2026 (7) TMI 268 - CESTAT CHANDIGARH

Commissioner of Customs, Ludhiana Versus Shri Sanjay Choudhary

No.- Customs Appeal No. 60326 of 2024 With Cross Objection Application No. 60812 of 2024

Dated:- July 2, 2026

Order No. Final Order No. 60415/2026

Insufficient evidence to sustain customs penalties for alleged concealed cigarette imports and uncorroborated involvement.

Penalty under Section 112(a)(i) and Section 114AA of the Customs Act was found unsustainable because the evidence did not sufficiently link the respondent to the concealed cigarette import. The alleged involvement rested mainly on a later statement of one co-noticee, while earlier statements, letters to authorities, the Customs Broker's account, and other investigation material did not name the respondent or independently connect him with the bill of entry, the imported goods, or the smuggling activity. The claimed port visit and related circumstances were also unsupported by corroboration. On that evidentiary record, the penal provisions could not be invoked.

Issues: Whether penalties imposed under Section 112(a)(i) and Section 114AA of the Customs Act, 1962 on the respondent for alleged involvement in the import of concealed cigarettes were sustainable on the basis of the evidence on record.

Analysis: The record showed that the allegations against the respondent rested principally on the statement of one co-noticee recorded at a later stage. Earlier statements, letters addressed to the authorities, the statements of the Customs Broker, and the surrounding investigation material did not name the respondent or independently link him to the import, the filing of the bill of entry, or the handling of the seized goods. The asserted visit to the port and the other circumstances relied upon by the Department were not supported by corroborative evidence. In these circumstances, the evidentiary foundation was found insufficient to establish the respondent's role in the alleged smuggling activity or to justify penalty under the penal provisions invoked.

Conclusion: The penalties were held to be not legally sustainable and the respondent succeeded.

Judgment / Order

Hon’ble Mr. S. S. Garg, Member (Judicial) And Hon’ble Mr. P. Anjani Kumar, Member (Technical)

For the Appellant : Mr. Anurag Kumar, Authorized Representative

For the Respondent : Mr. Naveen Bindal and Mr. Bharat Jain, Advocates

ORDER

S. S. GARG :

The present appeal filed by the Revenue is directed against the impugned Order-in-Appeal No. LUD-EXCUS-001-APP-190-2024 dated 02.05.2024 passed by the Commissioner (Appeals), CGST, Ludhiana, whereby the learned Commissioner (Appeals) has dropped the penalties imposed on the Respondent by the Adjudicating Authority.

2. Briefly stated facts of the present case are that-

> *a) M/s Shreyans Appearls & Leatherites, Ludhiana, had filed a Bill of Entry No. 3940459 dated 13.05.2021 through Customs Broker Shri Amandeep Singh Bagri, Ludhiana (F-Card of M/s Mojos Impex International) for clearance of 1120 bags of dry dates having declared assessable value of Rs.19,04,892/-. On 19.05.2021, the examination of the goods was conducted in the presence of Customs Broker and authorized representative of the importer, Sh. Jagjeet Singh (H-Card of M/s Mojos Impex International) and two independent witnesses and the officers of import shed. The examination proceedings were enumerated in the Panchnama dated 19.05.2021.*
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> *b) During the examination, it was noticed that although the packing material was same for all the imported goods but there was stark difference in the shape of the bags placed at the front of the containers than those placed behind. Therefore, one such bag was fetched from behind the front four to five layers of bags and on opening the same, it was found to contain cartons of ESSE brand cigarettes. Accordingly, the containers were ordered to be completely de-stuffed for detailed examination of the imported goods and on complete de-stifling of the containers, a large quantity of cartons of cigarettes concealed behind the bags of dry dates were found. The packing material of both i.e. dry dates and cigarettes was the same, so as to hoodwink the Customs officers and smuggle in large quantities of prohibited goods i.e. cigarettes.*
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> *c) The examination of the containers revealed that apart from the bags of dry dates, following prohibited goods i.e. cigarettes were also found:*
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>> *(i) 120 cartons of ESSE brand having 12,00,000 sticks of 100 mm length.*
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>> *(ii) 20 cartons of Benson & Hedges brand having 2,00,000 sticks of 84 mm length.*
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>> *(iii) 110 cartons of Gudang Garam brand having 15,84,000 sticks of 84 mm length.*
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> *d) The said cigarettes were not declared in the import document. The Import of cigarettes into India is prohibited and trade & commerce of cigarettes in India is regulated by the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ('COTPA, 2003') and related Rules. The import of cigarettes is restricted in terms of General Note 3 to import policy where under the import of cigarettes or any other tobacco product shall be subject to the provisions contained in the Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2018 (as amended from time to time) as notified by the Ministry of Health & Family Welfare. The cigarettes were found without statutory pictorial & Textual warning. Therefore, on such reasonable belief that the goods were liable for confiscation under Section 111 of the Customs Act, 1962, the goods imported vide impugned Bill of Entry were seized under Section 110 of Customs Act vide Seizure Memo dated 19.05.2021.*
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> *e) Investigations were conducted and during the investigations, searches were also conducted at various locations. Statements of various persons related to the case were also recorded under Section 108 of the Customs Act, 1962. As result of the investigations, the role played by the Respondent Sh. Sanjay Choudhary was as under:*
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>> *(i) That Sh. Sanjay Choudhary being parter of Sh. Chander Shekhar helped in procurement of prohibited goods i.e. cigarettes.*

