

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NOS: C/101 & 102/2012

[Arising out of Order-in-Original CAO No: 73/2011/CAC/CC/BKS dated 24th October 2011 passed by the Commissioner of Customs (Adjudication), Mumbai.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : Yes |
| 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : Yes |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : Seen |
| 4. Whether Order is to be circulated to the Departmental authorities? | : Yes |
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Parikh Clearing Agency Pvt Ltd
Rupin Parikh

... Appellants

versus

Commissioner of Customs (Adjudication)
Mumbai

...Respondent

Appearance:

Shri Anil Balani, Advocate for appellants

Ms Trupti Chavan, Assistant Commissioner (AR) for respondent

CORAM:**Hon'ble Shri C J Mathew, Member (Technical)****Hon'ble Shri Ajay Sharma, Member (Judicial)****Date of hearing: 11/02/2019****Date of decision: 20/03/2019****ORDER NO: A/ 85544-85545/2019**Per: C J Mathew

The present appeals challenge the penalties imposed on M/s Parikh Clearing Agency Pvt Ltd and Shri Rupin Parikh, Director of M/s Parikh Clearing Agency Pvt Ltd, for having filed bill of entry for the import of mobile accessories, viz., battery charger, housing, etc, following which proceedings were initiated against the importers, along with a number of other noticees, for undervaluation by manipulation of documents.

2. The primary contention of Learned Counsel for appellants is that the alleged organizer of the *modus operandi*, involving M/s Max Enterprises, Mumbai at Air Cargo Complex, Ahmedabad and JNCH, Shri Jaywant Thakar, and that the contents of his statements, having been denied by Shri Rupin Parikh, could not be the basis for any detriment. It was also pointed out by him that in proceedings against a live consignment, initiated at the same time as the consignments impugned herein, the first appellate authority dropped the penalties. It

is also contended that statements relied upon lacked validity without subjecting them to cross-examination as prescribed in section 138B of Customs Act, 1962.

3. Learned Counsel relies upon the decision of the Tribunal in *Natvar Parik & Co Pvt Ltd v. Commissioner of Customs, Chennai* [2012 (281) ELT 116 (Tri.-Chennai)] which has held that there is no bar on the custom house agent being contacted by logistic companies and that action against custom house agent was not sustainable without sufficient evidence and contends that the Hon'ble Supreme Court in *Andaman Timber Industries v. Commissioner of Central Excise, Kolhapur* [2015 (324) ELT 641 (SC)] as well as the Hon'ble High Court of Delhi in *Basudev Garg v. Commissioner of Customs* [2013 (294) ELT 353 (Del.)] disapproved of proceedings in which untested statements were relied upon.

4. Learned Authorised Representative narrated the course of events and the recovery of material that established foreknowledge on the part of the appellants.

5. We find from the impugned order that the request for cross-examination was denied on the ground that such could be allowed only after examination-in-chief and that the denial of permission for cross-examination does not violate the principles of natural justice. Impliedly, it was held that such cross-examination is mandated only

when reliance is placed on a departmental witness. The provisions in section 138B of Customs Act, 1962 are amply clear as enunciated in the two decisions cited by Learned Counsel for appellants. In the absence of credibility assignable to these statements which are not substantiated by facts and circumstances, validation through cross-examination is essential. It is clear that in the findings, the appellants were held liable to penalty under section 112 of Customs Act, 1962 on the basis of statements of Shri Jaywant Thakar, whose statement has been taken at face value by the adjudicating authority in the absence of retraction and their alleged role in some other imports. The finding that the

'the defence taken by the two noticees is without substance, and, therefore, of no consequence and of no help to the noticees.'

does not appear to be based on any sound footing.

6. Differential duty has been demanded from M/s Max Enterprises, the importer on record. The appellants were, undisputedly, concerned with the import of goods to the extent of filing the necessary documentation. There is no evidence on record that the appellants were aware of the quality and the value of the goods; indeed, unless any person, other than importers, are clearly brought on record as having participated in the conspiracy from the placement of the order, the charge on such person will not succeed.

Mere filing of documentation that may contain wrong details, unless established as deliberate act on the part of the customs house agent, cannot be held against them. Accordingly, we find that the evidence against the appellants are insufficient to establish that any act of theirs had rendered the goods liable for confiscation and, therefore, liable to penalty.

7. The appeals are allowed in consequence.

(Pronounced in Court on 20/03/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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