

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 740 of 2012

(Arising out of Order-in-Original No. Commr.(Adj.)/NCH/11/2012 dated 04.04.2012 passed by Commissioner of Central Excise (Adjudication), New Delhi)

Commissioner of CustomsAppellant
(Import) Nhavasheva

Jawaharlal Nehru Custom House,
Post Uran, District Raigad,
Nhavasheva - 400707

VERSUS

M/s Nagpal InternationalRespondent
Rakesh Nagpal

184, Sarojini Nagar Market,
New Delhi - 110002

Appearance:

Smt. Trupti Chavan, Authorized Representative for the Appellant
None for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88542 / 2018

Date of Hearing: 12.12.2018
Date of Decision: 12.12.2018

Per: S.K. MOHANTY

Brief facts of the case, leading to this appeal are as under:

1.1 The Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit received a specific intelligence that M/s Health Impex and M/s Nagpal International were engaged in imports of "Fitness/Health Equipments" by declaring under invoiced value of the said goods, with intent to evade payment of customs duty; that Mr. Rakesh Nagpal was the proprietor of M/s Nagpal International and another firm M/s Health Impex was owned by Mr. Praveen Nagpal, brother of Mr. Rakesh Nagpal; that both the

above firms had imported health equipments from China, Taiwan and Korea. Based on intelligence, investigations were initiated against M/s Health Impex owned by Mr. Praveen Nagpal. In the course of investigation, e-mails of Mr. Praveen Nagpal along with various records were resumed by the officers of DRI. Further investigations were also carried out at various premises belonging to M/s Nagpal International. During the course of search operation, fitness equipments valued at Rs.50,96,400/- were found by the department, which were seized and later on provisionally released on furnishing of bond and bank guarantee. In the course of investigations, the statement of Mr. Rakesh Nagpal was recorded under summon, wherein he had confronted with the details of e-mail regarding the import of health equipments.

1.2 On the basis of investigation, the Additional Director of DRI, New Delhi issued the show cause notice dated 04.06.2010 to M/s Nagpal International and its proprietor Mr. Rakesh Nagpal, asking them to show cause as to why:

(i) The value of the goods amounting to Rs.2,22,14,644/- declared by him at the time of import should not be rejected in terms of Rule 10A of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act ibid and the goods should not be assessed at the revised total value amounting to Rs.4,64,54,086/- worked out in terms of Rule 6 of the Valuation Rules, 1988/Rule 5 of the Valuation Rules, 2007 and Rule 8 of the Valuation Rules, 1988/Rule 9 of the Valuation Rules, 2007.

(ii) The imported goods having a revised assessable value of Rs.4,64,54,086/- should not be confiscated in terms of Section 111(m) of the Customs Act, 1962.

(iii) Customs duty to the tune of Rs.74,90,065/- short paid by them on account of under-invoicing in their imports should not be demanded and recovered from him along with interest in terms of provisions of Section 28 read with Section 28AB of the Customs Act, 1962.

(iv) Penalty should not be imposed upon him in terms of Section 112(a) of the Customs Act, 1962 read with Section 114A of the Customs Act, 1962.

1.3 The matter arising out of the above show cause notice dated 04.06.2010 was adjudicated vide the impugned order dated 04.04.2012 by the learned Commissioner of Central Excise (Adjudication), New Delhi, in confirming the demands proposed for recovery in the show cause notice. The impugned order at paragraph 48 has held that Mr. Rakesh Nagpal is the main person behind all such manipulations including suppression of value and the beneficiary of the evasion of customs duty and accordingly, it has been held that Mr. Rakesh Nagpal for his acts of omission and commission under the provisions of Section 114A of the Customs Act, 1962, is exposed to the penal consequences. However, in the order portion at sub-clause (vi), an amount of Rs.10,00,000/- was imposed as penalty under Section 112(a)&(b) *ibid* on Mr. Rakesh Nagpal on the ground that he is personally liable for contravention of various provisions of the Customs Act, 1962.

1.4 Revenue has assailed the impugned order by framing the following question of law for determination by the Tribunal:

"Whether the order of the adjudicating authority insofar as it relates to imposition of lesser penalty than mandatorily prescribed under Section 114A of the Customs Act, 1962, is legal and proper?"

2. Heard learned AR for Revenue. None appeared for the respondent, despite notice.

3. We have examined the case records. The show cause notice dated 04.06.2010 at paragraph 31 has recorded that the same is being issued under Section 124 of the Customs Act, 1962 read with proviso to Section 28(1) *ibid*. On perusal of the proposals made in the show cause notice, it reveals that M/s Nagpal International and its proprietor Mr. Rakesh Nagpal were basically called upon to show cause, as to why the declared

value shall not be rejected and re-determined under various provisions of the Valuation Rules, 1988. Further, there were also proposals for confiscation of the revised assessable value in terms of Section 111(m) *ibid*. On close scrutiny of the proposals made in the show cause notice, it transpires that the Bills of Entry in question were not finalized by the department at the time of initiation of the investigation proceedings and issuance of the notice to the respondent.

4. Insofar as Section 28 *ibid* is concerned, the proper officer is vested with the power to recover the duties not levied, short levied or short paid, by issuance of show cause to the person concerned. In this case, since the Bills of Entries were not finalized by the department, it cannot be said that the duty amount has been determined by the proper officer, for which the provisions of Section 28 *ibid* shall be invoked. In absence of determination of the duty liability, the provisions of Section 114A *ibid* cannot be invoked inasmuch as imposition of penalty under the said statutory provision is subject to determination of the liability under Section 28 *ibid*. The show cause notice issued to the respondent was under the provisions of Section 124 *ibid*, which deals with issuance of show cause notice before confiscation of goods. For improper importation of goods, which are liable for confiscation under Section 111 *ibid*, Section 112 *ibid* mandates imposition of penalty on the person concerned. Considering the facts of the case, the show cause notice has specifically stated that the same is being issued under Section 124 *ibid*, meaning thereby that it had sought to confiscate the offending goods in question. Mere mention of the proviso to Section 28(1) *ibid* in the said notice will not alter the stand that the case relates to short levy or non levy of the duty amount, especially when such liability has not been determined by way of adjudication. Further, it is also observed that the impugned order, though has specifically mentioned that Mr. Rakesh Nagpal was liable for penal action for his acts of omission or commission under the provisions of Section 114A *ibid*, but in the order portion the provisions of Section 112(a) & (b) *ibid* have been invoked for imposition of penalty on Mr. Rakesh Nagpal.

Invocation of the provisions Section 112(a) & (b) *ibid* in the impugned order is in conformity with the statutory mandates inasmuch as the issue relates to confiscation of goods and not on the issue of determination of the duty liability, which was short paid, non-paid by reason of collusion or any wilful misstatement or suppression of facts etc.

5. In this appeal, Revenue has not assailed the impugned order on the ground that quantum of penalty imposed under Section 112(a) & (b) *ibid* is not corresponding to the gravity of offence. Rather, prayer has been made that mandatory penalty prescribed under Section 114A *ibid* should not be at a lesser side. Since, the issue involved in the case relates to confiscation of goods and related contravention of the statutory provisions, Section 114A *ibid* cannot at all be invoked. Therefore, we are of the considered view that there is no substance in the appeal filed by Revenue.

6. In view of the above discussions, we do not find any infirmity in the impugned order dated 04.04.2012 passed by the learned Commissioner of Central Excise. Accordingly, appeal filed by Revenue is dismissed.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)