
(2021) 09 CESTAT CK 0014

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 51223, 51224 Of 2020

R K Sharma And Anr.

APPELLANT

Vs

Commissioner Of Customs (Appeals)

RESPONDENT

Date of Decision : 23-09-2021

Acts Referred:

Customs Act, 1962 — Section 112(b)(i), 117

Citation : (2021) 09 CESTAT CK 0014

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The present appeal has been filed against the Order-in-Appeal bearing No. 041-042-2020-21 dated 08.9.2020. The facts, in brief, relevant for the adjudication are as follows:

That based upon a specific intelligence about M/s. Sai Enterprises importing branded car tyres under the guise of multi brand and 'multi size stock let off' the road tyre by way of mis declaration and under valuation, the officers of DRI put on hold the import consignment covered under Bill of Entry No. 2585131 dated 26.3.2019 and also covered under Bill of Entry No. 2624519 dated 29.03.2019. On examination 2429 tyres were found imported against the declared quantity of 1649 tyres. The imported tyres were in addition, observed to not to be "off the road tyres" and were without mandatory BIS markings. Accordingly, the show cause notice bearing No. 4790 dated 30.02.20 was served upon to Shri Suryajeet Singh, Proprietor of M/s. Sai Enterprises, Shri R K Sharma, owner of Sharma Enterprises, and Shri Santosh Kumar Gupta, present appellants, the CHA and G card holder respectively and Shri Navin Kumar, beneficiary owner, proposing imposition of penalty on all of them under various provisions of Customs Act, 1962 along with the confiscation of 3066 number of tyres. The said proposal was initially confirmed by Order-in-Original No. 02/2020-21 dated 16.6.2020. The said order stand modified by the Order in Appeal which is under challenge.

however, only to the extent of reducing the penalty.

2. I have heard Shri Awneet Singh, learned Counsel for the Appellant and Shri Ravi Kapoor, learned Authorised Representative for the Department.

3. It is submitted on behalf of the appellant that no violation as alleged against the appellant have been committed by them not even under Customs Broker Licence Regulation. The penalty under Customs Act has been imposed illegally and wrongfully. It is submitted that CHA himself has asked for 100% examination. The packing list was duly filed by the appellant. It is impressed upon there is no legal requirement for the CHA to call for detailed packing list. The appellant otherwise have diligently verified and fulfilled all KYC norms and then asked for a 100% examination. It is mentioned that Commissioner (Appeals) has duly accepted the contentions of the appellants, still has not fully absolved them from penalty imposed by the original adjudicating authority. The imposition of penalty is otherwise on the basis of notional violation of CBLR which is outside the scope of duty of CHA. The order under challenge is accordingly, prayed to be set aside, appeal is prayed to be allowed.

4. Per contra, learned Authorised Representative has mentioned that it was incumbent duty of CHA only to verify the products imported not only those the duty was to warn importer to not to import the prohibited goods under the garb of mis-declaration.

5. After hearing the parties and perusing entire record, it is held as follows:

Bill of Entry as were filed for importing the tyres declared goods as "multi brand and multi size stock let off the road tyre", which on physical verification, were found to be of "multi brand multi size new radial car tyres" that too without mandatory BIS markings. Not only this, the tyres were found excess in quantity. Thus apparently, present is the case of mis declaration of quantity of tyres as well as of mis-description of imported goods being imported by M/s. Sai Enterprises for M/s. Auto Mart India Ltd., proprietor Shri Navin Kumar. From the statement of Shri Suryajeet Singh, Proprietor of M/s. Sai Enterprises and said Navin Kumar, it is apparent that they both were involved in the case of deception in import and were the real beneficiary of this mis-declaration and under valued consignment.

6. Coming to the involvement of the present appellant, it is observed from the statement of Shri Suryajeet Singh iself, that he has called all the import documents from Shri Navin Kumar and had handed over the same to Shri Santosh Kumar Gupta, G Card holder of CHA to get the clearance of the goods. Statement of said Shri Santosh Kumar Gupta as was recorded on 1.04.2019 reflects that he has acknowledged about never receiving the detailed packing list; that he has not denied the receiving of importing documents from the importing firm. He stated that he never received the detailed packing list from the importer. He further acknowledged that he used to file Bill of Entry without asking for the detailed packing list. He also has accepted having knowledge of

excess quantity and mis-declaration committed by the importer. Shri R K Sharma, Proprietor of Sharma Enterprises, CHA also has acknowledged to pass on the import documents without any verification. He also, therefore, failed to ask for detailed packing list from the importer. Though both of them denied any violation of CBLR on their part but the aforementioned observations amounts to foregoing the mandatory duty casted upon the CHA firm by the Customs Broker Licence Regulations (CBLR). Hon'ble Supreme Court in the case of Commissioner of Customs Versus K.M. Ganatra & Co. reported in [2016 (332) E.L.T. 15 (S.C.)] wherein the role of CHA has been elaborated and due compliance of CBLR has been impressed upon. It has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai reported in [2002 (142) E.L.T. 84 (Tri. - Mumbai)] wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed :-

"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."

And have followed the same.

7. Above noticed negligence of both the appellants herein is definitely the violation of their incumbent duty. This penalty has rightly been imposed upon them. I do not find any infirmity in the findings recorded in para 9 of the Order of Commissioner (Appeals) and accordingly have no reason to differ therefrom. Though only challenge of the appellant is that penalty cannot be imposed under the provisions of Customs Act on account of noticed violation of CBLR, to my opinion, said argument does not support the appellant's case. The penalties on Shri Santosh Kumar Gupta, CHA and G Card holder have been imposed under section 112(b)(i) of the Customs Act, 1962 and upon Shri R K Sharma, under section 117 of the Customs Act, 1962. The penalty under section 112 is for improper importation of goods and apparently the facts of the present appeals reflect the improper importation of goods that too the prohibited goods. Hence, I find no infirmity when penalty under section 112 (b)(i) has been imposed instead of it being imposed under CBLR. Similarly, penalty has been imposed upon under section 117 which is for such contravention as are not expressly mentioned under the Customs Act, 1962. The violation of any provisions of CBLR by CHA has no specific mention under Customs Act, section 117 has rightly been invoked by the appellants. Above all fraud vitiates everything and as discussed above,

there is notional fraud being committed while importing prohibited goods under mis-declaration of description as well as of quantum, I find no infirmity in the order under challenge not even with respect to the reasoning for reducing of penalty on CHA and his G Card holder, the appellant herein. I, accordingly, uphold the order. As a result thereto both the appeals are dismissed.

(Pronounced in the open Court on 23-09-2021)