CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87171 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-PAX-APP-1329 & 1330/18-19 dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-III, Mumbai)

Suneesh A.K. **.... Appellant**
c/o UBR Legal Advocates
8th Floor, 806, D Square, Dadbhai Road
Off S V Road, Opp. Gokilbai School
Vile Parle (West), Mumbai – 400 056.

VERSUS

Commissioner of Customs **.... Respondent**
Mumbai Customs-CSI Airport Commissionerate
5th Floor, Awas Corporate Point
Makwana Lane, Behind S.M. Centre
Andheri Kurla Road, Marol
Mumbai – 400 059.

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Sunil Subramanian **.... Appellant**
C/o UBR Legal Advocates
8th Floor, 806, D Square, Dadbhai Road
Off S V Road, Opp Gokilbai School
Vile Parle (West), Mumbai – 400 056.

VERSUS

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APPEARANCE:

Shri Bharat Raichandani, Advocate for the Appellants
Shri Rajiv Ranjan, Authorized Representative for the Respondent

CORAM: HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85755-85756/2025

Date of Hearing: 30.01.2025

Date of Decision: 30.04.2025

PER: M.M. PARTHIBAN

These appeals have been filed by Shri Sunil Subramaniam, owner of shop M/s Megha Collection, Mumbai and his employee Shri A.K. Suneesh (herein after, for short, referred together as 'the appellants') assailing the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1329 & 1330/18-19 dated 29.03.2019 (referred to, as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-III, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The Air Intelligence Unit (AIU) of CSI Airport Customs Commissionerate, Mumbai had developed an intelligence that some unknown persons are bringing consignments of foreign brand cigarettes from North-East to Mumbai, which were earlier smuggled into India from Myanmar, and these cigarettes do not conform with the legal requirements under Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ('COPTA' for short) and the relevant rules made under such Act of 2003. On the above basis, AIU Customs had intercepted one consignment covered under airway bill No.098-30900284 consisting of 10 packages weighing 450 Kgs. which had arrived at Mumbai by flight number Air India 676 from Kolkata and was lying at Air India Domestic Terminal. The name of consignee for said consignment was shown as 'Shri Sarup Singh'.

2.3 On close monitoring of the said consignment, the AIU Customs had intercepted one Shri Sarup Singh and Shri Manish Naobat Ram Gupta, owner of Shri Om Sai Logistics, who had come to receive the said imported consignment. In presence of panch witnesses and Shri Sandesh Narkar, Deputy Manager of Commercial department of Air India, the imported consignment was physically examined on 06.10.2016. The above examination revealed that the imported consignment comprising of 10 white plastic bags had 30 card board boxes containing total 1500 cigarette cartons which had 15000 cigarette packs in it, thereby containing a total of 300000 cigarette sticks (15000X20=300000 cigarette sticks) totally valued at Rs.15,00,000/-. The said cigarette carton boxes were having the marking as 'New Light Cigarettes WIN' and 'Made under the authority of Hongyunhonghe Tobacco Group Co. Ltd.' Since S/Shri Sarup Singh and Shri Manish Naobat

Ram Gupta could not produce any documents for licit import of the cigarettes, the AIU Customs had on reasonable belief that the same were smuggled into India in violation of the Customs Act, 1962 read with COPTA, had seized the said consignment imported cigarettes for further investigation. Statements were recorded from various persons involved in the said import including S/Shri Sarup Singh (alias Shri Shibi) driver of Shri Manish Naobatram Gupta, Sunil Subramanian, owner of the shop M/s Megha Collection dealing with sale of cigarettes, among other items perfumes, chocolates, ladies hand bags, gift items etc., Suneesh A.K., employee of Sunil Subramanian. The investigation revealed that on the instructions of Shri Manish Naobatram Gupta, his driver/assistant Shri Sarup Singh on whose name the cargo was sent, would collect the foreign brand cigarettes from the airlines/ Air India warehouse and further hand over the same to Shri A.K. Suneesh, who would in turn book the same as parcel, on the instructions of Shri Sunil Subramanian for onward transportation through buses bound to Pune/Goa. In this manner, they had transported six to seven consignments of foreign cigarettes in the past.

