CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO. II

Customs Appeal No.496 of 2010-Customs (DB)

(Arising out of Order-in-Original No.19/2009 dated 5.3.2009 passed by the Commissioner of Customs, ICD, Tughlakhabad, New Delhi]

Shri Vijender Kumar Anjan **Appellant**
General Manager & Authorised Signatory of
M/s.Dollar Poly Pipes (India) Limited,
529, Sector 12, Panchkula (Harayana).

VERSUS

Commissioner of Customs **Respondent**
Inland Container Depot,
Tughlakhabad, ICD,
New Delhi.

APPEARANCE:

Shri Prabhu Dayal Trivedi with Shri Surya Kumar, Advocates for the appellant.
Shri Sunil Kumar, Authorised Representative for the respondent.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.50758/2019

DATE OF HEARING: 27.11.2018
DATE OF DECISION:31.05.2019

ANIL CHOUDHARY:

The appellant is in appeal against the impugned order by which penalty of Rs.25 lakh has been imposed under Section 112 of the Customs Act, 1962.

2. The brief facts are that the appellant is an MBA had joined Aravali India Ltd., Hissar in 1992, which was engaged in the manufacture of Rigid PVC Pipes and G.I. Pipes. Shri Vinod Kumar Bansal was the main share

holder and Managing Director of the Company. In the year 2000, Shri V. Kumar Bansal established a new company under the name and style – "Dollar Polly Pipes (India) Ltd. ("DPPL" for short) at Patiala district having its corporate office at Panchkula. The appellant was appointed as Director (Marketing) and thereafter he resigned from Aravali India Ltd., Hissar. The production of Rigid P.V.C. Pipes started in the year 2002 in the said new company "Dollar Poly Pipes". Besides the appellant, there were two more Directors viz. Shri Nand Lal and Shri Rajendra Kumar. Shri Nand Lal was also the Marketing Officer, whereas Shri Rajendra Kumar was the Security Officer. Shri Vinod Kumar Bansal although was a promoter of the said Dollar Pollar Pipes but did not become a Director, as he was defaulter of 'Haryana Financial Corporation'. The said Dollar Poly Pipes got sanctioned term loan of Rs.1.53 crores against the factory land from Punjab State Industrial Corporation and alsoRs.75 lakhs from UCO Bank, Chandigarh in the year 2002. Shri Vinod Kumar Bansal was the Chairman of DPPL for about 3 months and thereafter, resigned, and continued to work as General Manager. This appellant was employee/Director for sometime and he resigned from Directorship w.e.f. 15.03.2004, and at the relevant time, shri S. Bhardwaj was appointed as Managing Director w.e.f. 15.3.2004 in DPPL. Thereafter, vide a further change in Partnership, Shri Dharamvir Bansal was appointed as Managing-cum-wholetime Director w.e.f 20.04.2004. Shri Dharamvir Bansal has sworn an affidavit dated 13.06.2005 before the Executive Magistrate, stating that he is the Managing Director of DPPL since April, 2004. The said company has got machineries for manufacture of Rigid PVC Pipes and that the company has taken or obtained advance licence from DGFT, Ludhiana for 800 MT of raw materials and the said company was working under the guidance of Shri Vinod Kumar Bansal. It is further stated in the affidavit that Mr. Vijendra Kumar-the appellant, is not involved with the working of the company, and has not signed documents as Director of the said company, and further stated that he (D. Bansal) is responsible for overall performance, tax compliance, labour law compliances, etc for the company. Thereafter, an appellate order was passed by the Additional DGFT, New Delhi dated 03.08.2012 being in appeal against the order of adjudication No.9/2-AM-06-ECA-Jt-DGFT/LDH dated 14.06.2006, wherein penalty was imposed on DPPL and its directors, including the present appellant, for non-fulfilment of export obligations against advance authorisations (i) No.3010040024 dated 27.01.2005, (ii) No.3010040420 dated 14.02.2005, (iii) No.3010040735 dated 1.3.2005 and (iv) No.3010040734 dated 1.3.2005.

