

2014 (3) ECS (229) (Tri - Del.)

In The Customs, Excise & Service Tax Appellate Tribunal
West Block No. 2, R.K. Puram, New Delhi-110066

SHRI PRASHUN JAIN

Vs.

CC (IMPORT & GENERAL), NEW DELHI

Date of Hearing: 25.06.2014

Pronounced on: 18.07.2014

Customs Stay Application No. C/Stay/51625/2014

Customs Appeal No. C/51369/2014 - Cus [DB]

Appearance:

Shri Rupesh Kumar, Adv &

Shri Aditya Kumar, Adv,

Ms. Ranjana Jha, JCDR

For the Appellant

For the Respondent

CORAM:

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

Hon'ble Mr. Rakesh Kumar, Technical Member

Stay Order No. 52416/2014 dated 18/07/2014

" The goods imported were mis-declared by the appellant as heald frame (spare Parts of weaving machine). When the goods were physically found to be micro chips as per Panchnama dated 18.01.2010 those were liable to be confiscated and appropriate duty was levied including penalty. The appellant was also found to be intimately connected with other two earlier imports making similar mis-declaration to cause evasion. He was accordingly brought to the charge in respect of those two consignments also. It was found that the appellant was unjustly enriched at the cost of customs. Therefore, there should not be any dispensation from pre-deposit of the demand." (Para 4.1)

Per: D.N.PANDA:

The appellant moving the stay application says that he is not concerned with the goods for which an affidavit has been filed averring that he is neither the importer nor the owner of the seized goods. While adjudication was initiated against live consignment, that was extended to two previous consignments for no reason. All these consignments gave rise to aggregate duty demand of Rs. 67, 17,015/-.

- 2.1. The officers of Special Investigation & Intelligence Branch (SIIB) of import & General Commissionerate, New Custom House, New Delhi, intercepted an import consignment i.e. one packet weighing 85 Kgs covered by Bill of entry No.168385 dated 16.11.2010 filed by the CHA M/s Rajinder P. Kanpur, in the name of M/s Rajdhani Crafts Khasra No.1955 to 1965, near 6 Km Stone, Chomu Village Jaitpura, Jaipur, an 100% EOU.
- 2.2. The goods covered by above bill of entry were declared as "Heald Frame" (Spare Parts of weaving machine) at value of Rs.5,66,862/-, claiming no Customs duty as well as Additional Customs duty payable in terms of Notifications No. 52/2003-Cus dated 01.03.2003 and 02/2008- C.Ex. dated 01.03.2008, (S, No.62).
- 2.3. During the course of inquiry one person, Sri Prashun Jain came forward with a gate pass No. N 201011180549 seeking delivery of the consignment above. He was found to be Proprietor of M/s. Prashun Jain CHA with registration No. R-91/2006 and "F" Card No. 162/06. He informed to the investigation team that the subject consignment was cleared by one Shri Biplav Kumar - Mobile no. 9999242055 of M/s. Rajender P. Kanpur, CHA having registration No. R-023/06 and Gate pass was given to him to take delivery anti transportation of the subject shipment to its destination.
- 2.4. When Sri Prashun Jain stated that the shipment consisted of Micro SD memory cards of 2 GB capacity, the investigative team conducted 100% examination of the goods and found the goods to be Micro SD Cards of 2 GB, and RAM of 1 GB of different speeds and further details of the goods found were as per annexure to the Panchnama dated 18/19 November, 2011. Since the goods were mis-declared those were seized under Section 110 of the Customs Act, 1962 (hereinafter referred as the Act) and total value of the seized goods was assessed to be Rs. 67,29,000/- and such goods were handed over to M/s CELEBI for the safe custody under a superdginama date 19.11.2010.
- 2.5. On examination Sri Biplav Kumar stated that the goods did not belong to M/s Rajdhani Crafts. As per agreement between him and Sri Prashun Jain, the latter was to provide parties who would provide financial assistance and procure the imported goods and Sri Prashun Jain was to arrange the clearance of the goods through an importer/IEC holder whose Bill of Entry was marked only for inspection in the system. Sri Prashun Jain being a 'F' card holder, he never wanted to endanger his license indulging in mis-declaration of goods for which he chose (Sri Biplav Kumar) to carry out above activity.

