

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

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 51095 of 2020-SM

(Arising out of order-in-appeal No. 13 to 15 (SM) CUS/ JPR/2020 dated 24/26.02.2020 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur).

Dharmesh B. Bhavsar

1469, Manivasan Sheri, Saraspur
Ahmedabad.

Appellant

VERSUS

Principal Commissioner, Customs

C. R. Building, Statue Circle,
C-Scheme, Jaipur.

Respondent

APPEARANCE:

Sh. N. K. Tiwari, Consultant for the appellant

Sh. Ishwar Charan, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50045/2023

DATE OF HEARING: 31.08.2022

DATE OF DECISION: 17.01.2023

ANIL CHOUDHARY:

The appellant, Dharmesh B. Bhavsar is a trader engaged in trading of electronic goods including mobile phones. He purchases the goods from local market in India for trading.

2. In the month of July, goods loaded on truck No. RJ14 GE 3145 comprising goods under various consignment notes (of various parties) were loaded from Delhi for being transported to Ahmedabad, was intercepted by Sales Tax Department at Jaipur in the month of July, 2014 (night of 1st and 2nd July). It appeared to the officers of

Commercial Tax Department that several goods inter alia electronic goods, namely LCD, LED TV and Chinese made mobile phones, alongwith other parchooni goods were being transported without proper invoice/ challan or documents. The Sales Tax Officer detained the vehicle and the goods and after taking the custody got the truck parked at High Court circle, at Jaipur. The sales Tax Officers assessed the goods to Sales Tax pursuant to enquiry and recording of statement(s) holding that the goods have been purchased and sold within India (in the State of Rajasthan) and accordingly assessed sales tax liability and penalty, which was deposited by the transporter. In the meantime, the Sales Tax Department had informed the Customs Department, that as the goods appears to be imported, they may also make enquiry. That immediately when the goods was released by the Customs Department after payment of tax and penalty on 01.08.2014, the Customs Officers at the gate of Sales Tax Department, intercepted the truck and detained the goods and the truck and brought to their office. Thereafter, after making enquiries the Customs Department issued show cause notice dt. 28.01.2015. In the show cause notice, it is mentioned that the Customs Department have intercepted the truck and the goods on 01.08.2014 itself on release by the Sales Tax Department and detained the goods under Section 110(1) of the Customs Act, 1962 under detention memo dt . 01.08.2014. The Customs Department recorded the statement of (i) Sh. Suresh Chand Gurjar, Truck Driver, and (ii) Sh. Kamlesh G. Chandwani, Partner of M/s Sri Vishal Gujrat Freight Cargo (Sri VGFC in short). The Customs Department also received letter dt. 17.09.2014 from Sh. Bhavesh Parnami, Ahmedabad wherein he submitted that the

goods – 20 LED TV was booked via Sri VGFC for transportation to Ahmedabad. He has purchased the LED TV under Tax Invoice No. 230 dt. 01.07.2014 from M/s Gomti Impex, Civil Lines, Delhi and one LED from M/s S. K. Trading Company, Delhi. He also annexed the copy of invoice for purchase of 19 LED TVs. Statement of Sh. Bhavesh Parnami was recorded on 03.11.2014.

3. Another letter was received from Sh. Jagdish Bhai alias Nilesh Bhai dt. 17.09.2014 by the Customs that he has booked 16 LED TVs for transport from Delhi to Ahmedabad with Sri VGFC, this he has purchased under Tax Invoice dt. 01.07.2014 from M/s S. K. Trading Company, Delhi.

4. Further statement of Sh. Kamlesh G. Chandwani, Partner of Sri VGFC was recorded on 03.11.2014, wherein he inter alia stated that the owner of mobile phones seized by the Department is Sh. Dharmesh Kumar B. Bhavsar, Ahmedabad (appellant).

