

**2014 (1) ECS (197) (Tri - Del.)**

Customs, Excise & Service Tax Appellate Tribunal  
West Block No. II, R.K. Puram, New Delhi - 110066  
Division Bench, Court No. II

**Date of Decision: 11.02.2014**

**MOOL CHAND SHARMA**

*Vs.*

**CC, NEW DELHI**

Appeal Nos. C/637, 638, 692,693/2010

Appearance:

Shri Piyush Kumar, Advocate

For the Appellants

Shri Gobind Dixit, AR

For the Respondent:

**CORAM:**

**Hon'ble Mr.D.N.Panda, Judicial Member**

**Hon'ble Mr.Manmohan Singh, Technical Member**

*Misc. Order No. 50411-50414/2014*

*Stay Order No. 50415-50418/2014*

**“Plea of importer that consigner abroad had exported the goods by mistake was not conceivable for the reason that no exporter shall export liquor which is costlier than aerated water or ketchup which came in container concealing the liquor.” (Para 26)**

**“Fraud is an act of deliberate deception of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intending to get an advantage. Therefore there is no scope to grant total waiver of pre-deposit to the appellants for hearing their appeals.” (Para 29)**

**PER: D.N.PANDA**

Shri Piyush Kumar, Id. Counsel moved four stay applications involved in aforesaid four appeals. Two stay applications relate to Sri Mool Chand Sharma in different capacities such as director of the CHA, M/s R.U. Imports & Exports Pvt. Ltd. in Stay Application No. C/Stay/3959/2010 involved in appeal No. C/693/2010 and as proprietor of M/s M.V. Logistics (the transporter of past consignments) in Stay Application No. C/Stay/3663/2010 involved in appeal No.C/367/2010. The third Stay Application registered as C/Stay/3663/2010 is by CHA M/s R.U. Imports & Exports Pvt. Ltd, in Appeal No. C/638/2010. The fourth Stay Application No. C/Stay/3958/2010 in Appeal No. C/692/2010 was by transporter M/s

## M.V. Logistics.

2. It was submitted that Shri Mool Chand Sharma has faced penalty of Rs.30 lakhs as Director of CHA M/s.R.U. Imports & Exports Pvt. Ltd and that is subject matter of Appeal No.C/693/2010. He has also suffered penalty of Rs. 50 lakhs as proprietor of M/s M.V. Logistics covered by Appeal No.C/637/2010.
3. The transporter M/s M.V. Logistic in Stay Application No.3958/2010 is alleged to be involved in the transportation of imported consignments of M/s.Swaraj International covered by bills of entry dated 30.4.2009 and 19.5.2009 and penalty of Rs.40 lakhs was imposed on this appellant which is subject matter of Appeal No.692/2010. Ld. Counsel submitted that those consignments even though were cleared after due examination by Customs, M.V Logistics has faced above penalty for no reason. Similarly the CHA M/s R.U. Import and Export Pvt. Ltd. has faced penalty of Rs. 50 lakhs for mis-declaration of description and value of imported goods covered by bill of entries dated 30.04.2009 and 26.05.2009.
4. Giving brief description of allegations, ld.Counsel says that when bill of entry No.795929 was filed by M/s Swaraj International, Karol Bagh on 26.5.2009 by the CHA appellant viz. M/s R.U. Imports & Exports Pvt. Ltd., Customs noticed that there were mis-declarations of description as well as value of goods imported in terms of that bill of entry. It was alleged that 501 cartons containing 5010 bottles of different brands of whisky of value of Rs.1,00,87,566/- were imported vide B/E 795029 dated 26.05.2005. Those were seized on 02.06.2009. Similarly 847 cartons containing food stuff/carbonated water/aerated water, beverages ketchup etc., covered by above bill of entry valued Rs.5,51,518/- were also seized.All the goods were in container No.DCCU 6984503. Further, it was submitted that basing on the allegation of mis-declaration of goods imported in terms of above B/E dated 26.5.2009, past consignments covered by bill of entry No.787588 dated 30.4.2009 and 792971dated 19.5.2009 were also questioned alleging mis-declaration of description and value of goods imported thereby.
5. Ld.Counsel further submitted that when the goods of past bills of entry dated 30.4.2009 and 19.5.2009 were cleared after due inspection and scrutiny by Customs, that cannot be brought to the fold of enquiry under this adjudication to penalize all the three appellants not involved in any mis-declaration.
6. On behalf of CHA appellant M/s R.U. Imports &Exports Pvt. Ltd., it was submitted that it acted on the instructions of importer M/s Swaraj International without being aware of the description and

