

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
EASTERN ZONAL BENCH: KOLKATA**

Cus.Appeal Nos.78403-78406/18

(Arising out of Orders-in-Appeal Nos.38-41/Pat/Cus/Appeal/2018 dated 31.05.2018 passed by Commr.(Appeals) of CGST & Excise, Patna)

Shri Suresh Kr.Singh
Shri Binay Kr.Singh
Shri Gopal Prasad Sharma
Shri Nakul Singh

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Prev.), Patna I

Respondent (s)

Appearance:

Miss Reena Rawat, Advocate for the Appellant (s)
Shri A. K. Singh, Asstt. Commr. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 30.11.2018

Date of Decision : 30.11.2018

ORDER NO...FO/A/77020-77023/2018

Per Bench :

The present four appeals have been filed against the Orders-in-Appeal Nos.38-41/Pat/Cus/Appeal/2018 dated 31.05.2018.

2. The brief facts of the case are that the Customs Department seized certain readymade garments totally packed in 15 gunny bags and bore markings as "Made in Bangladesh" and "Jack & Jones". The seizure of the goods was made at Patna Railway Station on the reasonable belief that the goods were smuggled goods. Further

investigations were undertaken and follow-up action was taken in different places where the consignee of the goods were said to be located. Upon conclusion of investigation, show-cause notice dated 25.05.2015 was issued proposing to confiscate the seized goods. The issue was adjudicated by passing the Order-in-Original No.28-Cus/ADC/HQRS/2015 dated 27.11.2015, in which the Adjudicating Authority determined the value of the seized goods at about Rs.13.71 lakhs, but ordered confiscation of the goods under the provisions of Section 111(b) & (d) of the Customs Act, 1962. Redemption of the confiscated goods was permitted on payment of redemption fine of Rs.4 lakhs. Penalty of Rs.1 lakh each were imposed on the four appellants. Out of the four persons, Shri Suresh Kr.Singh was the owner of the Courier Agency who transported the goods and the other three persons claimed to be owner of the goods. When the issue was carried out before the Commissioner (Appeals), he upheld the impugned order. Hence the present appeals.

3. Heard Miss Reena Rawat, Id. Advocate on behalf of the four appellants and Revenue is represented by Shri A. K. Singh, Id.D.R..

4. The Id.Advocate submitted that the goods were ordered for confiscation on the presumption that the goods were smuggled into India. She emphasized the fact that these goods were in the nature of readymade garments, which are not notified goods under Section 123 of the Customs Act, 1962. Only on the basis of certain labels which bore markings as "Made in Bangladesh" and "Jack & Jones", the goods cannot be presumed to be smuggled goods. As such, she prayed that

the confiscation of the goods be set aside. She relied upon various case laws to support her arguments including the following :

(i) B.Laxmichand Vs. Government of India : 1983 (12) ELT 322 (mad.) ;

(ii) Commr. of Customs (Prev.), Patna Vs. Manish Kakrania : 2009 (247) ELT 591 (Tri.-Kolkata) `

(iii) Uma Trading Company Vs. CC (Prev.), Patna : 2013 (289) ELT 300 (Tri-Kolkata).

5. The Id.D.R. for the Revenue justified the impugned order. He specifically relied on the findings of the Id.Commissioner (Appeals) in Paras 7 & 8, in which, he has given reason as to why the goods have been considered as smuggled goods and have been ordered for confiscation of the goods.

6. Heard both sides and perused the records.

7. As per the facts on record, the certain readymade garments totally packed in 15 gunny bags were seized from the Patna Railway Station. The examination of the goods revealed that they bore markings as "Made in Bangladesh" and "Jack & Jones". The lower appellate authority has observed that the brand name of "Jack & Jones" belongs is a top international brand name for readymade garments. On the basis of brand name sticker found on the garments as well as marking as "Made in Bangladesh" on the garments, he has concluded that the goods were of foreign origin. But he has also observed that the goods appears to be crudely manufactured and documents accompanied were fabricated.

8. It is not in dispute that the readymade garments are not notified goods in terms of Section 123 of the Customs Act, 1962. Consequently, before coming to the conclusion that the seized goods are of foreign origin, the Customs Department was required to establish by means of evidence that the goods are of smuggled goods. Mere fact that the goods bore foreign markings, will not be enough to conclude that the goods were smuggled. Hence, we are of the view that the investigation undertaken by the Revenue has failed to establish that the goods were smuggled.

9. We have also carefully considered the various case laws relied upon by the appellants. In the case of Manish Kakrania (supra), this Bench of the Tribunal has observed as follows :

"6. In the present case, the Revenue wants to impose penalty on the respondents under Section 112(b) of the Customs Act which provides penalty in respect of a person, who is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing in respect of the goods, which he knows or has reason to believe is liable for confiscation. The goods in question are not notified goods under Section 123 of the Customs Act, 1962. Therefore, the onus is on the Revenue to prove that the goods are smuggled into India. There is no evidence on record to show that the goods are smuggled into India. The Mobile phones are not restricted items for import and the same are freely traded in India. In the circumstances, I find no infirmity in the impugned order and both the appeals are dismissed."

Similar views have been taken by the Tribunal in the case of Uma Trading Company (supra), wherein the Tribunal has observed as under:

"6. We have carefully considered the submissions and perused the records. Undisputedly the goods involved in this case is rain coat, trousers and wrist watch chains. The goods are not notified under Section 123 of Customs Act, 1962. We find that once the goods are not notified, the onus lies on the department to show that the goods are smuggled goods. The appellant produced the bill for the said goods i.e. cash memo No. 384 dated 30-6-2001 and 22-9-2001. The show cause notice in this case was issued on 12-10-2001. We find that both the lower authorities have referred to these cash memos. The applicant produced the cash memo prior to issue of show cause notice. Nothing prevented the department to carry out further investigation to check the veracity of the documents. The decisions in the case of Kewal Kishan and Sambhu Nath pertains to smuggled goods of gold and silver and therefore they are not relatable to this case. So far the decision cited by the Id. AR in the case of Nazir Ur Rahman (supra) is concerned we find that in that case the persons from whose possession the goods were recovered were not able to establish how they come to possess the said goods whereas in the instant case, the appellants have produced the cash memos for purchase of the said goods and the department could not produce anything contrary or challenged the veracity of the said documents. As already discussed, supra, the onus rested with the department to show the smuggled nature of the goods. The department could not discharge that onus. In these circumstances the Id. Commissioner order is not sustainable and is accordingly set aside and appeals in the case of above three appellants are allowed with consequential relief, if any, as per law. It is made clear that no appeal has been filed in respect of

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chain, therefore the present order is limited to the extent of rain coats and trousers only”.

10. As discussed above, the seized goods have not been conclusively established as smuggled goods. Hence, by following the ratio of the above case, we set aside the impugned order and allow all the appeals.

(Dictated and pronounced in the open court.)

Sd/
(P.K.Choudhary)
Member (Judicial)
mm

Sd/
(V.Padmanabhan)
Member (Technical)