

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH**

Court No. IV

**CUSTOMS APPEAL NO. 50303 OF 2022**

[Arising out of Order-in-Appeal No. 162(SM)/CUS/JPR/2021 dated 07.09.2021  
passed by the Commissioner (Appeals) Jaipur 302 005]

**PURUSHOTTAM KUMAR JAIN**

T-16, Mayur Kumar Jain  
Nehru Bazar, Jaipur 302 001.

**APPELLANT**

**Vs.**

**COMMISSIONER OF CUSTOMS  
(PREVENTIVE) JODHPUR**

Hqrs NCR Building  
Statue Circle, C Scheme  
**JAIPUR 302 005**

**RESPONDENT**

**APPEARANCE:**

Shri Arun Goyal, Advocate for the Appellant  
Shri Divey Sethi, Authorised Representative for the Department

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)**

**Date of Hearing : September 19, 2022**

**Date of Decision : October 17, 2022**

**FINAL ORDER No. 50971/2022**

**PER DR. RACHNA GUPTA**

The appellant herein is the Customs House Agent (CHA) having his firm namely M/s. Purshottam Kumar Jain. Vide the Order-in-Appeal No. 162 (SM) CUS/JPR/2021 dated 07.09.2021, penalty of Rupees One lakh each under section 112 (a) & (b) (iii) and under section 114A of the Customs Act, 1962, as imposed has been confirmed against him. The facts in brief are as follows:

That the Department of Directorate of Revenue Intelligence, Jaipur got an information about the various importers to have been importing rough precious stones by making huge overvaluation, and that these are not the actual importers but the imports are being managed by someone else behind them. Accordingly, some consignments of rough precious stones were seized at Jaipur Gemstone Exchange, Diggi House, Jaipur and Air Cargo Complex at Customs Station. On examination, huge overvaluation was noticed in those consignments as per the Valuation Certificate given by Expert Valuer. One of such consignment was imported vide Bill of Entry No. 5980998 dated 14.04.2018 by M/s.Rishipushp Trading LLP and from Air Cargo Complex, Sanganer, Jaipur. For want of documents the consignment was examined. The goods contained were declared as rough precious stone 'Sapphire' and the Country of origin was declared as Hong Kong. The value declared was found highly overvalued. The consignment was accordingly seized.

Searches were conducted on 16.10.2018 at the office of the appellant being the Customs Broker for M/s. Rishipushp Trading LLP for the import of the impugned consignment. Premises of the partners ( Shri Hemant Kumr Bhambi and Shri Rajendra Byawat) of the importers were also searched on 17.10.2018. Their statements also got recorded. Based upon those statements and the documents recovered during search, department found that one Shri Pukhraj R Padiyar used the firm M/s.Rishipushp Trading LLP for the impugned import by declaring the overvalue of Rs.1,93,68,833.75 instead of its actual value of Rs.9,47,510/-. As such, he was alleged to have abetted the act which has rendered the seized rough precious stones 'Sapphire' liable to confiscation and himself liable for penalties under the Customs Act.

With respect to the appellant, the Department observed that he as Customs Broker of the importing firm has failed to fulfill its obligation and had deliberately / knowingly ignored the fact that the importer is not the actual importer and the importer is the one who is not the IEC holder. With these observations, show cause notice No. 02/2019 dated 23.08.2019 was served not only upon the importing firm and its partners but also upon the appellant proposing the imposition of penalty under section 112 (a) &(b) (iii) and under section 114A of the Customs Act, 1962. The said proposal was initially confirmed vide the Order-in-Original No. 38/2020 dated 01.06.2020. The appeal thereagainst had been rejected by the aforesaid Order-in-Appeal. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Arun Goyal, learned Counsel for the Appellant and Shri Divey Sethi, learned Authorised Representative for the Department.

3. It is submitted on behalf of the appellant that appellant has been the Customs Broker Agent for several years and he has been looking after the work of M/s.Rishipushp Trading LLP who is having valid IEC No. 5217506652. It is submitted that appellant had clearly brought to the notice of the Department that M/s. Rishipushp Trading LLP is IEC Code holder. Earlier Shri Pukhraj R Padiyar and Shri Rajendra Byawat were the partners of said importing firm. However, with effect from 11.01.2018 both of them retired introducing two new partners i.e. Shri Shri Hemant Kumr Bhmbi and Dinesh Kumar Meghwanshi. Both of them had authorized Shri Pukhraj R Padiyar to do or cause to be done all or any of the acts on behalf of M/s. Rishipushp Trading LLP including making negotiations with the Customs Broker for clearance of import parcels, etc. It is submitted that none of these facts were taken into consideration by the Adjudicating Authority. In ignorance of these facts, the Adjudicating Authority

had wrongly concluded that importer is not an actual importer and the Customs Broker was well aware of this fact. The appellant is wrongly held to have failed to fulfill his obligation as Customs Broker. Penalty also has wrongly been imposed. Finally it is mentioned that the Show Cause Notice under CBLR, 2018 was also served upon the appellant. The Commissioner himself while adjudicating the said Show Cause Notice has held that the allegations of non fulfillment of the obligations under CBLR, 2018 are not proved. Seeing from this angle also the penalties imposed upon the appellant are prayed to be set aside and appeal is prayed to be allowed.

4. Learned Departmental Representative while rebutting these submissions has submitted that there is no dispute about the fact that there has been a huge mis-declaration in the impugned imported consignment. The imported goods of actual value of Rs.9 lakh have been imported declaring its value approx Rs.1.9 crore. Hence the present has been the case where 1.8 crore approximately INR has illegally been sent out of our Country. Learned Departmental Representative has also impressed upon that none of the partners of the importing firm have appeared nor they have challenged the order of confiscation of the consignment and redetermination of its value and even of imposition of penalty upon the partners as well as on the importing firm. Finally impressing upon that such declaration is not otherwise be possible without the deliberate malafide intent and involvement of CHA, that the order of imposition of penalty upon him is in affirmed. Appeal is therefore, prayed to be dismissed.