5. On summons, Sh. Niraj Agarwal S/o Sh. Pawan Agarwal, Manager of Sri VGFC appeared before the Customs officer on 02.01.2015 and his statement was recorded. He inter alia stated that he is looking after the day-to-day work on behalf of his father, who is the Proprietor. It was further stated that till that day, no one has turned up to enquire about the mobile phones, but now the consignee Sh. Dharmesh B. Bhavsar having private marka 'Kumar DL' and 'DL Enterprises' (as mentioned in bilty No. 10256 for 11 packages, bilty No. 10245 – 5 packages and bilty No. 246 – 6 packages all dated 01.07.2014, have contacted at their Ahmedabad office with respect to

these bilty numbers. Accordingly, they informed the consignee that the goods have been seized by the Customs Department and the matter is pending. Further, he has asked the consignee to approach the Customs Department. They also issued certificate to the consignee certifying the goods mentioned belongs to Sh. Dharmesh B. Bhavsar, and they have no objection in handing over the goods of the above LR Nos. to Sri Dharmesh. Copy of such certificate was also submitted by Sh. Niraj Agarwal.

6. The Customs Department had seized mobile handsets of Chinese origin total quantity 2287 and valuation was done on MRP basis as per the stickers found affixed on the packages of the handsets, totally valued at Rs.22,76,743/-. After allowing abatement on the MRP of 35% the duty was calculated, including cess – Rs.2,17,720/-.

7. It appeared to Revenue that mobile handsets of foreign origin seized under panchnama dt. 02.08.2014 and 15.08.2014 are unclaimed and no claimant has turned up to claim the ownership. Further, the invoices etc. submitted by the truck Driver and transport company in respect of the mobile handsets, appeared to be bogus or fake. Further, observed that inspite of information given to the consignee Sh. Dharmesh B. Bhavsar in December, 2014 he has not turned up to claim the goods. As the appellant did not turn up to claim the goods, under the aforementioned facts, the mobile phones appears to be of smuggled nature and liable to confiscation under Section 111 of the Act. It further appeared to the Customs Department that the owner of the mobile handsets was the appellant in view of the no objection

certificate issued by the transporter in his favour. Show cause notice dt. 28.01.2015 was issued requiring the transporter (i) SVGFC (ii) Sh. Bhavesh Parnami and (iii) Sh. Jagdish Bhai are hereby jointly and severally proposing to confiscate 36 LED TV sets valued at Rs.20,20,400/- and further penalty was proposed on SVGFC to show cause as to why 2287 pcs. of Chinese origin phones having MRP Rs.22,76,743/- be not confiscated under Section 111(b) and (d) of the Act alongwith penalty. Penalty was also proposed on Sh. Kamlesh G. Chandwani and Sh. Niraj Agarwal both employee of Sri VGFC.

8. Addendum to show cause notice dated 05.07.2016 was issued to the show cause notice dt. 28.01.2015, observing that after issuance of the show cause notice, this appellant Sh. Dharmesh B. Bhavsar appeared before the Department and requested for provisional release of 2287 pcs. of Chinese origin mobile phones. Sh. Dharmesh B. Bhavsar also produced copy of order dt. 12.05.2016 of Rajasthan High Court in Civil Writ Petition, directing the appellant to appear before the Customs Department to prove the ownership of the seized goods. The appellant appeared on 02.06.2016 and in his statement categorically admitted the fact that he has no proof of legality of import of 2287 pcs. of mobile phones. Nor he has any documents in support of customs duty on the said phones. He has stated that he has purchased the mobile phones from Delhi market on cash payment; that the appellant, it appeared, failed to prove the legality of the impugned goods as well as the claim of the ownership of such goods. His request for provisional release was rejected. However, the show cause notice was amended to the effect that the appellant is free to furnish evidence in order to

support legal import of the said mobile phones. Further, this appellant was required to show cause as to why 2287 pcs. of Chinese origin mobile handsets be not confiscated under Section 111(b) & (d) and penalty under Section 112(b) and under Section 114AA of the Customs Act, 1962.

9. This appellant contested the show cause notice by claiming ownership of the mobile handsets of Chinese origin stating that the same was purchased in cash from the open market in Delhi. Further the claim is duly supported by 'No Objection Certificate' issued by Sri VGFC (transporter).