- 2.6. Sri Biplav Kumar further stated that Entry pass was issued to him by CELEBI; and one Sri. Prikshit Sharma and Sri. Manoj Srivastava arranged the finance and procured the shipment from China and Sri. Raja used to take the delivery of the goods in Nehru Place. He admitted that Micro SD Cards, RAM, etc. were imported in the guise of other items by using the name and IEC of a 100%EOU. He further admitted that he had all the information about the shipment. 2.7. Sri Biplav Kumar also stated that he knew that mis-declaration of the description and quantity of goods was an offence and admitted that he committed offence declaring the description and quantity of the goods and also using the name & IEC of the 100% EOU unit M/s Rajdhani Craft to evade the Customs Duty. The examination also brought out that Micro SD Cards and RAM in the name of M/s Rajdhani Crafts were cleared in the past mis-declaring the description in the past in the name of M/s Rajdhani Crafts a Chandigarh based concern.
- 3.1. Ld. Adjudicating Authority addressed the issue on ownership of the offending import and liability of the appellant towards customs Duty thereon. So also the issue whether goods were liable to confiscation under Section 111 of the Act and whether penalty imposable on the appellant Sri Prashun Jain Sri Prashant Gupta Sri Biplav Kumar M/s Rajinder P. Kapur and M/s Om Logistics was dealt by him elaborately.
- 3.2. Ld. Authority below noticed that the offending import did not belong to M/s Rajdhani Craft and appellant was involved in arranging parties to found the said imports Financing was found to have been Ld. Authority below noticed that the offending import did not belong to M/s Rajdhani Craft and appellant was involved in arranging parties to found the said made by Mr. Prikshit Sharma and Mr. Manoj Srivastava and Shri Raja was taking delivery of the goods in Nehru place, New Delhi.
- 3.3. Ld. Authority further noticed that the appellant was involved in clearance of three shipments of Micro SD cards and RAMs in the name of Rajdhani Craft. In his second statement dated 19.11.2010 Sri. Prashun Jain stated that the impugned goods were imported by Sri. Prashant Gupta having office at 210, Gadore House, Nehru Place, New Delhibut did not know his exact residential address but while reside in Sector 11 of Rohini. Sri. Prashant Gupta, was known to him for the last 3-4 months, was introduced to him by Sri.Prikshit Sharma and Sri. Manoj Srivastava.
- 3.4. From the statement of Shri Kishan Pal, transporter recorded under Section 108 of the Customs Act, 1962, it surfaced that one Sri. Sonu Jain is aware of the use of the name of Rajdhani. A book showing

the account of Sri. Sonu Jain came to light. In his cross examination Sri. Kishan Pal, admitted that he knew Sri. Prashun Jain and having business dealings with him for the last 1 year. He confirmed the mode of transaction and confirmed that RUD 14 to SCN was the daily list of cargo booking.

- 3.5. Ld. Adjudicating Authority found that Sri Samir Agarwal, Partner of M/s. Rajdhani Crafts, Jaipur in his statement stated that they had neither filed the Bill of Entry No. 168335 dated 16.11.2010 nor received any goods against the said Bill of Entry and that he did not know Sri. Prashun Jain, Sri. Biplav Kumar and Sri Prashant Gupta and never had any dealing with these persons. Statement of Sri. Kuldeep, consolidation executive in M/s. OM Freight Forwarders Pvt. Ltd. revealed that the delivery Order of the impugned consignment was collected by Sri. Sunil Kumar on payment of Rs. 3,111/-, as service charges. Sri Sunil Kumar was the G-Card holder of M/s Prasjun Jain, CHA. Sh. Sunil Kumar in his voluntary statement, tendered on 27.11.2010, under section 108 of the Customs Act, 1962, admitted that he was working on behalf of CHA M/s Prashun Jain. According to the learned Adjudicating Authority entire chain of events showed that Sri. Prashun Jain was the master mind behind the offending import and fully involved in the clearance of the impugned consignment.
- 3.6 Submission on behalf of appellant was that he was not connected with the goods imported. He was merely a person seeking delivery of the goods on behalf of Rajender P. Kapoor, CHA. He did not make any investment on the goods imported. Shri Biplav Kumar clearing the goods gave him the gate pass for taking delivery of the goods imported and to transport the same. What that was imported under the disputed bill of entry was not at all known to him. Who made the payment against the consignment was also not known to the appellant. The appellant being stranger to the import he is not liable to the recovery of the demand raised in adjudication
4. Revenue on the other hand says that this appellant was the mastermind behind the import of the following goods making misdeclaration of description thereof:-