(ii) That Sh. Sanjay Choudhary helped Sh. Chander Shekhar to abscond by supplying him with five lakh rupees in cash and even assuring him to get the case settled through his contacts. Sh. Sanjay Choudhary was regularly in touch with Sh. Chander Shekhar during the period he remained absconding.

(iii) Even during his statement dated 22.02.2022, Sh. Sanjay Choudhary remained evasive about most of the questions and kept beating around the bush, thereby concealing vital information relevant to the instant case indicating his involvement in the smuggling of cigarettes.

(iv) That he tried to get the consignment cleared by visiting the ICD CONCOR on 18.05.2021, whereas, on that particular day or even several days prior to 18.05.2021, none of his consignments as importer were registered or marked for examination.

(v) That it was his employee Sh. Bobby who had contacted the freight forwarder in Dubai, vide his email id gurdevdox@gmail.com and his contact number 00919814600909, through some "BOTIM APP"; though he denied of having BOTIM APP on his phone but him contact details have been provided by the freight forwarder in their reply. It is enough to prove his involvement in the booking of containers.

(vi) That when the department tried to investigate his role in the instant case, instead of cooperating in the investigation, he fled away and in the process of doing so, even tried to trample over an officer of Customs, with his car bearing registration no. PB-10-HQ-1434. Further, in the process he even took away all the incriminating evidences with him, which proves his mala fide intent, wrongful conduct and guilty mind.

(vii) That Sh. Sanjay Choudhary, had visited Dubai form 24.03.2021 to 29.03.2021. Further, as per the evidences Sh. Chander Shekhar had visited Dubai between 28.03.2021 to 31.03.2021. Therefore, it is established that both were together in Dubai on 28.03.2021 & 29.03.2021.

(viii) That he tried to derail the investigations by filing frivolous civil writ petitions before the court. It is apposite to mention that one of those petitions was never ever got admitted by the Hon'ble court because of want of any substantial averments.

(f) As per the Department, the Respondent has conspired and participated in harbouring, keeping, concealing and dealing with the goods imported by mis-declaring vide BoE No. 3940459 dated 13.05.2021, which appeared liable for confiscation.

(g) Accordingly, a show cause notice dated 13.05.2022 was issued to the Respondent, and after following the due process, the learned Adjudicating Authority vide the Order-in-Original dated 18.04.2023 imposed the penalty totally amounting to Rs.55,00,000/- on the Respondent (Rs.40,00,000/- under Section 112(a)(i) of the Customs Act, 1962 and Rs.15,00,000/- under Section 114AA of the Customs Act, 1962).

(h) Being aggrieved by the said Order-in-Original, the Respondent filed an appeal before the Commissioner (Appeals), who after examining the entire material on record including the statements of various persons and evidences produced by the Respondent, has come to the conclusion that the Department has failed to establish the allegations against the Respondent and the role of the Respondent in import of the impugned goods has not been proved beyond doubt by the investigation agency and consequently, he has dropped the penalty imposed on the Respondent. Hence, the Revenue has filed the present appeal.

3. Heard both sides and perused the material on records.

4. The learned Authorized Representative for the Revenue submits that the impugned Order-in-Appeal passed by the Commissioner (Appeals) is not sustainable in law as the same has been passed without properly appreciating the facts and the law, and the documentary evidences on record.