10. The Joint Commissioner observed in the order-in-original that inspite of issue of 'NOC' dt. 12.10.2014 by the transporter in favour of the appellant, he did not approach the Department till the issue of show cause notice till January, 2015. The appellant has claimed the ownership of the mobile phones (received through post on 10.03.2015), almost nine months since the seizure initially by the Sales Tax Department and then by the Customs Department. Thereafter, he approached for provisional release of the seized goods after filing Writ Petition No. 7146/2015 before the Hon'ble High Court of Rajasthan praying for provisional release of the goods. Further, Sh. Bhavsar admitted that he does not have proper sales invoice in support of purchase of goods from open market in Delhi and have also not given the name and details of the seller. It was held that the appellant has failed to prove the legitimate ownership of the mobile phones. The appellant had also raised the contention that admittedly it is a case of

town seizure and the appellant has purchased the goods from the open market in Delhi, after the import of the goods. Further, there is no legal obligation as per Section 123 of the Act and it was onus on the Department to prove the smuggled nature of the goods. The mobile phones 2287 pcs. of Chinese origin having MRP of Rs. 22,76,743/- were held liable for confiscation under Section 111(b) and (d) of the Act. The mobile phones were absolutely confiscated. Further, penalty of Rs. 1 lakh was imposed on this appellant under Section 112(b)(ii) and Rs.20,000/- under Section 114AA. Penalty was also imposed on the transporter among others.

11. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who vide the order-in-appeal was pleased to reject the appeal. Being aggrieved, the appellant is before this Tribunal.

12. Learned Counsel for the appellant Sh. N. K. Tiwari assailing the impugned order inter alia urges that the appellant had led sufficient evidence showing the purchase of mobile handsets from open market in Delhi. Admittedly, it is a case of town seizure as the goods were admittedly being carried by the transporter from Delhi to Ahmedabad. Further, urges that the Customs Department had not brought any evidence on record in support of their allegation of smuggled nature of goods. The whole order of confiscation and penalty is bad as the same is based on presumption and assumption, without any corroborative evidence. It is further urged that the goods have been admitted to have been traded within India and the Sales Tax Department had assessed and collected the sales tax alongwith penalty on the goods/ mobile

phones in question. It is further urged that the Court below have passed order of confiscation and penalty in a mechanical manner showing non-application of mind. The contention of the appellant is also supported by the documentary and oral evidence led by the transporter –Sri VGFC who have also stated that they received the goods at Delhi for transportation to Ahmedabad, and the goods were inspected at Jaipur by the Sales Tax Department. After being assessed to Sales Tax and on payment of sales tax, the goods were released by the Sales Tax Department and thereafter immediately detained and seized by the Customs Department. Thus, the fact of trading of the goods in India in the domestic market, is also supported by the levy of sales tax by the Sales Tax Department of Rajasthan. Accordingly, he prays for allowing of the appeal with consequential benefits.

13. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

14. Having considered the rival contentions, I find that admittedly the goods under dispute – Chinese mobile phones have been purchased by the appellant from open market in Delhi. Such contention is also supported by the statement and evidence led by the transporter. Appellant have also produced documents of transport before the Tribunal as well as the bilties that the goods were being transported from Delhi to Ahmedabad. Further, appellant had appeared before the Customs Department and had claimed the goods. Admittedly, no other person has claimed the goods in question. I further find that in view of admitted town seizure, it was the onus on the Customs Department to

lead evidence in support of allegation as to the smuggled nature of goods. I also find from the record that no evidence has been brought on record in support of its allegation. Further, sale-purchase of goods in India is supported by the levy of Sales Tax by the Sales Tax Department of Rajasthan. Accordingly, I find that the order of Court below is vitiated in law and on facts.

15. In view of my findings and observations, I set aside the impugned order and allow the appeal. The respondent –Revenue is directed to release the goods forthwith to the appellant within a period of 15 days from the date of receipt of copy of this order. Further, ordered that the appellant shall not be liable for payment of godown rent or detention charges or demurrage.

16. In the result, the appeal is allowed.

(Order pronounced on 17.01.2023).

(Anil Choudhary)
Member (Judicial)