04.2017. Specific information was received by Directorate

of Revenue Intelligence (DRI) that illegally imported Sony Televisions were stored secretly at a godown premises at Karol Bagh, Delhi, which were controlled by one Sh Bhimendra Kumar Goyal, @ Munna Goyal, @ Sh BK Goyal, @ V.K. Goyal. Search was conducted at the premises on 15.10.2014 and 120 pcs. of LED TVs of "Sony Bravia" brand of different sizes were found and seized. Subsequently, another godown premises of Shri B.K. Goyal, situated at Shahbad, Daulatpur, Delhi was also searched and 185 pcs. of LED TVs of 'Sony' Brand alongwith other goods like rice cooker, stereos, etc. were found, were seized. A White chemical substance weighing 15575 KGs was also found. A third godown of Shri B.K. Goyal situated at Shahbad Daulatpur, Delhi, was also searched on 21.10.2014 in which Red Sanders Wood weighing 7357 KGs were found and seized alongwith velvet fabrics.

2. On the basis of information that smuggled goods were being transported from Calcutta to Delhi through Container Corporation of India Ltd (CONCOR), DRI officers detained a container at the domestic terminal of CONCOR at Okhla, New Delhi, and on examination of the contents, was found to contain 423 pieces of Sony LED televisions which were seized.

3. LED/LCD/Plazma Televisions, of sizes 32" and above, were covered by the Schedule to the Electronics & Information Technology goods (Requirement for Compulsory Registration) Order, 2012. Since none of the models of seized TVs were found registered, the seized TVs of sizes 32" and above were to be considered as prohibited goods.

4. Representative samples of Red Sanders Wood, which were seized, were got tested by DRI at the Central National Herbarium, Botanical Survey of India, Howrah, and were confirmed to be Red Sanders which were prohibited for export.

5. The white chemical substance seized on 16.10.2014 was confirmed by the Chemical Examiner, CRCL, New Delhi to be Ascorbic Acid (Vitamin 'C'). Anti-Dumping duty was liable to be paid on Vitamin 'C', if imported from China.

6. DRI, Calcutta booked a separate case against S/Shri BK Goyal, Pawan Kumar Ralli, Naresh Dutta and others in connection with two containers imported at Calcutta port which were found to contain un-declared cigarettes.

7. DRI Lucknow booked another case against S/Shri Pawan Gupta and Deepak Verma in connection with 12 MTs of Red Sanders Wood attempted to be exported through ICD Tughlakabad.

8. During further investigation, DRI Calcutta found, during scrutiny of record, that one M/s Shrinivasa Roadways (P) Ltd, Calcutta were regularly transporting 20/40 ft. containers from Calcutta to Delhi, under the Inland Weighing Bills issued by CONCOR.

9. Detailed investigation was carried-out by DRI, in to the allegations of smuggling of televisions of sizes 32" and above, illegal import of Vitamin 'C' as well as illegal attempt to export contraband in the form of Red Sanders Wood. The statements of various connected persons were recorded including that of Shri Bimendra Kumar Goyal, the alleged kingpin of entire smuggling racket.

10. Upon conclusion of the investigation, DRI issued SCN dated 14.10.2015. After adjudication of the case, the impugned order was passed in which, *inter alia*;

- a) The seized goods are contraband in the form of prohibited goods, i.e., Red Sanders Wood as well as televisions of size above 32" were confiscated absolutely.
- b) All other seized goods (which were not prohibited goods) were ordered for confiscation but were allowed for redemption on payment of fine.
- c) Payment of customs duty was ordered on various electronic goods (which were not prohibited goods).
- d) Penalties were imposed on various firms and individuals involved in the whole case.

11. Appeals stand filed before us only by the above 10 appellants. No appeal is on record filed by any other persons. All the appeals are disposed-of by this common order.

12. With the above background, we heard S/Shri Ashish Batra, Dr Prabhat Kumar, Jaydeep Maheshwari, B. Bhushan, Advocates on behalf of appellant and S/Shri AK Singh, Amreesh Jain, DR on behalf of the respondent.

13. The appeals filed by various parties are discussed below one by one:

A) Appeal Nos.C/51015,51017,51016,51018/2017 - filed by M/s HIM Logistics (P) Ltd, M/s HLPL Logistics (P) Ltd and the Directors S/Shri Ashok Sharma and Parkash Chand Sharma:

a) Penalties have been imposed on all the 4 appellants in the impugned order. The case of the department is that the appellants have acted as a Customs Broker at the Delhi Port with respect to some of the firms alleged to have been used by Shri Bhimendra Kumar Goyal for his nefarious smuggling activities. It has been alleged that two firms-M/s Singh Impex and M/s Karan Overseas were opened by the same persons with two different names Shri Karan Singh and Shri Karan Arora. It is alleged that the appellants did not verify the antecedents of the said firms and facilitated imports by Shri BK Goyal in the name of bogus firms. It is further alleged that both Shri Ashok Sharma and Shri Parkash Chand Sharma were well-aware about the two firms being owned by one person and thereby facilitated the clearance of imports in the name of dummy firms.

b) The submission of the Id Advocate in this regard is that during the course of investigation, the DRI has identified various consignments/containers/importers/CHA through which the smuggled goods were brought into the country. It was pointed-out that the

appellants name (as CHA) does not figure place in the list of such imports. It is further submitted that the documents regarding IEC were obtained by the appellant and hence penalties imposed were not justified.

