

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

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No.729 of 2009-SM

(Arising out of Order-in-Original No.20/Commr/HKT/2009 dated 29.10.2009 passed by the Commissioner of Customs (Preventive), New Customs House, New Delhi-110 037.]

Shri Raj Kumar Batra, Proprietor of

Appellant

M/s.Music Palace, 597, Hamilton Road, Kashmere Gate,
Delhi-110 006.

VERSUS

Commissioner of Customs (Preventive)

Respondent

New Customs House, Near I.G.I. Airport,
New Delhi-110 037.

AND

Customs Appeal No.50 of 2010-SM

(Arising out of Order-in-Original No.20/Commr/HKT/2009 dated 29.10.2009 passed by the Commissioner of Customs (Preventive), New Customs House, New Delhi-110 037.]

Commissioner of Customs (Preventive)

Appellant

New Customs House, Near I.G.I. Airport,
New Delhi-110 037.

VERSUS

Shri Raj Kumar Batra, Proprietor of

Respondent

M/s.Music Palace, 597,Hamilton Road, Kashmere Gate,
Delhi-110 006.

APPEARANCE:

Shri Akhil Krishan Maggu and Shri Vikas Sareen, Advocates for the assessee.
Shri Divey Sethi, Authorised Representative for the Revenue.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NOs.51110-51111/2022

DATE OF HEARING:03.11.2022

DATE OF DECISION:29.11.2022

ANIL CHOUDHARY:

The appellant, Raj Kumar Batra is a trader mainly of musical gazettes like car stereo, amplifier, speakers, etc. having his shop under the name and style of Music Palace situated at Kashmiri Gate, Delhi. The appellant deals in both type of products, the goods, which are manufactured in India and the goods of foreign origin. There was search in the premises of the appellant by the officers of DRI on 19.12.2007, whereby several documents like invoices, etc. were resumed for further investigation. However, no stock

was seized or detained. Thereafter, the 2nd search was conducted by the officers of Customs (Preventive) within one month on 5.1.2008 (concluded on 6.1.2008) by the officers of Customs (Preventive). The officers also searched godown of the appellant located at 599, Hamilton Road, Kashmere Gate, Delhi. On demand of the officers, as the appellant could not produce documentary evidence or otherwise showing lawful import, acquisition, possession in respect of the goods, which appeared to be of foreign origin, the same were seized under Panchnama, valued at Rs.92,73,350/-. Further, Indian currency of Rs.14,10,990 available in the cash box of the shop was also seized. The goods and currency were seized under Section 110 of the Customs Act on the belief that the appellant have imported/acquired /possessed the goods in contravention of the Exim Policy 2004-2009 read with Standard of Weights and Measures Act (SWM Act) and Packaged Commodity Rules, 1977.

2. The statement of the appellant-Raj Kumar Batra was recorded on the spot on 6.1.2008 under Section 108 of the Act, who, *inter alia*, stated that he is the sole proprietor of 'Music Palace' and is dealing in trade of car stereo, speakers, etc. As regards non-availability of the invoices/bills etc. in support of the goods, he stated that these are not available with him as in the recent search, the DRI officers have resumed the documents on 19.12.2007. Further, as regards the source of purchase of imported goods, he stated that he has been mainly procuring the goods from Mr. Sushil Agarwal, owner of M/s. Ashish Panchal, Ahmedabad, who normally sent the goods without challans/invoices. That Rs.14,10,990/- of Indian currency recovered from his shop was the sale proceeds of his shop. He also stated that about 80% of his turnover was in imported goods and 20% in Indian goods. That the imported goods used to come from Bombay through ABC Transport as well as from Ahmedabad. The office of ABC Transport is located at Chabi Ganj, Kashmere Gate, he usually gets the bulity/RRs by post on

the basis of which, he gets delivery. He makes the payment in cash through Shri Kalpesh Angaria, who was located at Cloth Market, near Novelty Cinema, Delhi.

