

Umesh Kumar vs Pr Commissioner Of Customs New Delhi ... on 7 April, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 7th April, 2025

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CUSAA 51/2025 & CM APPLs. 13613/2025 & 13615/2025

UMESH KUMAR

.....App

Through: Mr. Jitin Singhal, Adv.

versus

PR COMMISSIONER OF CUSTOMS NEW DELHI

(PREVENTIVE)

.....Respon

Through: Ms. Monica Benjamin, SSC with M

Nancy Jain, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Appellant - Mr. Umesh Kumar under Section 130 of the Customs Act, 1962, challenging the Final Order No. FO/C/A/55489/2024- CU(DB) dated 8th April, 2024 (hereinafter, the Impugned Order) passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter, CESTAT).

3. The impugned order is a common order passed in two Customs Appeals before the CESTAT being C/51578/2018 titled Umesh Kumar v. Principal Commissioner of Customs, New Delhi and C/51595/2016 titled Rajat Arora v. Principal Commissioner of Customs, New Delhi.

4. The origin of this case goes back to when the Bill of Entry No.6807339 was filed on 18th September, 2014 by one M/s Aromatech which is a sole proprietary concern of the Appellant- Mr. Umesh Kumar, as the importer of certain goods(hereinafter 'the said goods'). The Customs Department, upon examination, realized that the said goods were in excess of the declaration in the Bill of Entry No.6807339 and some goods were, in fact, not declared in the Bill of Entry at all.

5. Investigation further revealed that on a previous occasion as well, the firm had filed 15 Bills of Entry prior to the Bill of Entry No.6807339 by the same importer and in all these cases, the appellant had availed the benefit of Customs exemption notification no. 12/2012 dated 17th March, 2012 without following the conditions of the notification.

6. In furtherance to such investigation, Show Cause Notice dated 25th March, 2015 was served, both on the Appellant herein, Mr. Umesh Kumar and one Mr. Rajat Arora for recovery of differential duty under Section 28(1) of the Customs Act, 1962, in respect of all the Bills of Entry.

7. The said show cause notice culminated in the Order-in-Original dated 24th February, 2016. Pursuant to the Order-in-Original, the said goods had been seized.

8. In the meantime, the company M/s Aromatech had also filed a writ petition being W.P.(C) 644/2015 titled M/s Aromatech v. Commissioner of Customs (Preventive) & Ors., seeking provisional release of the goods and the writ petition was disposed of. Relevant orders in the said writ petition are extracted below:

"Order dated 30th January, 2015 in W.P.(C) 644/2015 Mr Gandhi, learned counsel for the petitioner says that an authorized representative of the petitioner will appear before Mr Harvinder Singh, Supdt. Customs, on 04.02.2015, at 11.00 a.m. It is further submitted by Mr Gandhi that though an application for provisional release of goods in issue, has already been filed, the petitioner will file a fresh application by Monday, i.e., 02.02.2015. In the event such an application is filed, the same will be actioned by the concerned officer. I am told, the Deputy Commissioner, Customs is authorized to deal with such like applications. An order on the application for provisional release will be passed within ten days of the petitioner appearing before the concerned authority. Mr Gandhi, at this stage, says that once an order for provisional release of goods is passed, the writ petition would have worked itself out.

The writ petition is, accordingly, disposed of. List for compliance on 24.02.2015.

Dasti.

Order dated 24th February, 2015 Mr. Nijhawan has brought to court a copy of the order dated 13.2.2015, whereby the application for provisional release of goods has been rejected.

A copy of the order has been given to the counsel for the petitioner.

The writ petition was disposed of vide order dated 30.1.2015.

No further orders are called for.

The petitioner will be at liberty to take recourse to an appropriate remedy, albeit in accordance with law, vis-a- vis the aforesaid order."

9. The investigation by the Customs Department further revealed that the Appellant had, in fact, provided his IEC code, as also his bank account details to one Mr. Rajat Arora. There were also allegations of VAT returns having not been filed by the Appellant herein.

10. In case of Bill of Entry No.6807339, the Order-in-Original was passed on 24th February, 2016 in which the demands against the Appellant were confirmed. This was challenged by the Appellant before CESTAT and vide final order dated 25th April, 2017, the matter was remanded back to the original authority for fresh adjudication.

11. In the second round of adjudication, the Order-in-Original dated 4th January, 2018 has been passed.

12. Furthermore, the earlier order dated 24th February, 2016 was also assailed by the importer- Mr. Rajat Arora. The matter was then taken up by the CESTAT and was decided vide the Impugned Order. Before CESTAT, Mr. Umesh Kumar tried to completely wash his hands off the imports by alleging that it was Mr. Rajat Arora alone who had been instrumental in the whole process of imports which he himself had only lent his IEC number to Mr. Rajat Arora. Such averment was completely rejected by the CESTAT in the Impugned Order in the following terms:

"15. The prayer of Umesh Kumar before us in this appeal is to set aside the impugned denovo OIO dated 4.1.2018. The main contention of Umesh Kumar is that he had only lent his IEC to Rajat Arora and was in no way concerned with the imports at all and therefore, the impugned order needs to be set aside. The specific grounds listed in the appeal are:

(a) The impugned order is bad in law, unjust and unfair.

(b) Rajat Arora was the real importer and he (Umesh Kumar) had sought his cross examination which was allowed on 5.12.2017 and 15.12.2017 but Umesh Kumar had not appeared. Next time on 29.12.2017, the Rajat Arora's advocate had not appeared. The impugned order was passed without offering any further cross examination and hence should be set aside;

(c) He neither imported the goods nor signed any of the Bills of Entry as can be verified from the records;

(d) He had not even filed the Writ Petition before the Delhi High Court and was also unaware of the order passed by the High Court but on being informed by Rajat Arora, he had appeared before the Customs officer on 4.2.2015.