4.1 The learned Authorized Representative further submits that the Revenue has proved on record that the Respondent was a business partner of Sh. Chander Shekhar and helped in the procurement of prohibited goods i.e. cigarettes and arranged for their import into India. The Respondent was also involved in financing the purchase and clearance of the goods while Sh. Chander Shekhar was responsible for selling the goods in India.

4.2 The learned Authorized Representative further submits that it has been come from the statement of Sh. Chander Shekhar that the Respondent provided five lakh rupees in cash to Sh. Chander Shekhar to help him abscond during the investigation and the Respondent also assured Sh. Chander Shekhar that he would manage the case through his contacts. The Respondent was in constant touch with Sh. Chander Shekhar during his period of abscondence which indicates his involvement in the smuggling operation.

4.3 The learned Authorized Representative further submits that the Respondent Sh. Sanjay Choudhary, during his statement on 22.02.2022, remained evasive and refused to give clear answers to questions related to the smuggling of cigarettes and also concealed vital information which indicates his involvement in the illegal activities. The Respondent denied having any knowledge of the cigarettes or his involvement in the import despite evidence suggesting otherwise.

4.4 The learned Authorized Representative further submits that the Respondent Sh. Sanjay Choudhary also attempted to get the consignment cleared by visiting the ICD CONCOR on 18.05.2021 even though none of his consignments were registered or marked for examination on that day, which also indicates that he was actively trying to facilitate the clearance of the smuggled goods.

4.5 The learned Authorized Representative further submits that the Respondent Sh. Sanjay Choudhary's employee Sh. Bobby had contacted the freight forwarder in Dubai through the BOTIM APP to book the containers and the contact details provided by the freight forwarder matched those of the Respondent which implicates him in the smuggling operation.

4.6 The learned Authorized Representative further submits that when the Customs Officers attempted to investigate the Respondent's role, the Respondent fled from the scene and even tried to trample over a Customs Officer with his car which shows his mala fide intent and guilty mind.

4.7 The learned Authorized Representative further submits that the Respondent Sh. Sanjay Choudhary had visited Dubai from 24.03.2021 to 29.03.2021, overlapping with Sh. Chander Shekhar's visit to Dubai from 28.03.2021 to 31.03.2021, which clearly indicates that both were together in Dubai during the time when the smuggling operation was being planned.

4.7 The learned Authorized Representative also submits that the Respondent Sh. Sanjay Choudhary tried to derail the investigations by filing frivolous civil writ petitions before the court but he did not get any relief from the court as one of these petitions was not even admitted by the court due to a lack of substantial evidence.

5. On the other hand, the learned Counsel appearing for the Respondent justifies the impugned order and submits that the Commissioner (Appeals) has considered the entire evidences on record and has also perused the various statements made by Sh. Chander Shekhar from time to time, and has also examined the documents produced on record, and has rightly come to the conclusion that the Respondent is not at all involved in the import of prohibited cigarettes and consequently has rightly dropped the penalty by recording the detailed findings in the impugned Order-in-Appeal.

5.1 The learned Counsel further submits that the entire allegations against the Respondent is only on the basis of statement of Sh. Chander Shekhar (who is mastermind in the alleged offence) recorded on 08.09.2021 & 09.09.2021 and that summons dated 08.09.2021 is not part of relied upon documents;

appearance of Sh. Chander Shekhar without summons is not a coincidence but same is result of counter blast from Quick Response Team after arrest of Smt. Parul Garg, the then Additional Commissioner of Customs and also head of Quick Response Team.

5.2 The learned Counsel further submits that in the statement dated 08.09.2021 & 09.09.2021, Sh. Chander Shekhar took a complete U-turn and implicated the Respondent as mastermind and main beneficiary; but whatever he stated in his said statement was completely without any proof and totally contrary to evidences available on record; it has come on record that Sh. Chander Shekhar was not only owner of importing firm but also owner of exporting overseas supplier.

5.3 The learned Counsel further submits that in the statement of Sh. Chander Shekhar dated 19.05.2021 & 20.05.2021, he has stated to be the real owner and importer, but did not name the Respondent about his relation with said import; both, Sh. Chander Shekhar and Smt. Meenakshi Sharma, wrote various letters to Customs Authorities regarding re-valuation, re-export etc. but never stated about the Respondent nor mentioned Respondent’s name in any manner, but the name of the Respondent only cropped up in the statement of Sh. Chander Shekhar recorded on 08.09.2021 & 09.09.2021 coincidently immediately after arrest of Smt. Parul Garg who was in charge of Quick Response Team dealing with this matter.