3. That Revenue in follow-up action, searched the premises of Shri Ashish Panchal at Ahmedabad vide a Panchnama dated 8.1.2008, wherein nothing incriminating pertaining to this appellant was found. Shri Ashish Panchal in his statement recorded on 16.1.2008 stated that he had been working with M/s. Chinmay Corporation at Ahmedabad as clerk, from Jan. 2007 to October, 2007. The said firm was engaged in import of music system and he used to attend phone, messages and routine filing work and did not know anything about sales/purchase related details. Further, stated that he did not know either Shri Sushil Kumar Agarwal or Shri Raj Kumar of Music Palace.

4. Statement of Shri Sushil Kumar Agarwal was recorded on 28.01.2008 under Section 108 of the Act, wherein, he, *inter alia*, stated that he is Director of M/s. Aashna Securities (P) Ltd. at Ahmedabad and the firm was engaged in the business of equity shares trading. He did not know Shri Ashish Panchal, resident of Ahmedabad. Earlier, he was in the business of electronic goods like T.V. and spares, etc. He knew M/s. Music Palace of Delhi and one Mr. Mama of M/s. Music Palace, who was doing purchase/sales of electronic goods in Delhi. In April, 2007, he had given reference of M/s. Music Palace, Delhi to Mr. Pundrik Trivedi. Further, stated that he did not receive any payment from Shri Raj Kumar of Music Palace.

5. Further, in the course of investigation, statement of Shri Pundrik Trivedi was recorded on 29.01.2008 at Ahmedabad, wherein, he, *inter alia*, stated that he is partner in Parth Marketing and is engaged in imports and domestic sales of electronic goods including car stereo, LCD, speakers, etc. That he was also partner of M/s. Chinmay Corporation, Ahmedabad. That he

imports goods from Singapore and Hongkong and had supplied the goods valued at Rs.1,08,030/- to Shri Raj Kumar of M/s. Music Palace, Delhi. He had submitted three bills of entries of March/July/September, 2007 covering imports of various music systems like Kenwood KFC, Cone Type Speakers, JVC, Cone Type Speaker and Formula 7.7" Sunvisor LCD Car and had also supplied such goods to Mr. Raj Kumar of Music Palace. Further, stated that he had not issued any sales invoice for the said goods and had received the payment in cash through Angaria(Courier).

6. Further, the statement of the appellant was recorded on 3.2.2008 , wherein, He, *inter alia*, stated that Shri Sushil Aggarwal was not the owner of M/s. Ashish Panchal, Ahmedabad but the owner of other two firms viz. M/s. Parth Marketing and M/s. Chinmay Corporation, Ahmedabad. That a person of Shri Sushil Agarwal used to come and collect the payment from his shop. That the identity of the person was made known over phone by Shri Sushil Agarwal. That Shri Sushil Agarwal used to receive the payment through Shri Kalpesh Angaria at Delhi. He reiterated that he deals in sales & purchase of Indian make goods. Further, that the goods of Indian origin was purchased from M/s. M.R. Electronics Corporation, New Delhi, M/s. Royal Electronics, Shalimar Industrial Area, Delhi and some other firms. That the goods of foreign origin was purchased from M/s Tokyo Sale Corporation, Kashmere Gate, Delhi, M/s. M.R. Electronics Corporation, Delhi, M/s. Morata India (P) Ltd., Delhi, M/s. Carrion Communication (P) Ltd., New Delhi and M/s. Sriram Corporation, Kashmere Gate, Delhi. Further, stated that he was not having documents of purchase as the same have been resumed by the officers of DRI in their earlier search.

7. In his further statement recorded on 20.03.2008, the appellant, *inter alia*, stated that he did not know whether the details i.e. name and address of importer, month of import, quantity of goods, name of commodity, were mentioned on the package or on the labels. That he did not affix or

remove any label or details printed on the cartons and he used to sell the goods to its buyer as it was. Further, on seeing 17 photocopies of invoices submitted by him along with letter dated 29.02.2008, he could not tell the model and brand of the goods covered by the said invoices. Since in few cases, model number was given but the brand name of the product was not given in the invoices.