5. Having heard both the sides and perusing entire record all the facts, it is held as follows:

There is no dispute that the importer in the present case is M/s.Rishipushp Trading LLP and that the firm is an importer-exporter code (IEC) holder. The copy of IEC code is very much

on record. The firm is otherwise registered for GST purpose as is apparent from the Certificate of Registration dated 27.07.2017. I also perused the Deed of Admission cum Retirement dated 12.1.2018/ Addendum to LLP agreement dated 10.2.2017. The perusal thereof reveals that it is a document between new partners and retiring partners of M/s.Rishipushp Trading LLP. The retiring partners of M/s.Rishipushp Trading LLP namely, Shri Pukhraj R Padiyar and Shri Rajendra Byawat have agreed for them to be substituted with new partners namely, Shri Hemant Kumr Bhmbi and Shri Dinesh Kumar Meghwanshi with the clear understanding that the importer LLP between the partner will continuing with effect from 10.2.2017 on same terms and conditions as are consistent in the deed of LLP. The said deed was duly brought to the notice of the competent authority.

During earlier regime of the retiring partners, the LLP's registered address was at Surat, Gujarat and after aforementioned deed, the LLP got itself registered in Rajasthan. However, Surat continued to be one of its branch office. I also observe that an authority letter is signed by the new partners of M/s.Rishipushp Trading LLP in favour of Shri Pukhraj R Padiyar to do or cause to be done all or anyone of the matters :

- (i) To negotiate with the Customs Broker for clearance of import parcel
- (ii) To sign and receive and deal with the import parcel
- (iii) To negotiate with overseas supplier for import of rough precious stones
- (iv) To make payments and deal in all customs related work for import of consignment
- (v) To comply with all rules and regulation of customs as directed.

6. Reverting to the Order under challenge, it is observed that penalty upon the appellant has been confirmed on the sole ground that the importer on record i.e. M/s.Rishipushp Trading LLP is not the actual importer. The actual importer is presumed to be Shri Pukhraj Ramdevji Padiyar and since Shri Pukhraj Ramdevji Padiyar is not IEC code holder and since this fact was known to the appellant, he deliberately ignored the same, thereby committing violation of his obligation as Customs Broker. The above observed and un-disputed facts are opined sufficient to falsify the findings that the importer is someone else other than M/s.Rishipushp Trading LLP. The firm is holder of valid IEC. There is no dispute about their valid KYC documents. There is nothing on record that Shri Pukhraj R Padiyar was the actual importer. He rather the authorized by the firm (LLP) to deal with the Customs Broker for facilitating the importing firm to get the imported consignment.

7. At this stage, statement of appellant has also been perused wherein he has stated as follows:-

"43.2 The noticee no 5 Customs Broker M/s Purshottam Kumar Jain has mainly contested that he had undertaken customs clearance work of noticee no. 1 M/s Rishipushp Trading LLP who are IEC code holder. He was not concerned whether or not its Partners individually held IEC Code. Change of Partners in the LLP firm did not render the said firm in operative. All imports were done by this firm only. There is no question of him allowing import related activities at the behest of the persons who were not the IEC holders. The noticee no. 2 Shri Pukhraj Padiyar had done all work on behalf of M/s Rishipushp Trading LLP as its authorized signatory/ Power of Authority holder. The concept of doing work at behest of Power of attorney holder is an accepted legal principle and acknowledged so in the CBEC circular 09/2010 dated 08.04.2010. He ensured proper KYC done of the importer in question. He in true spirits and bonafidely also complied with the Instruction envisage in Circular No. 9/2010-Cus., dated 8-4-2010."

The said statement is actually in line with the above documents. The findings of the Adjudicating Authority are therefore, held to be the findings in total ignorance of the

documentary as well as oral evidence on record. Thus the findings are held as nothing but the outcome of Department's own presumptions and assumptions, as far as the obligations of Customs Broker on part of appellant are concerned.

8. Coming to the aspect of imposition of penalty, it is observed that penalty has been imposed under section 112 (a) &(b) (iii) and under section 114A of the Customs Act, 1962. The foremost provisions are reproduced here:

**“[section 112 (a) &(b) (iii)**

In the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees), whichever is the greater;

**[114AA. Penalty for use of false and incorrect material**

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]”

9. From the above discussion, it stands apparently clear that the appellant has deliberately and intentionally has not provided any such information which was false or incorrect. As such, in my opinion that penalty under section 114AA of the Customs Act, 1962 has wrongly been imposed upon him.

10. However with respect penalty under section 112 (a) &(b) (iii) of the Customs Act, penalty is the consequence to a wrong declaration of the value of the goods in the Bill of Entry. Since there is no denial that Bill of Entry were filed by the appellant, under his obligation it was mandatory for him to have the documents showing the value of imported consignment. Nowhere

appellant has stated about the said document and the valuation thereof nor any such document in the form of invoice has been produced on record which would have been verified by the appellant at the time of processing of the impugned consignment. Accordingly, I hold that the penalty under section 112 of Customs Act has rightly been imposed.

11. As the outcome of entire above discussion, the penalty under section 114A of the Customs Act, 1962 is hereby set aside. However, penalty under section 112 (a) &(b) (iii) is hereby confirmed. Appeal consequently stands partly allowed.

(pronounced in the court on 17.10.2022)

**( DR. RACHNA GUPTA )  
MEMBER (JUDICIAL)**

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