value of goods imported in the container. What that was declared to Dubai Customs by Swaraj International was not known to the CHA appellant nor its director Shri Moolchand Sharma. They should not face penalty being strangers to the imports. Department had preconceived notion against them even through the CHA appellant was set up in 1988 and has no blemish record.

7. It was further submitted that although CHA licence of M/s R.U. Import & Export was suspended by order dated 05.6.2009, that was revalidated and in the mean time, CHA licence availed from 26.9.2008 was renewed twice. Ld.DR at this stage says that Revenue is in appeal against the order of restoration of CHA licence and that Appeal is registered as appeal Case No.C/2382/2012 before Tribunal and Tribunal was pleased to tag present appeals with the appeal of Revenue as well as appeal of the importer Shri Harsh Anil Vasant who is in Appeal No.C/225/2012 causing prejudice to the interest of Revenue.
8. It was submitted on behalf of appellants that Customs merely doubted description and value of the goods covered by B/E dated 26.5.2009 and suspected role of Sri Mool Chand Sharma as well as Anil Vasant to make adjudication baselessly. Revenue stepped into enquiry relying on materials came from Dubai Customs for no goods reason and on the basis of enquiry result, mis-declaration against Harsh Anil Vasant as well as Mool Chand Sharma was alleged and they were arrested. It was further submitted on their behalf that valuation of goods imported was carried out according to the direction of ACMM and Rs.40 lakhs was deposited by the importer Shri Harsh Anil Vasant in the course of proceedings before ACMM. Such deposit by the importer neither implicates CHA M/s R.U. Imports & Exports Pvt. Ltd. nor as its director Sri Mool Chand Sharma. He has resigned from directorship of CHA Company. Therefore imposition of penalty of Rs.50 lakhs on CHA company i.e.M/s.R.U.Imports & Exports Pvt.Ltd. is without basis and pre-deposit of any amount against such penalty is uncalled for. It was further submitted that mere association of Shri Mool Chand Sharma with M/s R.U. Imports & Exports Pvt. Ltd. as director thereof does not ipso facto implicate the CHA company nor Shri Mool Chand Sharma. He should not be blamed for his no involvement in any mis-declaration.
9. It was further submitted that Mool Chand Sharma had not guided any one to make mis-declaration for which he should not be implicated. Accordingly, levy penalty on the CHA company was unwarranted. According to Id. Counsel, valuation of the goods ultimately worked out in the court of ACMM calls for remand of the

matter for re-computation of penalty if any imposable in a proper adjudication. Penalty being connected to the value of the import, upon revaluation, that shall certainly come down. Therefore all the stay applications deserve lenient consideration.

10. It was further submitted by Id. Counsel that the CHA M/s.R.U.Imports & Exports Pvt.Ltd. has not been benefited by the role of Sri Mool Chand Sharma when other three directors formed the CHA company for operation thereof. He also further submitted that Shri Mool Chand Sharma was proprietor of M/s.M.V.Logistics, and had transported goods of M/s.Swaraj International in which Harsh Anil Vasant was partner. That does not mean that Shri Sharma guided Sri Harsh Anil Vasant to make mis-declaration. When there were proper declarations made to the Customs every time by the CHA and no mis-declaration found in past, that prove that Sri Mool Chand Sharma was not at all involved in the mis-declaration alleged in respect of past or present consignments. Merely getting remuneration for transporting goods of Swaraj International, M/s.M.V.Logistics should not be penalised. The transporter performed its role after Customs clearances were made in the past on 30.4.2009 and 19.5.2009. Neither there were evidences of connivance of transporter in mis-declaration in the Bill of entry dated 26.5.2009 nor the transporter instigated to make any to make mis-declaration in past.