(e) He had also given his bank details to Rajat Arora who has been operating it and he was not even aware of the details of the transactions in the AXIS Bank in the name of the his firm through which all transactions took place.

(f) He had not even authorised Rajat Arora to appear and the authority letter dated 29.9.2014 purported to be signed by him was forged.

(g) The Bills of Entry were filed by the CHA M/s. Venstar Shipping and not by him."

13. Vide the Impugned Order, CESTAT then dismissed both the appeals and held that the demands in the Order-in-Original dated 24th February, 2016 and 4th January, 2018 are completely valid.

14. Ld. counsel for the Appellant submits that the opportunity for cross- examination of two witnesses was not granted which was not appreciated by CESTAT. In addition, in respect of the past goods, the Appellant was entitled to an exemption. However, the same was also not granted.

15. On behalf of the Respondent, it is submitted that the entire transaction was itself completely shrouded in fraud. In fact, there is a clear intention on part of the Appellant to evade the payment of customs duty. Even VAT returns have been filed as NIL by the Appellant.

16. The Court has heard the Counsels for the parties.

17. The Order-in-Original dated 24th February, 2016, which was challenged before the CESTAT, has clearly valued the goods as also imposed penalty as under:

"ORDER In view of the above findings, I pass the following order:

i) I reject declared assessable value Rs. 29, 59, 398/- of the goods imported vide Bill of Entry 6807339 dated

18.09.2014 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 and redetermine assessable value at Rs.41,48,464/-under Rule 5 of Rules ibid read with Section 14 of the Customs 'Act, 1962.

ii) I confiscate the goods totally valued at Rs.41,48,464/- under section 111 (l), (m) & (o) of the Customs Act, 1962. However, I give an option to get the said 'goods redeemed on payment of redemption fine of Rs. 10,00,000/- (Rupees ten lakhs only) under Section 125 of the Customs Act, 1962.

iii) I confirm the duty amounting to Rs.11,37, 685/- on the goods imported vide Bills of Entry 6807339 dated 18. 09. 2014 under section 28(1) of the Customs Act, 1962.

iv) I impose penalty of Rs. 11,37, 685/- under section 114A of the Customs Act, 1962 on M/s Aromatech for the duty short paid by reason of collusion/wilful mis-

statement/suppression of facts for their various acts of omission and commission as detailed above.

v) I confirm demand of Additional duty of Customs on the goods imported vide 15 earlier shipments amounting to Rs.61,65,224/- which was evaded wilfully and intentionally under section 28(1) of the Customs Act, 1962 alongwith interest under Section 28AA of Act, ibid by invoking extended period of 5 years under section 28(4) of the Customs Act, 1962.

vi) I impose penalty of Rs.61,65,224/- under section 114A of the Customs Act, 1962 on M/s Aromatech for the duty short paid by reason of collusion/wilful mis-

statement/suppression of facts for their various acts of omission and commission as detailed above.

vii) I impose penalty of Rs. 10,00,000/ - (Rupees ten lakhs only) on Sh. Rajat Arora under section 112(a) of the Customs Act, 1962."

18. This order was challenged before the CESTAT and the CESTAT has come to the conclusion that the Order-in-Original is liable to be upheld. Relevant portion of the Impugned Order dated 8th April, 2024, of the CESTAT reads as under:

"41. In this factual matrix, the conclusion in impugned OIO is that M/s. Aromatech had mis-declared the imported goods which were liable to confiscation under section 111(m) and (o) of the Act, Consequently, penalty was imposed on Rajat Arora under section 112(a).

42. Rajat Arora introduced himself as the sales incharge of M/s. Aromatech in his statement made representing Umesh Kumar, proprietor of M/s. Aromatech with an authorization from him. He provided to the department such details of the business as the IEC, VAT registration with different states and the bank account details of M/s. Aromatech which are most unlikely to be available with anyone not intricately connected with the business of the importer, Therefore, we find no reason whatsoever to interfere with the penalty.

43. Customs Appeal No. 51595 of 2016 is rejected and the impugned order dated 24.2.2016 is upheld insofar as the penalty on Rajat Arora is concerned,

44. Customs Appeal No. 51578 of 2018 is rejected and the impugned order dated Order in Original (denovo) dated 4.1.2018 is upheld."

19. Thus, in effect, both the second order in original passed against the Appellant herein dated 4th January 2018 and the first order in original dated 24th February 2016 in respect of Rajat Arora, were upheld. The Court does not find any question of law that would arise in the present appeal. Moreover, the Appellant has, at various stages, tried to evade the true facts and has taken incorrect pleas before various authorities. Such acts on part of the Appellant also shows that the conduct of the Appellant does not deserve any indulgence.

20. In light of the same, the amounts and penalties, which have been imposed upon the Appellant in the Impugned Order are liable to be upheld.

21. The Appellant, who enjoyed the IEC registration, ought to have acted responsibly and ensured that the same was not misused by any third party. Apart from not being careful about the IEC codes etc., in the present case, this Court is clearly of the opinion that the Appellant and Mr. Rajat Arora

were conniving with each other and were fully aware of the transactions and imports that were being undertaken. Their role cannot be delineated and differentiated in the manner that the Appellant seeks to delineate himself.

Both were acting in concert with each other, as is clear from the findings of CESTAT.

22. Under these circumstances, the present appeal is dismissed. All pending applications are also disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 7, 2025/dk/ss