8. Further, M/s. ABC Transport had submitted 28 GRs relating to transport of the goods from Mumbai/Ahmedabad to the appellant at New Delhi. The appellant also submitted photocopies of 29 invoices on 25.03.2008 with the Revenue. The seized goods were re-examined on 3/4/7/8th April, 2008 at the request of the appellant to ascertain whether the goods were in packaged form or whether the declarations including MRP, as required under para 5 (Chapter 1 A) to Import Policy – 2004-2009 were affixed/printed on the goods or on the packages containing the said goods. Pursuant to examination, the statement of the appellant was recorded, wherein, he stated that the goods were packed in two types of packages, one in cardboard box and other in polythene packing. That there was no declaration on the goods or packages regarding name and address of the importer, common name of the commodity, quantity in the packages, month and year of import and MRP. That on the cardboard boxes/packages, quantity and name of the item was printed. In further statement recorded on 10.04.2008, the appellant stated that he would be able to correlate the seized goods with the documents only after receipt of the documents resumed by the DRI.

9. Further, follow-up action investigation was done at (i) M/s. Carion Communication (P) Ltd., Okhla Industrial Area, Phase-I, New Delhi and (ii) M/s. M.R. Electronic Corporation, Okhla Industrial Area, New Delhi.

9.1 Shri Uma Shankar, Accountant & Authorised Signatory of M/s. Carion Cummunication (P) Ltd. - had stated that they are engaged in manufacture and registered under Central Excise and further stated that M/s. M.R. Electronics is a trading firm and owner of brand "AMEZ". They were not engaged in selling/purchasing of imported goods. M/s. M.R. Electronics trades in electronic goods like car cassette player, amplifier, AM/FM Radio, etc. of Indian origin.

9.2 M/s. Tokyo Sales Corporation, Kashmere Gate, Delhi - Shri Inder Preet Singh Sahani, Partner of M/s. Tokyo Sales Corporation, *inter alia*, stated that they were importers of TFT LCD/Monitor/Screens from China. They made the sales to various retailers/dealers, wherein the name of the buyer is not mentioned. It is not possible to reveal, which of the invoices were issued to M/s.Music Palace. Further, admitted that Music Palace was purchasing imported goods from them. Further, stated that invoice 'KV' mentioned in the invoice stands for brand - KARVOX. Further, stated that the goods/packages sold by them did not bear declaration regarding MRP except brand name, name of commodity, modal no., which were printed on the packages.

9.3 Shri Subhash Checker, Proprietor of M/s.Royal Electronic, New Delhi, *inter alia*, stated that they are engaged in the manufacture of the goods like speakers, amplifiers, etc. and his turnover was below the exemption limit for central excise. Further, admitted that they have supplied the goods to the appellant vide several invoices including invoice no.194 dated 2.1.2008 and 196 dated 3.1.2008. Such goods were of Indian origin. They have never imported any goods and are registered owner of the brand 'JVL'.

9.4 M/s. Morata India (P) Ltd., Prashant Vihar, Delhi - Shri Rakesh Kumar Gupta, Director in his statement stated that they were not importers and were dealing in sale and purchase of TFT/LCD monitor, 14" TV etc.. On

seeing invoice no.019 dated 25.12.2007, no.021 dated 27.12.2007 and no.022 dated 28.12.2007, he admitted that that these were issued to M/s. Music Palace by them. They never dealt with foreign goods of brand like Sony, Pioneer, JVC, Kenwood, etc. That the goods purchased or sold by them do not bear declarations including MRP.

9.5 M/s.Boschmann India (P) Ltd. – Shri Sumedh Narda, Director, *inter alia*, stated that he was dealing in sale and purchase of speakers, car stereo and amplifier of 'Boschmann' brand. They purchased these goods from M/s.Fusion Electronic, Shalimar Bagh, Delhi, who were importer of such goods. That the goods purchased from M/s. Fusion Electronics were affixed with the sticker bearing name and address of the importer, month and year of import, modal no., quantity of the goods and MRP, etc. and the goods are sold as such and also stated that such stickers are there on the goods, including the goods sold to the appellant.