### **SUBMISSIONS OF REVENUE**

12. Repelling all the arguments made on behalf of the appellants, Revenue's, precise submission was that allegation of wilful mis-declaration of description and value of goods was not made in vacume. But that was made on the basis of inventory made by physical examination of goods imported under bill of entry dated 26.5.2009. That paved the way for further investigation into the history behind the import made by the importer M/s Swaraj International and CHA M/s R.U. Imports & Exports Pvt. Ltd. as well as the transporter M/s M.V. Logistics and persons behind the imports. The Container No.DCCU6984503 containing 501 cartons (5010 Bottles) of different brands of whisky valued at Rs.1,00,87,566/- and declared as carbonated/ Aerated water, food stuff and beverages, ketchup and Mustard (for hotel supply) were concealed in 847 cartons of above description of goods valued at Rs.5,51,518/; Entire goods were seized on 02.09.2009 and were confiscated. Such goods were attempted to be cleared by the importer in connivance with the CHA as well as transporter. That result led to further Investigation into past consignments imported. Assistance of Dubai Customs was taken to know the export details covered by earlier bill of entry

No.787588 dated 30.4.2009 and 792971 dated 19.5.2009. That proved mis-declaration like present consignment.

13. Placing page 16 of appeal folder it was submitted by Id.DR that perusal of Show Cause Notice and particularly para 33 thereof, provides basis to appreciate the mischievous role of CHA i.e., M/s.R.U.Import and Export Pvt. Ltd. and most particularly role of Shri Mool Chand Sharma shows that he had hand in glove with M/s Swaraj International, the importer to make mis-declaration of the description and value of the goods deliberately in respect of present as well as past imports. It was further submitted by him that para 31 and 34 (XV) of the order provides ground to appreciate the case of Revenue as to how Swaraj International, Mool Chand Sharma and Harsh Anil Vasant were closely and integrally connected with each other in all three consignments and evaded Customs duty. Material facts and evidence were therefore culled out in para 32 of the Show Cause Notice available at page 157 of the appeal folder to appreciate case of Revenue.
14. Revenue further submitted that all the appellants had oblique motive to deceive Customs. The modus operandi followed by them was questionable and they were found to be consciously involved in the fraud against Revenue. The goods imported in past moved in a planned manner and were concealed in the godown of Mohit International belonging to Harsh Anil Vasant. That appellant with the aid and assistance of Mool Chand Sharma dared to make repeated imports evading customs duty.
15. It was further submitted by Revenue that Rahul Gupta and Dinesh Kumar Yadav were partners of M/s.Swaraj International as benamida. But that concern was fully owned and controlled by Harsh Anil Vasant who was also the owner of another concern M/s. Mohit International. Upon examination of Sri Harsh Anil Vasant, Sri Dinesh Kumar Yadav and Sri Mool Chand Sharma, and Sri Hemraj, G.Card holder of the CHA company M/s R.U. Import & Export Pvt. Ltd., their association and involvement in the Racket to defraud Revenue came to light. Wilful mis-declaration with intent to evade duty was proved. Documents as well as seal of office of Commissioner were forged by Mool Chand Sharma to fulfil their mission of cheating Revenue. The Show Cause Notice through its different paras brought out criminality of these appellants who actively conspired against customs.
16. It was submitted by Id. DR that submission of Sri Mool Chand Sharma recorded in para 3.2 of adjudication order read with statement of Harsh Anil Vasant in para 4.1 of the said order, corroborated by result of inventory made during search as well as statement of Shri

Rahul Gupta appearing in para 12.1 of adjudication order revealed that there was deceitful design made by all the appellants against revenue making Dinesh Kumar Yadav and Rahul Gupta as mere signatories of Swaraj International to operate the smuggling racket by Harsh Anil Vasant and Mool Chand Sharma. These two persons were master mind behind such evasion.