5.4 The learned Counsel further submits that there is no evidence on record brought by the Revenue regarding the allegation of payment of rupees five lakhs by the Respondent; there is also no evidence on record showing that the Respondent was a partner in partnership with Sh. Chander Shekhar; there is no evidence of any inflow or outflow of money.

5.5 The learned Counsel further submits that import of M/s Shreyans Appearls & Leatherites in the month of May 2021 was pending investigation and no arrest was made despite the dismissal of bail application of Sh. Chander Shekhar in June 2021; arrest of Sh. Chander Shekhar on 09.09.2021 is only to cover the acts and misdeeds of Smt. Parul Garg and her Quick Response Team.

5.6 The learned Counsel further submits that Sh. Chander Shekhar and Smt. Meenakshi Sharma filed anticipatory bail application before Ld. Additional Sessions Judge, Ludhiana which was rejected vide order dated 07.06.2021; in the said bail application and even during the arguments, there is no averment about any connivance or any role of the Respondent in alleged import; it was nowhere stated that the Respondent was partner or any beneficiary in said import; against aforementioned order dated 07.06.2021, Sh. Chander Shekhar and his wife Smt. Meenakshi Sharma filed petitions before Hon’ble Punjab & Haryana High Court which were disposed of by Hon’ble High Court being not pressed by the Petitioners; in the said appeals filed before Hon’ble High Court, there is no averment with regard to the role of the Respondent in any manner.

5.7 The learned Counsel further submits that the allegation against the Respondent Sh. Sanjay Choudhary that he has assured Sh. Chander Shekhar to manage his case, is without any evidence on record.

5.8 The learned Counsel also submits that the allegation against the Respondent that he arranged goods in Dubai is completely wrong whereas it has been proved that the goods had been supplied by the firm which is owned by Sh. Chander Shekhar. The learned Counsel denies the meeting of the Respondent with Sh. Chander Shekhar in Dubai as there is no evidence adduced to that effect.

5.9 The learned Counsel further submits that the Respondent was neither the Customs Broker nor authorized person to enter into the Customs Area and the allegation against him, that he tried to clear the goods, is without any basis.

5.10 The learned Counsel further submits that Sh. Amandeep Singh Bagri, a CHA who filed BoE in the instant case, has stated in his statements that he dealt only and only with Sh. Chander Shekhar regarding import clearance who provided him import documents along with KYC documents. Sh. Amandeep Singh Bagri did not name the Respondent having relation in impugned consignment. There is nothing on record which shows any kind of role of the Respondent in said import.

5.11 The learned Counsel also submits that the penalties have been imposed upon the Respondent under Sections 112(a)(i) and 114AA of the Customs Act, 1962. He further submits that no penalty can be imposed under Section 112 of the Act as the Respondent has neither imported the goods nor dealt with the goods in any way; there is no evidence placed on record to show that the Respondent was anywhere related with the goods or has played any role in importing such goods; there is no statement except the statement of Sh. Chander Shekhar which proves any involvement of the Respondent. Statement of Sh. Chander Shekhar is not corroborated with any single evidence for name sake even. Further, regarding the penalty under Section 114AA of the Act, he submits that penalty under Section 114AA of the Act can only be imposed when a person knowingly or intentionally makes, signs or uses any declaration, statement or document which is false or incorrect and made in the transaction of any business; but in the present case, the Department has failed to state as to how penalty is imposable under Section 114AA and for what reason, penalty is imposable under said section, since the Respondent has not signed or made any declaration for the purpose of import of goods and there is no role played by the Respondent which has been brought on record and therefore, merely on statement of the mastermind, penalty under Section 114AA of the Act cannot be imposed.

6. We have considered the submissions made by both the parties and perused the material on record as well as the impugned order passed by the learned Commissioner (Appeals). We find that the entire case has been made against the Respondent only on the basis of statement of Sh. Chander Shekhar recorded on 08.09.2021 & 09.09.2021. We also find that before the said statement, Sh. Chander Shekhar also made his statement on 19.05.2021 & 20.05.2021 in which he stated that he is the real owner and importer and the goods were procured from Sh. Sahib Singh who later on found to be his partner in Dubai based supplier firm. We also find that in both the statements, Sh. Chander Shekhar did not name the Respondent about his relation with the said import. Even in letters written by Sh. Chander Shekhar to various authorities, he did not implicate the Respondent in any manner.