- c) We have examined the contentions raised by the appellants vis-à-vis the charge against them made in the impugned order. We note that the allegations made against the appellants are not borne by the evidence on record. Since appellant's name does not figure in any of the fraudulent imports identified by DRI, we find no justification for the penalties imposed on the above four persons. For the charge, that the appellants have failed to carry-out verification of KYC documents, no penalty can be imposed under the provisions of Section 112 or 114A. The right course of action available for the same is in terms of CBLR 2013. In view of above, we set-aside the penalties imposed on all the four persons.

B) Appeal Nos. C/51350, 51235/2017- filed by M/s Dex Logistics P Ltd and Shri Daulat Ram, Director

- a) The allegation made against the appellant is that as CHA, they facilitated custom clearance of imports made by Shri BK Goyal in the name of different importers. It is alleged that all the documents were provided by Shri BK Goyal and payment of duty was also made by him in cash.

b) The Id Advocate submitted that Revenue has not brought out the details of any bill of entry, on the basis of which the appellants can be alleged to have facilitated unlawful import of any goods. It is submitted that in the absence of any such specific Bill of Entry, the charge against the appellants cannot be sustained. He prayed that the penalty under Section 112/114AA may be set-aside.

c) On perusal on record, it is seen that the allegations against the appellant are that they facilitated customs clearance of goods on behalf of Shri BK Goyal. The statement of Shri Daulat Ram, Director is on record. However, it is seen that the allegation is not specific to any Bill of Entry identified against the appellant. In the absence of specific allegation, the charge of facilitation of illegal import cannot be sustained against the appellants. Further, it is seen that no relied upon documents have been made available to the appellant by the Adjudicating Authority. Consequently, we set-aside the penalties imposed on two appellants.

C) Appeal Nos.C/51366,51367,51368/2017- M/s Shriniwasa Roadways P Ltd, Sh Nagendra Mishra, Shri Shriniwas Bansal

a) The appellant is engaged as an agent of CONCOR and according to the booking orders received, loaded containers are transported through CONCOR. During the course of investigation, the DRI established that 43 containers containing smuggled electronic items were transported by the appellant from Calcutta to Delhi. The names of consignors of these consignments were identified as one or the other of the fictitious firms found to have been used by Shri BK Goyal for import at Calcutta and the

movement of illegally imported goods from Calcutta to Delhi. The investigation has established that through these 43 consignments, huge quantity of smuggled electronic goods were transported to Delhi and arranged to be sold by Shri BK Goyal in cash. The consignors were all found to be fictitious. The container which was intercepted by DR in the CONCOR yard in Delhi was also transported by M/s Shriniwasa Roadways and found to contain electronic goods, such as televisions. It stands admitted in the statements of Shri Nagendra Mishra as well as Shri Shriniwas Bansal that their companies had booked various consignments in the name of many fictitious firms. It further stands admitted that they used to send empty containers to some place as per the instructions of either Shri Rajesh or Shri Vijay on phone and the goods were loaded at such place and then transported by M/s Shriniwasa Roadways.

- b) After consideration of the evidence on record, we are of the view that the appellants have admitted to the transportation of 43 containers from Calcutta to Delhi through CONCOR. It further stands admitted that they have booked the consignments showing their name as consignor on behalf of fictitious firms. Both Shri Bansal and Shri Mishra have admitted in their statement that empty containers were dispatched for loading of goods at places intimated telephonically. We are of the view that the appellants have to be held responsible for facilitating the illegal import carried-out by Shri BK Goyal and Shri Rahul Goyal. Consequently, we find no reason to interfere with the penalties imposed on them

which were sustained for the reasons mentioned, in detail, in the adjudicating order.

D) Appeal No. C /51550/2017- filed by Shri Pawan Kumar Ralli

- a) It is the submission of the Id Advocate that no penalty is liable to be imposed on Shri PK Ralli. Penalty stands imposed on the appellant on the basis of the statements recorded from Shri Ashok Kumar Sharma as well as Shri PC Sharma of M/s HIM Logistics who have stated that the papers regarding the import by one of the fictitious firms i.e. M/s Jagdamba Enterprises was provided by Shri PK Ralli. Further, in the statement of Shri NK Jha, prop. of M/s Jagdamba, he stated that Shri PK Ralli had misused the IEC issued in their name. The Id Advocate submitted that Shri Ralli has been falsely implicated only on the basis of statements made by co-accused.
- b) It is further submitted that Shri PK Ralli was arrested on 13.10.2014 and was in the custody of DRI Calcutta and hence could not have handed-over documents pertaining to Bill of Entry 7069884 dated 15.10.2014 of M/s Mehak Overseas.
- c) We have carefully considered the statements urged on behalf of the appellant vis-a-vis the evidence on record and the findings of the adjudicating authority. Shri PK Ralli is alleged to have been actively involved in the clearance of various goods imported by Shri BK Goyal in fictitious names. From the statement of Shri Ralli, it is revealed that he used to receive monetary consideration to the extent of Rs.3 to 4 lakhs per container from Shri BK Goyal. Shri Ralli is found to

have acted as middleman and cleared several consignments of Shri BK Goyal in the past. He has admitted to have introduced many of the fictitious firms to the CHA M/s HIM Logistics or M/s HLPL Global Logistics. For such introduction, Shri PC Sharma of M/s HIM Logistics used to provide him commission on the basis of which consignment was imported in the name of fictitious firms. The role of Shri Ralli is too significant to be ignored in the overall scheme of smuggling orchestrated by Shri BK Goyal.

- d) In view of the above discussions, we find that the active role played by Shri PK Ralli in the scheme of illegal import under the direction and scheme of master-minded Shri BK Goyal stands established. We find no reason to interfere with the penalty imposed on him which is sustained for the detailed reasons outlined in the impugned order.

14. In view of the above detailed discussions, all the appeals are disposed-of as above.

(Pronounced in the court on 24.04.2018)

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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