10. It appeared to Revenue that as per para-5 to General Notes regarding Import Policy "Chapter 1-A of FTP-ITC(HS) Classification 2004-2009, all such prepackaged products, which are subject to provisions of SWM Act and Packaged Commodity Rules, shall be subject to compliance of all the provisions of the said Rules, when imported into India. The compliance of these shall be ensured before the import consignment of such commodities is cleared by Customs for home consumption. The packaged commodities are required to contain (a) name and address of the importer, (b) generic or common name of the commodity packed; (c) net quantity in terms of standard unit of weights and measures. If the net quantity in the imported packages is given in any other units, its equivalent in terms of standard unit shall be declared by the importer, (d) month and year of packing in which the commodity is manufactured or packed or imported; and (e) maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise,

freight, transport charges, commission payable to dealers and all charges towards advertising, delivery, packing, forwarding and the like, as the case may be.

11. It further appeared that as the goods found in the shops/godown of the appellant, the requirement of SWM Act read with the Rules have not been complied with, thus such goods are prohibited goods and are liable to confiscation under Section 111(d) of the Act.

12. Accordingly, show cause notice dated 3.7.2008 was issued by the Commissioner of Customs (Preventive) alleging that the goods found in the shops/godown valued at Rs.92,73,350/- appeared to be smuggled in contravention of the various restrictions/prohibitions imposed on the import, thereof as the seized goods were found not bearing the declaration including MRP as required in General Notes to the Foreign Trade Policy, under which Customs Act read with SWM Act and the Rules thereunder and hence, the goods are liable to confiscation under Section 111(d) of the Customs Act, 1962. Indian currency of Rs.14,10,900/- seized from shop are liable to confiscation under Section 121 of the Customs Act, 1962. Further, penalty under Section 112 was imposed on M/s.ABC Transport Company and also on the appellant. Shri Satinder Singh Chug, Proprietor of M/s. Chug Transport Co. was also penalized under Section 112 of the Customs Act, 1962.

13. Being aggrieved with the order-in-original passed by Commissioner of Customs (Preventive), the appellant/assessee is in appeal against order of confiscation and penalty and the Revenue is in cross appeal against failure of the Commissioner to demand duty on the seized goods under Section 125(2) of the Customs Act.

14. Ld. Counsel for the appellant, *inter alia*, assails the impugned order, has been passed without discharging the onus, on the assumptions and

presumptions. The goods in question are freely importable by any person. The appellant are also dealing in goods manufactured in India and Revenue have erred in treating all the goods found in the shops/godown of the appellant as imported goods. Post-importation when the goods are in the open market, presumption is that the goods are duty paid. It is the onus of the Revenue to lead evidence that the goods, which are in the open market, are not duty paid. The appellant have led evidence and given name and contact and address of the persons/firms, from whom he is making purchases and several such parties have confirmed that they had dealings with the appellant /assessee and have supplied him either Indian or imported goods in regular course of business. The receipt of the imported goods from Mr. Sushil Agarwal of Ahmedabad and other parties of Ahmedabad & Mumbai has been corroborated by the statements of the transporters viz. M/s. ABC Transport. Mr. Sushil Agarwal has also admitted having trade relations with the appellant. It is further urged that confiscation of cash recovered from the shop/godown premises is bad. Out of the total cash found and seized, the appellant had led evidence that Rs.14,10,000/- belongs to his mother-in-law and filed evidence in support of the same, which was not found untrue. So far the issue of producing documents in support of purchase/stock found in the premises of the appellant is concerned, the appellant had produced few current invoices and stated that few days back, there was search by DRI on 19.12.2021, and they have resumed the documents for further investigation. Accordingly, as the documents were lying with the Revenue, the appellant was prevented by sufficient cause. Thus, there is no failure on the part of the appellant to produce the documents in support of the stock in his shop/godown. Rather it is failure of the Revenue, as they have not referred to the seized documents, which was available with the Department. Further, urged that Revenue has erred in relying upon the retracted statement of the appellant. The appellant have retracted the statement at first available opportunity

before the Court of Metropolitan Magistrate on 11.04.2008, when the appellant was produced before the Magistrate pursuant to the arrest.

