

Taxhelpline Case No. 161 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

**Messrs PERVAIZ UMER ENTERPRISES,
LAHORE
VS.
DEPUTY COLLECTOR OF CUSTOMS,
AFU, LAHORE**

JUDGMENT

CH. IMRAN MASOOD (MEMBER JUDICIAL)---(1) This judgment will dispose of Appeal No. 317/LB of 2010 filed by the appellant against Order-in-Appeal No. 311 of 2010 dated 15-10-2010 passed by the Collector of Customs (Appeals) Lahore.

2. Brief facts leading to this appeal are that the importer imported a consignment of "Refrigerant Gas for Sugar Industry" under H.S Code 2903.3990 and filed GD No. 44574 dated 17-3-2010 through appellant for clearance thereon. At the time of out of charge above said GD the staff posted in the MCD Section checked the documents enclosed with subject GD and it was found that the invoice attached with said GD was showing import value of the imported goods as US\$ 3445.00 (C&F) whereas the invoice recovered by the MCD staff directly with IGM and invoices pouch showed actual value of the subject goods as US\$ 3445.00 without freight. The C&F value for assessment regarding recovered invoice value with freight was calculated @ 5099/US\$. It is evident that the importer Messrs Colony Sugar Mills Ltd. Lahore with the active connivance of appellant had mis-declared the value of the consignment and deprived the government exchequer of revenue to the tune of Rs.49913 along with fine as per S.R.O. 499(I)/2009 dated 13-6-2009. As consequence of adjudication, the impugned goods were allowed to be released against 30% redemption fine plus duties and taxes besides penalty of Rs.25,000 on the appellant.

Feeling/aggrieved by the said order, the appellant filed the appeal before the Collector (Appeals) who also dismissed the same; hence this appeal.

3. It is contended by the counsel for the appellant that the importer Messrs Colony Sugar Mills Ltd. Lahore forwarded us the import documents for clearance of his shipment of "Refrigerant Gas in cylinders". It is further added that we, as the authorized clearing agent of the importers, prepared and filed goods declaration bearing 44574 dated 17-3-2010 on the basis of documents received from the importer. The invoice received from the importer showed the total value of the consignment as US\$ 3445 C&F, Lahore. It is submitted by the learned counsel for the appellant that without prejudice to the bona fide of that evidential invoice, we understand and appreciate that if some importer has violated provisions of Customs Act or any other law, the customs authorities have to take necessary action against the importer who is the ultimate beneficiary of such acts and the clearing agent cannot be held responsible for any recovery action etc. as per proviso to subsection (3) of section 209 of the Customs Act, 1969. It is further contended that to charge the clearing agent of connivance and collusion, at least the element of prior knowledge of the offense has to be proved. He argued that in this case the so-called "evidence" is provided by the department after the filing of GD hence how the clearing agent could know about the same at the time of making declaration? He further submitted that the respondent/department has, therefore, failed to give any reasoning for the allegations in the notice. It is further asserted that the learned Collector (Appeals) has failed to appreciate the fact that it was never a case of summary adjudication. The department has not produced on record any application/documents to that effect and we again submit that the charges were conveyed to us not verbally but in writing through a show cause notice dated 24-3-2010. A detailed reply to the show cause notice was also submitted by us and it was after proper hearing proceedings that order in original dated 25-5-2010 was passed. Therefore it is incorrect to say that it was a case of summary adjudication. The order in appeal is, therefore, not based on facts. It is further argued that the respondent completely ignored the following declaration made on the reverse of the GD:--

"The description/details/value/weight etc. is not clear in documents. Therefore, kindly endorse First Appraisal Examination orders to check correct description/details/origin/ value/weight etc. please give TD/SD and check all other aspects before processing as per CGO No. 10/99 dated 22-4-1999".

It is also contended that as the goods were subject to first examination hence the declaration on the GD was not a qualified statement and the same was subject to confirmation hence there was no question of any declaration and it was the duty of appropriate customs officers to make assessment in terms of section 80 of the Customs Act, 1969 after physical examination of the consignment. It is further submitted that as per S. No. 101 of CGO 12 of 2002 dated 15-6-2002, in such case where the importer makes request for first appraisal; no penal action can be taken. In the last learned counsel argued that in the past, this item was imported by sea and cleared from PaCCS Collectorate, Customs House, Karachi @ 90.18 (C&F) per cylinder bearing GD No. CRN. I-HC-1228572 dated 4-12-2009 and evidence also confirms that our declaration value (US\$ 149.78) (C&F) per cylinder is quite fair and normal. The learned counsel for the appellant argued that the difference between these values is already due to the element of air-freight vs sea freight. Had our value been on FOB basis, the same would have been around US\$ 72 per cylinder.

4. On the other side the learned Departmental Representative rebutted the assertions raised by the appellant and defended the impugned order. It is submitted that direct evidence in the form of original invoice has been retrieved by the department along with manifest of the goods in the MCD branch and submission of fake invoice with GD has been established. The learned Departmental Representative also added that the adjudicating authority had lawfully imposed penalty on clearing agent under section 156(1)14 of the Custom Act, 1969. He further stated that the clearing agent has failed to exercise due care and diligence in discharging his responsibilities. Therefore, he, had not performed his duties correctly and promptly as laid down in the customs Agent Licensing

Rules, notified vide S.R.O. 450(I)/2001 dated 18-6-2001. He also contested that in the presence of direct evidence in shape of original invoice the evidential record of past clearances cannot be considered. In the last the learned Departmental Representative contended that the importer and the appellant had presented invoice in which the value was C & F. Whereas, the actual/original invoice found along with manifest pouch revealed no such term.

5. Arguments have been heard. Record has been perused. It is evident that the appellant being authorized clearing agent of the importer prepared and filed goods declaration on the basis of documents received from the importer. The invoice received from the importer showed that the total value of the consignment as US\$ 3445.00 (C&F) Lahore. It is also obvious from the record that the appellant is neither charged for maneuvering the invoice or getting any benefits. It is apparent from the record that the goods declaration was stamped for first appraisal, resultantly it seems that the appellant in normal course of his business filed goods declaration based upon documents and information provided by the importer. Therefore, it cannot be held that the appellant is a party to any illegal arrangement which the importer might have in his mind. But according to the available record, there is nothing to show that the appellant is directly or indirectly beneficiary of evasion of taxes. Even otherwise to hold the appellant liable for the act of commission and omission on the part of the importer would require a clear finding based upon legal acceptable evidence of being active and conscious part to the manipulation which is missing, therefore, the imposition of penalty against the appellant being unjustified is set aside. No order to costs. Parties be informed through registered post AD or by UMS.

6. File be consigned to the record after completion.

Appeal accepted.

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