7. We also find that Sh. Chander Shekhar and his wife Smt. Meenakshi Sharma filed various petitions in the district court and the High Court wherein also nothing has been mentioned against the Respondent that he is involved in any manner in illegal import of prohibited cigarettes.

8. We also find that even the CHA, Sh. Amandeep Singh Bagri, who filed the BoE and other documents before the Customs Authorities, did not say any word against the Respondent that Sh. Sanjay Choudhary was at all involved in the import of prohibited goods. The CHA clearly stated that he dealt only and only with Sh. Chander Shekhar who provided him all the documents along with KYC documents for clearance of the imported goods.

9. The other allegation that the Respondent has tried to clear the consignment by visiting the ICD CONCOR on 18.05.2021, was also not proved by any corroborative evidence and further, the behaviour of the Respondent during the investigations, also did not bring any concrete facts on record.

10. We also find that in the facts & circumstances, the imposition of penalties under Section 112(a)(i) and Section 114AA is not legally sustainable because the Respondent has neither imported the goods nor dealt with the goods in any way; there is no evidence placed on record to show that the Respondent was anywhere related to the imported goods or has played any role in importing such goods and the Department has failed to prove as to how penalty is imposable under Section 114AA of the Act because the Respondent has not signed or made any declaration for the purpose of import of goods.

11. Further, we find that in the impugned order, the learned Commissioner (Appeals) has examined in details the various facts & circumstances and statements made by various persons, and thereafter has come to the conclusion that the Respondent was not involved in the illegal import. Here, it is pertinent to reproduce the relevant findings of the learned Commissioner (Appeals) recorded in the impugned order:

> "5.3 I find that Sh. Chander Shekhar in his statement has also stated that on 18.05.2021 the appellant ("the Respondent in the present appeal") went to port i.e. at ICD CONCOR around 18:00 hrs for the clearance of impugned goods. But the said consignment was not examined that day and

was examined next day i.e. on 19.05.2021. I find that, as per the facts on record, the Quick Response Team has not been able to even verify this part of the statement with corroborated evidence to prove as to whether the appellant was present in the Port for seeking examination of the impugned consignment as alleged by Sh. Chander Shekhar. Further, Sh. Chander Shekhar had alleged that Sh. Sanjay Choudhary may have filed anticipatory bail on their behalf, but this allegation was also not verified/corroborated from the advocates who represented the case in the Court of Law.

5.4 In the statement dated 19.05.2021, Sh. Chander Shekhar stated that he had submitted KYC documents to the CHA M/s Mojos Impex International, Ludhiana. Further, as per available facts, the impugned goods were examined on 19.05.2021 in the presence of the Customs Broker Sh. Amandeep Singh Bagri (F-card of M/s Mojos Impex International) and others. I find that statement of Sh. Amandeep Singh Bagri was recorded on three different dated i.e. on 19.05.2021, 14.06.2021 & 07.10.2021, but in none of the statement, he has mentioned the name of the appellant even once. Rather, he has stated that Sh. Chander Shekhar was in constant touch with him, mentioned about his work relating to import of dry dates and as he was well known, he agreed; that Sh. Chander Shekhar had provided him the documents. Hence, I find that even the statements of the Customs Broker, one of which was recorded even after the statement dated 08/09.09.2021 of Sh. Chander Shekhar, do not corroborate the statement given by Sh. Chander Shekhar regarding involvement of the appellant in the import of the impugned goods or involved in filing of BoE or examination thereof.

5.5 In view of the above, it is quite evident that in the absence of any corroborative documentary evidence put forth by Sh. Chander Shekhar or by the investigation agency, the role of the appellant in import of the impugned goods has not been proved beyond doubt by the investigation agency."

12. In view of our discussion above and keeping in view the totality of facts & circumstances, we do not find any infirmity in the impugned Order-in-Appeal, therefore, we uphold the same by dismissing the appeal of the Revenue.

Cross objection application is also disposed of accordingly.

(Order pronounced in the open court on 02.07.2026)