15. Ld. Counsel further urges that so far the allegation of non-compliance of the provisions of Standard Weight & Measures Act, 1976 is concerned, read with the Packaged Commodity Rules, in the facts of the present case, where the goods are in town, the officers of Customs have no jurisdiction. The jurisdiction of the officers of the Customs with respect to the compliance of the SWM Act read with the Rules, lies within the Customs Area in case of imported goods. So far the goods lying outside the Customs area in the domestic market is concerned, jurisdiction is vested on the Director, who is appointed by the Government under the provisions of Section 29 of SWM Act, 1976. The provisions of SWM Act are a complete code in itself.

16. Ld. Counsel further urges that the impugned order is bad and against the principles of natural justice as the investigator has become the judge in this case. The investigation including seizure and issue of show cause notice was done by the office of the Customs (Preventive), New Customs House, near IGI Airport, New Delhi. The show cause notice has been adjudicated by the Commissioner of Customs (Preventive), New Customs House, New Delhi.

17. The impugned order is hit by the principle-no one can be a judge in his own cause. Accordingly, the appellant prays for allowing the appeal with consequential benefits.

18. Opposing the appeal, Id. Authorised Representative for the respondent/Revenue relies on the impugned order. He also supports the appeal of Revenue.

19. Further, in support of the Revenue's appeal, he urges that the Id. Commissioner has erred in not demanding duty on the seized goods, which were confiscated by the impugned order, in terms of Section 125(2) of the

Customs Act. Section 125(2) provides that, "where any fine in lieu of any confiscation of goods is imposed under sub-section (1), the owner of such goods or person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods."

20. Having considered the rival contentions, I find that admittedly, it is a case of town seizure. I further find that the appellant/assessee have led sufficient evidence that he has purchased the goods from the open market in India and is not the importer. Further, they have led the evidence by producing some documents available with them and also gave name of the parties, who were either traders or importers or manufacturers in India, who had supplied the goods. Further, all such suppliers/importers have corroborated the statement of the appellant/assessee, as to have supplied the goods. Further, admittedly, the documents available with the appellant in support of the goods lying with the appellant in shops/godown were resumed by Revenue officers of DRI on 19.12.2007 about a month before the search by the Customs (Preventive). Thus, as the documents were lying with the Department, the appellant could not produce all the documents in support of his contention. I further find that the Court below have erred in not referring to the resumed records lying with them.

21. Under the facts and circumstances, the goods being not notified goods under Section 123 of the Act, it was onus on the Revenue to establish the smuggled nature of the goods, which the Revenue have miserably failed. Not a single evidence was produced by Revenue in support of allegation of smuggling save and except bald allegation.

22. I further find that the allegation made by Revenue as regards violation of the provisions of the SWM Act read with the Rules is bad and wholly without jurisdiction. As in the facts of the present case, the jurisdiction to inspect, search and seize the goods in the open market, was with the

Director appointed under the SWM Act. The Customs officers can exercise the jurisdiction under the provisions of SWM Act and the Rules thereunder, only in the Customs area. I further find that the impugned order is bad and suffers from the vice of violation of principles of natural justice. Thus, I hold that Revenue has not been able to establish the smuggled nature of the goods.

23. Accordingly, in view of my findings and observations, I set aside the impugned order. I allow the appeal of the appellant/assessee. The appeal of Revenue is dismissed. In view of my aforementioned findings, the appellant is entitled to consequential benefits including refund of the amount seized /confiscated.

[Order pronounced on 29.11.2022]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.