2.4 On completion of the investigation, the department had proposed for confiscation of the Imported foreign origin cigarettes illegally brought into India under Section 111(d) and 111(i) of the Customs Act, 1962 along with the packaging material under Section 118 *ibid*; and for imposition of penalty on various persons involved in such smuggling, including S/Shri Shri Sunil Subramaniam and his employee Shri Suneesh A.K. under section 112 of the Act of 1962 by issue of Show Cause Notice (SCN) dated 05.04.2017. In adjudication of the said SCN, learned Additional Commissioner of Customs, CSI Airport, Mumbai had absolutely confiscated the imported foreign cigarettes along with its packing material and imposed penalty of Rs.3,50,000/- on Shri Sunil Subrammanian, as a passenger under Section 112(a) and 112(b) of the Customs Act, 1962. Further, he imposed penalty of Rs.1,50,000/- on Shri Suneesh A.K.; Rs.50,000/- on Shri Sarup Singh, Rs.2,00,000/- on Shri Manish Naobatram Gupta; Rs.1,50,000/- on Shri Mahendra Shaw; Rs.1,50,000/- on Shri Bharat Ram, as passengers under Section 112(a) and 112(b) of the Act of 1962, vide Order-in-Original dated 13.03.2018. Being aggrieved with the original order, the appellants had filed an appeal before the Commissioner of Customs (Appeals), who by upholding the order of the original authority had rejected the appeals filed by the appellants vide Order-in-Appeal dated 29.03.2019 which is impugned herein.

Feeling aggrieved with the impugned order, the appellants have filed these appeals before this Tribunal.

3. Heard both sides and perused the case records. The additional submissions made in the form written paper books in this case was also perused carefully.

4. The short issue for determination before the Tribunal is whether the imposition of penalty on the appellants consequent to confiscation of imported goods in the present case, on the ground that the foreign origin cigarettes have been smuggled, and that the appellants are liable for penalty as 'passengers' under Section 112(a) and 112(b) of the Customs Act, 1962, is legally sustainable or not?

5. In order to appreciate the issues under dispute, the specific legal provisions of the Customs Act, 1962 read with relevant legislations governing import of cigarettes, are extracted and herein given below for ease of reference:

Customs Act, 1962

> ***"Confiscation of improperly imported goods, etc.***
> ***Section 111.*** *The following goods brought from a place outside India shall be liable to confiscation: —*
> *….*
> *(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
> *…*
> *(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;…*
>
> ***Penalty for improper importation of goods, etc.***
> ***Section 112.*** *Any person,—*
> *(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
> *(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*
> *shall be liable,—*
> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;…..*

Plain reading of the above legal provisions clearly indicate that imported goods are liable for confiscation under Section 111 (d) of the

Customs Act, 1962, only if 'import' of such goods are prohibited or contrary to the prohibition imposed under the relevant legislation is in force. Similarly, if the imported goods are found concealed in any package so as to enable its smuggling, then such goods are liable for confiscation under Section 111(i) *ibid*.

6. The relevant legislative provisions containing restrictions on import or export of goods are specified in the ITC-HS item wise import policy of Foreign Trade Policy issued under the Foreign Trade (Development and Regulation) Act, 1992. The extract of the relevant item wise ITC-HS for the impugned goods are given below:

ITC(HS), 2022

Schedule 1 Import Policy

Section IV, PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES; PRODUCTS, WHETHER OR NOT CONTAINING NICOTINE, INTENDED FOR INHALATION WITHOUT COMBUSTION; OTHER NICOTINE CONTAINING PRODUCTS INTENDED FOR THE INTAKE OF NICOTINE INTO THE HUMAN BODY

Main Notes

Sl.No.	Notes	Notification No.	Notification Date
1	In this Section the term "pellets" means products which have been agglomerated either directly bycompression or by the addition of a binder in a proportion not exceeding 3 % by weight.		

Chapter 24 Tobacco And Manufactured Tobacco Substitutes.

Policy Conditions

Sl.No.	Notes	Notification No.	Notification Date
1	In terms of General Note 13 of this Schedule, the import of cigarette or any other tobacco product shall be subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009, as notified by the Ministry of Health and Family Welfare (the details can be accessed from the website of the Ministry of Health and Family Welfare: (www.mohfw.nic.in)		

Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003

***

3. In this Act, unless the context otherwise requires,—

(*a*) "advertisement" includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;

(*b*) "cigarette" includes,—

(*i*) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,

(*ii*) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include *beedi*, cheroot and cigar;

(*c*) "distribution" includes distribution by way of samples, whether free or otherwise;

(*d*) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(*e*) "foreign language" means a language which is neither an Indian language nor the English language;

(*f*) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area.

6. No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product—

(*a*) to any person who is under eighteen years of age, and

(*b*) in an area within a radius of one hundred yards of any educational institution.

Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.

7. (*1*) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label, the specified warning including a pictorial depiction of skull and cross bones and such other warning as may be prescribed.