3. The ld. Additional DGFT concluded by his order no.F.No.11/523/2011-12/ECA.1/1302 dated 3.8.2012, to the effect that the name of the Vijender Kumar (appellant) is deleted from the adjudication order, (under appeal) passed by the Joint DGFT, Ludhiana, modifying the said impugned order-in-original.

4. Further, the present appellant also filed civil suite no.192 of 2009 on 24.03.2009 before the Addl. Civil Judge, Senior Judge, Derabassi, Punjab against the said Dollar Poly Pipes and Shri Dharam Vir Bansal, has declared that this appellant is not responsible for any liability of the said company – Dollar Poly Pipes, and restrained the director of the said Dollar Poly Pipes from referring the creditors to appellant, by way of permanent injunction held that this appellant is not responsible for any type of liability on behalf of the said Dollar Poly Pipes, as he is not more Director of the Company since 15.03.2004.

5. There was another company viz. Shivalik Plastichem India Ltd.. which was involved in similar activities, controlled by the said Mr. V.K. Bansal, in which also the present appellant was the employee director, and he resigned from the directorship w.e.f. 2.7.2004, and w.e.f. the very same date, another director was appointed viz. Ekta Bansal w/o V.K. Bansal and Vijay Kalra. Further, the said D.V. Bansal s/o Pyare Lal Bansal, who was already the Managing Director of DPPL was also appointed as Chairman-cum-Managing Director of Shivalik Plastichem w.e.f. 10.07.2004. The said Shri D.V. Bansal also sworn a similar affidavit before the Executive Magistrate, Panchkula on 13.06.2005, as hereinabove mentieond in the case of DPPL. vide another order-in-appeal No.F-11/249-270-11/ECA/225 dated 17.11.2011 against the order of adjudication no.57.01/AM 2009/CHD dated 25.06.10, passed by the Joint DGFT, Chandigarh, in the matter of Shivalik Plastichem India Ltd. and its directors and ex-director, imposing physical penalty for non-fulfilment of export obligations against advance licence no.2210000/049 dated 22.12.2004; the ld. Addl. DGFT, New Delhi held that the present appellant and one Shri Raj Kumar, Ex-Director are not responsible for the default by the said Shivalik Plastichem and ordered deletion of their names from the adjudication order dated 25.06.2010.

6. Another Civil Suit No.28/25-2010 has also been filed by this appellant before the District Civil Judge, Derabassi, which was decided by the judgement dated 14.01.11 by the Civil Judge, Junior Division, Derabassi, granting relief to the present appellant and holding that he is not responsible for any kind of liability of the defunct company –Swastik Plastichem India Ltd., as he was no longer Director of the said company w.e.f. 2.7.2004.

7. The brief facts are that one Shri V.K. Bansal was the master mind and person behind these two companies viz Dollor Poly Pipes (India) Ltd. and Shivalik Plastichem (India) Ltd., who obtained advance scrips authorization for free importation of goods (raw materials), which were supposed to be used in the manufacture of finished Products and after manufacture to be exported and to achieve net foreign exchange earning. However, the said Shri Vinod Kumar Bansal in collusion with one Shri Vinod Kumar Garg, Managing Director of Veekay Poly Coats Ltd., Gurgaon imported and diverted the raw materials clandestinely in the open market. Further, the said Shri Vinod Kumar Bansal in order to escape from the clutches of law, always made his employees as Directors in the said companies. Pursuant to investigation, show cause notice was issued proposing to confiscate the imported raw materials. So far as the Dollar Poly Pipes (India) Ltd. is concerned as regards 40 MT of PVC resins having assessable value of Rs.13,17,236/- imported through Mumbai Sea Port and further demand of customs duty on the same, amounting to Rs.7,82,711/-, which was foregone at the time of import. Further, proposal to impose penalty under Section 112 (a) and (b) and /or under Section 114 A on the present and the past directors including the present appellant-Shri V.K. Anjan.

