

## **TaxHelpline 2013/200**

### **INLAND REVENUE APPELLATE TRIBUNAL**

**C.A. No. 134/LB/2013 Date of hearing 24.03.2013 Date of judgment 30.05.2013**

**Ch. Muhammad Asghar Paswal, Member (Judicial)**

**For the appellant Mian Abdul Ghaffar, Advocate. For the Respondent Mr. Muhammad Ismail, D.R. assisted by Mr. Mubarik Sherazi, I.O**

**1. Tariq Sardar s/o Muhammad Sardar District Sheikhpura.2. Arif Hussain s/o Muhammad Sardar District Sheikhpura.3. Muhammad Zubair**

**1. Superintendent, Intelligence and Investigation, Federal Board of Revenue, Lahore.2. Additional Collector of Customs (Adjudication), Model Custom Collectorate, Lahore**

### **ORDER**

CM. MUHAMMAD ASGHAR PASWAL, MEMBER (JUDICIAL): This judgment shall dispose of a Customs Appeal filed against an order-in-original No.36/2013 dated 02.04.2013 passed by the learned Additional Collector of Customs (Adjudication), Lahore.

2. The facts leading to this appeal are that on an information the staff of Customs, Intelligence and Investigation-FBR, Lahore visited the premises of Tariq Basharat (Tariq International Plastic Works). The search of it led to recovery of 1200 bags of Iranian plastic dana which were found repacked in polypropylene bags of Indian origin, empty Irani bags 05 bundles and empty Indian bags 05 bundles. On demand the owner failed to produce any documentary evidence regarding legal import of lawful possession of the recovered goods. As a consequence of adjudication, the seized goods were confiscated. A personal penalty of Rs.50,000/- was also imposed upon the appellant.

3. The appellant being aggrieved of the said order has filed the instant appeal before this Tribunal where the main grounds of the appeal are as under:-

i) That the impugned order is totally void because respondent No.2 neither considered

import documents provided by the appellant No.1 nor give any reason for rejecting thereof. She just mentioned in the impugned order "the charges leveled in the show cause notice stand established". She did not consider the documents i.e. sales tax invoice and return filed by the importer and appellant No.1 with the Sales Tax Department. The summary statements filed along with returns reflects the numbers of invoices against which the goods were purchased by the appellant No.1. The above said documents are acceptable by any government department because the same have been filed in accordance with law of sales tax. The impugned order cannot be termed a judicial order and as such the same is liable to be struck down along this score.

ii) That appellant No.1 purchased 1200 bags of plastic dana imported from India vide GD No. LDRY-HC-1329 dated 08.08.2012 by M/s Javed and Company. The goods imported by Javed and company arrived at T-10 vide IGM No.3035 dated 06.08.2012 Index No.23. On arrival of consignment the aforesaid GD was examined and duties and taxes were deposited by the importer 10.08.2012.

iii) That out of aforesaid consignment of plastic dana imported by M/s Javed and Company appellant No.1 purchased 1200 bags. These bags were lifted from T-10 by Ayan Cargo on 10.08.2012, 13.08.2012 and 15.08.2012. Appellant No.1 lifted these 1200 bags from Ayan Cargo on the same dates. However, the entry regarding out of charge was made at T-10 by the Customs authorities on 13.08.2012. Certain quantity was delivered by the importer prior to the said entry because he had already deposited entire amount of duties and taxes. It is further added that there is a normal practice that on payment of entire duties and taxes as assessed by the Customs authorities the goods "are delivered to the importer of his Cargo agent prior to the formal out of charge of the goods.

iv) That the goods lawfully imported from India by the importer namely Javed and Company were purchased by appellant No.1 against proper sales tax invoices issued against placing of order to the importer by appellant No.1 in advance and prior to release of consignment by the customs authorities. The payment of the goods supplied by M/s Javed and Company was made by appellant No.1 through banking channel as required under Sales Tax Act, 1990 which can be easily verified from bank. It is further clarified that while filing the sales tax return along with summary statement the importer duly mentioned the invoices issued to appellant No.1 in the summary statement for the period of August 2012. It is humbly pointed out that appellant No.1 also submitted sales tax return of the relevant period and the purchases made from different registered person were duly mentioned in the summary statement filed with Inland revenue authorities and the invoice numbers reflected on the summary statement of the importer duly matched with summary statement along with return of

the relevant period. It is further added that serial number of the invoices were in sequential order, the invoice No.27 dated 08.08.2012, No. 29 dated 09.08.2012 and 30 dated 11.08.2012 inadvertently written as 2011 as stated above were in sequential order and same invoice numbers mentioned by the importer as well as respondent No.3 with Inland Revenue department while filing sales tax return of relevant period along with summary. Statement.

v) That the allegation for non submission of reply to the letter dated 07.11.2012 by Ayan Cargo Railway Godown, Badami Bagh Lahore is against the facts and record. The actual facts are that in response to letter dated 07.11.2012 M/s Ayan Cargo submitted the relevant record showing delivery of plastic dana to respondent No.3 along with entry register of the said cargo company through courier vide letter dated 22.11.2012. Perusal of the documents submitted by M/s Ayan Cargo revealed that plastic dana seized in the case was lawfully imported by M/s Javed and Company was delivered to appellant No.1 and entry in response thereof was duly made in their record.