17. Ld. DR further submitted that statement of the driver Shri Sanjay and Iqrar Ahmed revealed as to how the past imported goods transported by M.V.Logistics to the premises of Harsh Anil Vasant. Para 18 of adjudication order is relevant in this regard to peruse. The goods covered by past B/Es were concealed in the godown of Mohit International situated at South Extension-1, New Delhi. All such acts were engineered by Harsh Anil Vasant and Mool Chand Sharma to be enriched at the cost of Revenue, making evasion of Customs duty.
18. Investigation was supported by material evidence came from Dubai Customs and that also proved malafide of the entire racket. Ld.DR specifically emphasised on para 29 of Show Cause Notice for appreciation as to how evasion was detected by Customs. He drew attention to para 3.1 at page 145 of appeal folder to demonstrate how Shri Mool Chand Sharma acted against Revenue through an organised bid. Citing relevant para of the adjudication order at page 135 of appeal folder, it was submitted by Id. DR that Revenue's letter was forged by Mool Chand Sharma to make attempt for clearance of mis-declared goods. According to him, Para 49 and para 50 of adjudication order demonstrate how the racket acted with a premeditated mind to cause detriment to the interest of Revenue resorting to fabrication and forgoing of documents and seal of Revenue administration.
19. Ld,DR further submitted that CHA when acted malafide, its CHA licence was cancelled. Revenue is in appeal in appeal No.. C/2382 of 2012 against order of restoration of cancelled license. Fraud against Revenue rendered the goods confiscated.
20. On all the above grounds, prayer of Revenue was to dismiss all the stay applications. At this stage Id. Counsel for the appellants submitted that there was no active involvement of Sri Mool Chand Sharma, who is totally different from M/s.R.U.Import and Export Pvt. Ltd and was never involved in alleged mis-declaration. Penalty if any imposable was required to be considered looking into the value of the goods determined by ACMM.
21. Heard both sides and perused the record.

**PRIMA FACIE CASE AGAINST APPELLANTS**

22. Prima facie, record reveals that import of 5010 number of bottles of whisky in 501 cartons covered by B/E 795029 dated 26.05.2009 valued at Rs.1,00,87,566/- (as against declared value of Rs. 83,94,779/-) were concealed under 847 cartons of Carbonated/Aerated water, Beverages and Ketchup etc. Valued at Rs. 5,51,518/- came in container No. DCCU 6984503. Such fact remained undisputed when physical verification of the container was made by Customs which resulted in above inventory as per Panchnama. Above bill of Entry was filed by M/s Swaraj International, KarolBagh owned and run by one Harsh Anil Vasant. This was confirmed by the appellant Mool Chand Sharma Director of CHA M/s R.U. Import & Export Pvt. Ltd. The CHA was attempting to clear above consignment. In his statements recorded under section 108 of Customs Act, 1962 on 2.06.2009 and 03.06.2009 Shri Mool Chand Sharma brought out his role affirming that Harsh Anil Vasant was also owner of both Swaraj International and M/s Mohit International.
23. Harsh Ani Vasant, the importer in his statement recorded on 02.06.2009 and 03.06.2009 under section 108 of Customs Act, 1962 stated that he floated M/s Swaraj International Ltd, taking Rahul Gupta and Dinesh Kumar Yadav as directors thereof only for the sake of record paying them approximately Rs. 20,000/- to Rs. 25,000/- per shipment against each import. He further admitted that B/E No. 795029 dated 26.05.2009 was filed declaring the goods as mineral water/soda water/ Ketchup Ginger Ale/ Milk drink concealing 501 cartons of whisky therein.
24. The mis-declaration made by M/s Swaraj International as above rendered seizure of the goods imported and confiscation thereof. The goods so imported were attempted to be cleared by Shri Mool Chand Sharma who was director of the CHA M/s R.U. Imports & Exports Pvt. as was confirmed by Hemraj Meena, 'G' Card holder of the CHA company in his statement dated 10.06.2009. Documents and seal of Commissioner of Customs were forged by Shri Mool Chand Sharma to attempt clearance of the above goods for which he was arrested along with Harsh Anil Vasant.
25. Investigation revealed that two more consignments were imported through B/E No.787588 dated 30.04.2009 and B/E 792971 dated 19.05.2009 prior to present consignment and those were also mis-declared as to their description and value in the above manner. The value declared were Rs.3,27,311/- and Rs.3,15,304/- in those consignments as against valuation thereof made at Rs.17,07,318/- and Rs.12,97,050/- respectively. Enquiry from Dubai Customs proved the mis-declaration of description of goods as well as value thereof.