(*2*) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(*3*) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

(*4*) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(*5*) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

Manner in which specified warning shall be made.

8. (*1*) The specified warning on a package of cigarettes or any other tobacco products shall be—

(a) legible and prominent;

(b) conspicuous as to size and colour;

(c) in such style or type of lettering as to be boldly and clearly presented in distinct contrast to any other type, lettering or graphic material used on the package or its label and shall be printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its labels.

(2) The manner in which a specified warning shall be printed, painted or inscribed on a package of cigarettes or any other tobacco products shall be such as may be specified in the rules made under this Act.

(*3*) Every package containing cigarettes or any other tobacco products shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.

9. (*1*) Where the language used on a package containing cigarettes and any other tobacco products or on its label is—

(*a*) English, the specified warning shall be expressed in the English language;

(*b*) any Indian language or languages, the specified warning shall be expressed in such Indian language or languages;

(*c*) both English and one or more Indian languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;

(*d*) partly English and partly any Indian language or languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;

On combined reading of the ITC-HS policy conditions for cigarettes and the provisions of COPTA, it is very clear that imports of cigarettes are subject to the regulations framed under COPTA *inter alia* for display of pictorial warnings and other statutory information to be mentioned in the package containing cigarettes. These provision shall also apply to the licit of import of cigarettes.

7. It is a fact on record that in respect of the imported cigarettes, these have been imported in violation of COPTA and import policy, inasmuch as the packages of the cigarettes do not contain or display the requisite mandatory details. Therefore, in my considered opinion there is clear violation of the provision of Section 111(d) of the Customs Act, 1962 in the present case.

8.1 Further, in terms of the legal provisions under Section 123 *ibid*, where gold, watches and other goods notified thereunder are seized on the reasonable belief that they are smuggled goods, then the burden to prove that such goods are not smuggled lies on the owner of the goods. The relevant legal provisions of Section 123 of the Act of 1962 are as follows:

> ***"Burden of proof in certain cases.***
> ***Section 123.*** *(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—*
>
> *(a) in a case where such seizure is made from the possession of any person,—*
> *(i) on the person from whose possession the goods were seized; and*
> *(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*
>
> *(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*
>
> *(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."*

8.2 'Cigarettes' have been specified vide Notification No. 103/2016-Customs (N.T.) dated 25.07.2016, as one of the goods for which Section 123(2) ibid would apply. It is also a fact on record that the appellants did not produce any valid documents, for licit import of such cigarettes. Therefore, it is clearly held that the appellants had not discharged their responsibility for proving that the impugned goods are not smuggled foreign origin cigarettes. Therefore, I am of the considered view that the appellants have not provided any credential evidence to prove their innocence to state that they are not in any way concerned with the smuggling of foreign origin cigarettes in violation of the COPTA.

8.3 The facts on record clearly provide that the consignment was booked for delivery to the consignor i.e., Shri Sarup Singh, on the advice of Shri Manish Naobatram Gupta as evidenced in Air way bill relating to the impugned consignment. No other record or evidence has been produced to state that the appellants are the 'passengers' arriving in India, who had brought the imported cigarettes in an illegal manner and forwarded the same from Kolkata to Mumbai in the said consignment. Therefore, it is clear that the imported goods in the present case though having contravened the provisions of Section 111(d) *ibid* and Section 111(i) *ibid*, it cannot be said that the appellants are the 'passengers' to saddle with the penalty for having done any act or omission to do any act under Section 112(a) *ibid*. On the other hand, since the appellants have received the foreign origin cigarettes in the past cases and in the present case, were about to receive the same for distribution or sale in an illegal manner, they are rightly liable for imposition of penalty under Section 112(b) *ibid*. To the above extent, I find that the impugned order confirming the adjudged demands of penalty under Section 112(a) *ibid* on the appellants is legally not sustainable.

9. In view of the above discussions, I am of the considered view that the penalty imposed on the appellants in the original order dated 13.03.2018 and confirmed in the impugned order dated 29.03.2019, is reduced to the extent of Rs.1,75,000/- on Shri Sunil Subrammanian, and Rs.75,000/- on Shri Suneesh A.K., being the penalty imposable under Section 112(b) of the Customs Act, 1962 for their role played in relation to the illegal import of foreign origin cigarettes.

10. In the result, by partially modifying the impugned order dated 29.03.2019, I partly allow the appeals filed by the appellants in their favour, as above.

(Order pronounced in open court on 30.04.2025)

(M.M. Parthiban)
Member (Technical)

Sinha