vi) That the allegation mentioned in para-9 of the show cause notice that plastic dana was of Iranian origin which was arrived from Quetta and it was repacked in other bags is false, frivolous, imaginary and based on presumption. It is humbly pointed out that appellant No.1 is regular importer of empty bags/scraps from different countries, the empty bags about 5 kg was seized by the Seizing Officer only Iranian origin malafidely to show that Iranian plastic dana was repacked in Indian origin empty bags. It is further added at present huge quantity of empty bags/scrap imported from different countries having different marks and origin which were originally used for packing of plastic dana are still lying in the godown of appellant No.1 which was lawfully imported and cleared by the competent customs authorities on payment of duty and other taxes. The empty bags/scrap are being used by appellant No.1 for recycling the same in its unit for manufacturing of recycled plastic dana.

vii) That the show cause notice was inadvertently issued to appellant No.2 and 3. The perusal of the show cause notice revealed that initially appellant No.2 and 3 were arrested on the same charge and an FIR was also registered against them. It is humbly pointed out that during the investigation appellant No.2 and 3 were found innocent therefore they were subsequently discharged by the Special Judge (Customs Anti-smuggling and Taxation), Lahore vide order dated 28.08.2012 on the request of the prosecution/complainant. The conduct of the complainant is very much clear from the above facts that on the one hand they were got discharged and released after their arrest and on the other hand name of the appellant No.2 and 3 were incorporated in seizure report on the basis of which the show cause notice was issued hence imposition of penalty upon appellant No.2 and 3 is totally illegal and against the law.

viii) That the goods i.e. 1200 bags of plastic dana were lawfully imported from India and all government duties including duty and taxes were paid by M/s Javed and Company from whom the same were purchased by appellant No.1 against proper sales tax invoices duly reflected in the summary statement of the importer as well as respondent No.3 filed along with their sales tax return of the relevant period. Appellant No.2 and 3 have nothing to do with the goods seized in this case therefore they were got discharged by the Special Judge (Customs Anti-smuggling and Taxation), Lahore by the prosecution itself. Since the delivery of plastic dana was also confirmed by Ayan Cargo agent of the importer and record showing entry as well as delivery thereof to appellant No.1 was also submitted to the Investigating Officer in response their letter dated 07.11.2012 vide letter dated 22.11.12 duly delivered through TCS particularly when appellant No.2 and 3 were got discharged by the prosecution itself by the Special Judge (Customs Anti-smuggling and Taxation) Lahore which means that it was well within the knowledge of the seizing officer that the goods subject matter of the show cause notice was lawfully imported and duty paid whereas the same were seized from the possession of appellant No.2 and 3.

ix) That as regards mentioning the date of out gate as 17.08.2012 in PRAL data it is humbly pointed out that the goods were examined and assessed to duty and taxes which were paid on 10.08.2012 and 2 x vehicles were out gated on the same date but the entry thereof was made in the customs register at T-10 on 13.08.2012 along with 2 other vehicles loaded with plastic dana were out gated on 13.08.2012. The entire quantity imported by M/s Javed and company out gated till 15.08.2012. It was fault on the part of the official of customs posted at T-10 Railway Godown who submitted the GD at the Customs Dry Port on 17.08.2012 whereas the goods were out of charged on 13.08.2012 and the entire quantity was out gated till 15.08.2012. the objection of the complainant that entry in the PRAL data shows that the goods were out gated on 17.08.2012 is against the record copies of which had already been taken into custody by the Investigating Officer from T-10 Railway Godown. It was the duty of the customs officials to submit the GD on the same day when the goods ere out of charged and endorsement was made on' the face of GD. Appellant No.1 could not be held responsible of the negligence of the customs department who submitted the GD with customs officials of Dry Port Mughalpura as well as PRAL on 17.08.2012. the seizure and subsequent confiscation of lawfully imported and duty paid goods is illegal, void and without lawful authority.

4. The arguments advanced by both of the parties were heard in detail. The learned counsel for the appellant reiterated the submissions made in the grounds of appeal.

5. The representatives of the Department vehemently defended the impugned orders and prayed for dismissal of the petition filed by the appellant.

6. I have heard the arguments of both of the parties and perused the case record carefully. From the perusal of the record it is evident that the appellants repacked the smuggled Irani plastic dana in used polypropylene bags of Indian plastic dana to hide the smuggled nature of the plastic dana which is usually packed in original packing and each bag bear full description. Further the consignment against GD No. LDRY-HC-1329 dated 08.08.2012 of HDPE Grade 002DF50 consisting of 2560 bags were cleared on 13.08.2012. The impugned 1200 bags of plastic dana bear different grades and these cannot be connected with any import document presented by the appellants. I have also perused the impugned order in original and of the view that the same has been passed after hearing both the parties and their view points have been given due consideration. The learned counsel for the appellant at this stage too was asked to substantiate his contentions regarding legal status of the impugned goods and any rebuttal to the allegations leveled against the appellant with corroborative documentary evidence, but no such evidence was produced, keeping in view the facts and circumstances of the case I find no reason to interfere with the impugned order passed by the learned Additional Collector of Customs (Adjudication), Lahore which is upheld.

Resultantly, the appeal being devoid of any merits is hereby dismissed.

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