8. Further, show cause notice proposed to confiscate 800 MT. of PVC resins having assessable value of Rs.3,39,02,757/-,imported through ICD, Tughlakabad, by DPPL, with similar proposal to confiscate and demand duty amounting to Rs.96,66,209/- along with penalty. Further, as regards import by Shivalik Plastichem for import of 280 MT of PVC resins, having assessable value of Rs.1,15,40,196/- through ICD, Tughlakabad, for demand of duty of Rs.30,70,792/- alongwith similar proposal of confiscation and penalty.

9. Further, various persons, who were either directors or employees of the company, at different points of time, including this appellant were required to show cause on the penalty be not imposed should not be imposed under Section 112 (a) and (b) read with Section 114 A of the Customs Act.

10. The Adjudicating Authority took notice that Shri Vinod Kumar Garg, Managing Director of Veekay Polycoats Ltd., had approached the Settlement Commission with respect to imports though ICD, Tughlakabad, by these two companies and had got settled the disputes by paying duty with interest and penalty, as fixed by the Settlement Commission, vide Final Order No.F-704/2—7 (SC) PB dated 20.12.2007. Further, the Settlement Commission have granted immunity from prosecution.

11. In the proceedings before the Adjudicating Authority, the present appellant appeared and filed written reply wherein he submitted that he was only the employee-director for a short period of time, and had nothing to do with the import of PVC resins and its diversion in the open market. He also relied upon the settlement done before the Settlement Commission, with respect to import through ICD, Tughalakabad by the said Shri Vinod Kumar Garg. It is further stated that the balance matter relates to import of 40 M.T. of PVC resins having value of Rs.13,77,236/- through Mumbai Sea Port, by the said DPPL. It is further stated that it is wrong to state that he was appointed as General Manager of DPPL, though he remained a Director for sometime only and resigned on 15.03.2004, and further stated that he had informed the Asstt. Commissioner of Central Excise, Chandigarh, DGFT and others, and stated that he is no longer associated with the said company, DPPL and Shivalik Plasticam and also relied upon the affidavit of the subsequent Director, which is referred to hereinabove, by which he stated

that the present appellant is nowhere responsible for any dues and for any type of fiscal liability of these companies. Accordingly, he prays for allowing the appeal.

12. Ld. Authorised Representative for Revenue have relied on the impugned order. Further, ruling in the case of **Mamta Garg - 2018 (359) ELT 77 (Tribunal-Delhi),** he states that this appellant cannot get benefit of settlement order in case of Shri V.K. Garg (main accused). He further states that, in statement recorded Mr. Vinod Kumar Bansal have stated that Bank Guarantee was forged by them, (him and the present appellant). Further, urges that penalty imposed is just and proper.

13. Having considered the rival contentions, I find that the present appellant resigned from directorship of both the companies in April-June, 2004, on coming to know of the nefarious activity and intention of Mr. Vinod Kumar Bansal. Further, I find that the Addl. DGFT, New Delhi have in appellate orders, mentioned hereinabove, ordered deletion of name of this appellant from the adjudication orders, with respect to the disputed "Advances Authorisation Licenses".Further, I find that the adjudicating authority have not found complicity on the part of the present appellant. Rather it is the finding that Mr. Vinod Kumar Bansal in collusion with Mr. Vinod Kumar Garg of Veekay Poly Coats Ltd., imported and diverted the PVC-resins, in violation of the conditions of the Advance Authorisation Licence. Further, Mr. Vinod Kumar Bansal was the actual owner and mastermind behind the activities of both DPPL and Shivalik Plastichem. Thus, this appellant, being an employee, only accepted directorship of the two companies under instructions of his employer, and was not personally involved.

14. Therefore, the appeal is allowed in part and the penalty under Section 112 is reduced to Rs.50,000/-(Rupees fifty thousand only). The appellant is entitled to consequential benefits.

[Order pronounced on 31.05.2019.]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Ckp..