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

APPEAL NO.C/85293 to 85295/2013

(Arising out of Order-in-Appeal No.105/2012 dated 28.09.2012 passed by the Commissioner of Customs (Import), JNCH, Nhavasheva, Raigad, Maharashtra)

Chandra Shekhar R. Shukla : **Appellant**
504 Rekha Apartment, Amrut Nagar
Ghatkopar (W), Mumbai 400 086

VS

Commissioner of Customs, (Imports) : **Respondent**
Jawahar Nehru Custom House,
Post Uran, Dist. Raigad,
Nhava Sheva 400 707

Appearance

Shri Anil Balani, Adv for Appellant

Trupti Chavan, AC (A.R) for Respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 09.05.2019
Date of decision : 09.05.2019

ORDER NO. A/86026-86028/2019

Per : **P Anjani Kumar, Member (Technical)**

Different importers namely Modern Impex, M/s. Gaylord Impex and M/s. Aarey Impex, Modern Impex have filed B/E No.738809, 7338810, 731182 of date 09.11.2004 declaring the goods to be Walkman, Radios and Rechargeable Lantern. On examination it was found that the consignment contained Radio cassette recorder, DVD player, Emergency lights, Dry iron, Cordless phone, Shampoo, Deodorant and Perfumes. As there was mis-declaration, the goods was seized and Show Cause Notice was issued to the three importers as well as proposing penalty on other persons. The same were confirmed by the Commissioner vide order No.104, 105 and 106/2012. Among the persons on whom penalty was imposed was the Appellant Shri Chandrashekhar Shukla who filed these three appeals C/85293 to C/85295/2013. The department alleged that Shri Anwar Hanif Khan named Shri C. R. Shukla as the main person behind the three imports; Mr. Bhansare had instructed CHA Shri Shailesh Singh that he broke off from Shri C. R. Shukla, call record shows that all the concerned persons were in very frequent touch with each other.

2. Learned Counsel for Appellant submits that Appellant did not commit any Act rendering goods liable for confiscation under Section 111(e), 111(f), 111(j), 111(h); Shri Pansare approached him for help in clearance of the above imports; The Appellant did not entertain him even when he came alongwith Shri Anwar; search at the Appellants residence and office did not lead to recovery of any evidence; Shri Anwar who is the co-accused; in his statement dated 28.12.2004 alleged that Shri Iqbal of M/s. Gaylord Impex has financial dealings with the Appellant; there was no allegation regarding M/s. R.A. Impex and M/s. Modern Impex; moreover Shri Anwar retracted his statement and that department rebuttal contains no date. He relied upon the following cases to submit that penalty cannot be levied upon without

corroborative evidence and nearly on the basis of statement of co-noticee.

He submitted that penalty is imposed on the Appellant only on the basis that there were telephonic talks with Shri Anwar and Pansare and due to his past conduct. The Appellant never made any claims for the goods, no payment have been traced to him or by him therefore penalty cannot be imposed on vague observation and presumption.

3. Learned AR reiterate the findings of OIO and submitted that, Imported goods were found to be grossly mis-declared in terms of quantity, description and value; the importer Anwar who masterminded (para 13 on page 3 of the impugned order) the 3 imports in the names of M/s. R.A. Impex, M/s. Modern Impex and M/s. Gaylord Impex named this Appellant as the main person/financer behind the whole case; call records showed that all the concerned persons were in touch with each other during the investigations; Pansare stated that he was directed by Anwar to contact the Appellant in case of any problem; The Appellant and Anwar have been meeting each other; The past conduct of the Appellant proved the charges against him; Anwar's retraction was not reliable because he did not make any complaint of duress to the Magistrate.

4. Heard both the sides and perused_ the records of the cases. We find that penalty of Rs.10,00,000/-, Rs. 20,00,000/- and Rs.10,00,000/- has imposed on the Appellant. In going through the Order in Original the role of Appellant was shown to be the main

person behind the whole case and that is based on the statement of Shri Pansare who had claimed before the CHA that he has taken up with Shri C.R. Shukla and the statement of Shri Anwar saying that he had financial dealing with M/s. Gaylord Impex one of the importer and the fact that there are some call records showing conversation between the person involved, other than this no evidence has been brought to justify the imposition of penalty to Shri R. C. Shukla. It has not been brought out as to the exact role he played in rendering the case liable for confiscation in the Show Cause Notice nor the adjudication authority conclude that he would have been benefitted in any manner had the import been through. He *understandably the revenue cannot conclude with a clinical precision. However the case cannot be built on the basis of vague statement of the co-accused and more existence of call records. It has been considerably held by the tribunal that though the theory of preponderance of probability is hall mark in evasion cases of taxation than proof beyond doubt there should be some evidence, document to support scope for such pre-pondence of probability. We find that no such record is available. It is reinforced by the fact that no evidence of any sort has been found during the search of the Appellant residence. It is also not clear whether investigation could reach of the actual importer. In such situation imposition of penalty on the Appellant without properly establishing his role is not acceptable. We find that the ratio of the cases submitted by the Appellant reinforce the same.

5. In view of the above, appeal are allowed with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(D.M. Misra*)*
Member (Judicial)

(P Anjani Kumar)
Member (Technical)

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