26. Plea of importer that consigner abroad had exported the goods by mistake was not conceivable for the reason that no exporter shall export liquor which is costlier than aerated water or ketchup which came in container concealing the liquor.
27. Statement of Mool Chand Sharma director of M/s Import Export Pvt. Ltd. prima facie, brought out his close connection with Harsh Anil Vasant designing the above modus operandi to defraud Revenue. Para 49.1 of adjudication order brought out how he extended his assistance to Harsh Anil Vasant for clearance of mis-declared goods filing a wrong bill of entry on 26.05.2009 deliberately and twice in past. Mool Chand Sharma laid hands on the stamp of Commissioner of Customs, ICD, TKD adopting unscrupulous means to make use thereof and forge document to make an attempt for clearance of the offending goods. His conduct dragged him to arrest along with Harsh Anil Vasant. Deliberate mis-declaration surfaced in respect of all the 3 B/Es and Shri Mool Chand Sharma failed to defend before learned Adjudicating Authority.
28. Mool Chand Sharma as proprietor of M/s M.V. Logistics, transported the offending goods in previous 2 occasions and stored the same in the godown of Harsh Anil Vasant situated in South Ext.-II, New Delhi. The truck drivers Shri Sanjay and Shri Iqrar Ahmed in their statements dated 08.07.2009 and 13.07.2009 stated that they had transported the offending goods on 20.05.2009 and 04.05.2009 respectively under the instruction of a person guiding them going by a Maruti Car in front of them. Payment of transportation charges to Mool Chand Sharma by Harsh Anil Vasant proved his nexus with offending goods. Prima facie, it appears that Shri Mool Chand Sharma, director of CHA as well as owner of M.V. Logistic was actively and consciously invnlved himself in the evasion of Customs duty in the past and attempting to clear the offending goods of Harsh Anil Vasant imported through present B/E. It also appears that he could not dissociate himself from involvement with Harsh Anil Vasant and caused prejudice to the interest of Revenue. Entire evidence brought out by Revenue self speak against these two appellants. Added to that, the evidence gathered from Dubai Customs brought out full proof case of deliberate mis-declaration to cause subterfuge to Revenue.
29. Fraud is an act of deliberate deception of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intending to get an advantage as has been held in the case of S.P. Chengalvaraya Naidu V. Jagannath [1994 (1) SCCI]. In Ashok Leyland Ltd. V. State of Tamil Nadu [2004 (3) SCCI] it has also been held that fraud is proved when it

is shown that a false representation has been made knowingly. Therefore there is no scope to grant total waiver of pre-deposit to the appellants for hearing their appeals. Accordingly Shri Mool Chand Sharma is directed to make deposit of following amounts in respect of stay application involved in the appeals noted against each within 4 weeks of receipt of this order:

Stay application	Appeal No.	Amount to be deposit
Sp. No. C/Stay/3662/2010	C/637/2010	<b>Rs. 40 lakhs (Forty lakhs )</b>
Sp. No. C/Stay/3959/2010	C/693/2010	<b>Rs. 20 lakhs (twenty lakhs)</b>

31. M/s R.U. Imports & Exports Pvt. Ltd., the CHA company having been noticed to have been involved in the racket, that appellant in Stay Application No. C/Stay/3663/2010 (Arising out of appeal No. C/638/2010) is directed to deposit Rs.20.00 Iakhs (Twenty Iakhs) within 4 weeks of receipt of this order.
32. Shri Mool Chand Sharma as proprietor of M/s M.V. Logistics having been directed to deposit Rs.40 lakhs in Stay Application No. C/Stay/3662/2010 (In appeal No. C/637/2010), there shall be waiver of pre-deposit from M/s M.V. Logistics.
33. In view of disposal of stay applications, all the Misc. Applications are disposed.
34. Compliance of the deposits directed as above shall be made on 06.05.2014.

(Pronounced in the open court on 11.02.2014)