Box Sl. No.	Description of goods	Brand /Make	No. of Pcs.	Value P/ Pc(Rs.)	Total Value (Rs.)
1	Micro SD Card GB	2 Micro SD	12,000	200	24,00,000

	RAM 1 GB 667 Mhz.		200	350	70,000
2	Micro SD Card 2 GB	Micro SD	12,000	200	24,00,000
	RAM 1 GB 667 Mhz.		150	350	52,500
3	Kukram 1 DG 800 Mhz.	Solar Eneergy	898	500	4,49,000
	RAM 1 GB 667 Mhz.		400	350	1,40,000
4	Kukram 1 GB 800 Mhz.	Solar Eneergy	50	500	25,000
	RAM 1 GB 667 Mhz.		800	350	2,80,000
5	Kukram 1 DG 800 Mhz.	Solar Eneergy	50	500	25,000
	RAM 1 GB 667 Mhz.		800	350	2,80,000
Loose	RAM 1 GB 800 Mhz.	-	300	450	1,35,000
	RAM 1 GB 667 Mhz.		200	350	70,000
	RAM 1 GB 667 Mhz.		1150	350	4,02,500
	Total				67,29,000

The goods imported were mis-declared by the appellant as heald frame (spare Parts of weaving machine).

4.1 When the goods were physically found to be micro chips as per Panchnama dated 18.01.2010 those were liable to be confiscated and appropriate duty was levied including penalty. The appellant was also found to be intimately connected with other two earlier imports making similar mis-declaration to cause evasion. He was accordingly brought to the charge in respect of those two consignments also. It was found that the appellant was unjustly enriched at the cost of customs. Therefore, there should not be any dispensation from pre-deposit of the demand.

5. Heard both sides and perused the records.

- 5.1 When the import made by Bill of Entry No. 16385 dated 16.11.2010 was found to be misdeclared as to the description as aforesaid, the import became confiscable and evasion of customs duty surfaced. Examination by Customs also brought past two consignments to investigation. That revealed that appellant was involved therein intimately. All the three consignments taken together had resulted duty evasion of Rs.67,17,015/-. That was levied accordingly and penalty of equal amount was levied on the appellant.
- 5.2 The appellant tried to shift the ownership of the goods to one M/s. Rajdhani Crafts although he was found to be owner thereof and such concern was not the real importer. Appellant was 'F' Card holder. To save his license he found it convenient to bring one Shri Biplav Kumar to implicate him to the charge.
- 5.3 Enquiry revealed that M/s. Rajdhani Crafts has not made any of the imports including the import made earlier by 2 bills of entry No. 991362 dated 13.09.2010 and 957813 dated 13.08.2010. Under such circumstance various evidence gathered by investigation as has been. Summarily dealt at the outset unerringly provided a basis to Customs to hold that the appellant was importer inviting the consequences of law in terms of the adjudication order which is under appeal. Prima facie, nothing is found to demonstrate that balance of convenience tilts in favour of the appellant.
6. Keeping in view interest of Revenue involved, the appellant is directed to deposit Rs.50,00,000/- (Rupees fifty Lakhs) within 6 weeks of receipt of this order and make compliance on 13th October, 2014. Subject to compliance, there shall be stay of the recovery of balance amount during pendency of the appeal.

[Pronounced in the open Court on 18/07/2014]