* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 02.11.2026**
Judgment pronounced on: 06.11.2026

CNR No. DLHC010333192022

\+ CUSAA 132/2022

HARISH GOYAL .....Appellant
Through: Mr. Pradeep Jain & Ms. Pritty Jain, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent
Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Aryaman Singh Choudhan & Mr. Aditya Chaudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

AVNEESH JHINGAN, J.:

1. The present appeal is filed under Section 130 of the Customs Act, 1962 (for short 'the Act') against the order dated 04.05.2022 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

2. The facts in brief are that the appellant is the proprietor of M/s Krishna Clearing & Forwarding Agency at Ludhiana. The appellant was operating as a Customs House Agent (CHA) for M/s Rahul Traders and M/s Kirat Sales, a concern of Rahul Sehgal and Jaskirat Singh respectively.

2.1 The litigation originates from the import of two containers under Bill of Lading No. OOLU2023101170 dated 04.08.2016. The consignment was declared to contain bicycle parts. On 05.09.2016, the Directorate of Revenue Intelligence (DRI) examined the containers at the Inland Container Depot (ICD), Tughlakabad, New Delhi, Chinese-made firecrackers (hereinafter 'firecrackers') concealed behind a small quantity of bicycle parts and pumps were allegedly found and the goods were seized. On 06.09.2016, the DRI officers searched the office premises of the appellant at Ludhiana and seized documents, a mobile phone and a laptop.

2.2 During the investigation, the statement of appellant, Manish Srivastava, Deputy Manager (Imports), Orient Overseas Line (hereinafter referred to as 'Shipping Line') India Pvt. Ltd. and Ajay Sagar and Purshottam, CHA based in Delhi, were recorded. The Department relied on these statements to hold that the appellant knew about the misdeclared goods, arranged meetings with Delhi-based CHA and facilitated the import by misusing the IEC/KYC documents of M/s Kirat Sales. The show cause notice (SCN) dated 02.03.2017 was issued to the appellant.

2.3 The Additional Commissioner of Customs, ICD Tughlakabad (Import), New Delhi, passed the Order-in-Original (OIO) dated 28.02.2018, holding that the import of prohibited goods by misusing the KYC documents of M/s Kirat Sales had been facilitated by the appellant. A penalty of Rs.10,00,000/- under Section 112 (b)(i) of the Act was imposed on the appellant.

2.4 The appellant challenged the imposition of penalty and the CESTAT by the impugned order dated 04.05.2022, dismissed the appeal. Hence, the present appeal.

3. The substantial question of law framed by this Court on 24.08.2023 is as under:

> "a) Whether the appellant was rightly and justifiably penalized under Section 112(b)(i) of the Customs Act, 1962."

4. Learned counsel for the appellant submits that the appellant was working as CHA at Ludhiana and not at Delhi, neither the appellant filed the Bill of Entry (BOE) nor handled clearance of the consignments at ICD, Tughlakabad. It is contended that there is no evidence to establish the involvement of the appellant in the import of the misdeclared goods.

4.1 It is contended that the penalty of Rs.10 lakh was imposed on the basis of third-party statements, without granting an opportunity of cross-examination. The rejection of the request for cross-examination of Ajay Sagar, Purshottam and Jaskirat Singh is violative of the principles of natural justice.

4.2 Learned counsel relies on the orders of the CESTAT dated 11.02.2020 and 17.08.2021 setting aside the penalties imposed on co-noticees Saurabh Aggarwal and Rahul Sehgal, respectively and prays that the impugned order dated 04.05.2022 be set aside.

5. *Per Contra* the appellant was the CHA for M/s Rahul Traders and M/s Kirat Sales. The statement of the appellant dated 13.10.2016,

the statements of the Delhi-based CHA and the correspondence of shipping-line establish three things, that the appellant knew of the proposed import; arranged a meeting with the Delhi-based CHA; and facilitated the use of M/s Kirat Sales' KYC documents.

5.1 The contention is that non-filing of BOE does not absolve the appellant and the liability must be judged on the entire evidence.

5.2 The argument is that the cross-examination was rightly refused to avoid delay. The statements relied upon are corroborated by statement of the appellant and the shipping-line correspondence and together the evidence establishes the involvement of the appellant.

ANALYSIS

6. The proceedings commenced with drawing of a panchnama on 05/06.09.2016 at ICD, Tughlakabad where the customs authorities found the firecrakers concealed behind bicycle parts and pumps. The goods were seized prior to the custom gate and before filing of the BOE. The consignment was covered by the Bill of Landing no.OOLU2023101170 dated 04.08.2016 in the name of M/s Kirat Sales. The SCN alleged that Rahul Sehgal, proprietor of M/s Rahul Traders in connivance with Saurabh Aggarwal and the appellant planned to import firecrackers in the guise of freely importable goods i.e. bicycle parts. The adjudicating authority (hereinafter 'AA') relied upon the deposition of Deputy Manager (Imports), Shipping Line who stated that the consignment was initially booked in the name of M/s Rahul Traders and later the name of the consignee was changed to M/s Kirat Sales. Further that in second week of August, 2016 a phone

call made on landline number was to the appellant who informed to be the CHA of M/s Rahul Traders. The material collected during the search of the premises of Rahul Sehgal coupled with failure to appear during investigation was treated as substantial evidence that Rahul Sehgal was the importer and by mis-declaration attempted to get the firecrackers cleared from ICD. The goods were ordered to be confiscated and a penalty of Rs.41,16,424/- under Section 112(b)(i) of the Act was levied on Rahul Sehgal.

7. The AA imposed a penalty of Rs.5 lakhs on Saurabh Aggarwal under Section 112(b)(i) of the Act. The AA noted that Saurabh Aggarwal was named by the appellant. The statement of Purshottam disclosed that Purshottam and Ajay Sagar met Rahul Sehgal along with the appellant and two other persons in a restaurant in Ambala in January, 2016. During the meeting a proposal was made to the accompanying persons to clear the consignment by mis-declaration but it was not accepted. The AA inferred that Saurabh Aggarwal failed to join the investigation despite repeated summons and this indicates active participation in the unlawful import of the consignment.

8. Jaskirat Singh gave the statement that the KYC documents of M/s Kirat Sales were given to the appellant who was working as a CHA for both M/s Kirat Sales and M/s Rahul Traders. Further that the KYC documents of M/s Kirat Sales were handed over by the appellant to M/s Rahul Traders for misuse. The investigation against Jaskirat Singh was dropped.

9. The appellant was penalised for Rs.10 lakhs under Section 112(b)(i) of the Act. After considering the evidence on record, the AA held that role of the appellant in the import of the seized consignment was not proved but he had the knowledge of mis-declaration of goods and has arranged the meeting between Rahul Sehgal, Saurabh Aggarwal and the two CHAs, namely, Ajay Sagar and Purshottam, based in Delhi. Further that contact number of the office of the appellant was mentioned in the contact details of M/s Rahul Traders as given in correspondence through e-mail provided by the shipping line. M/s Rahul Traders misused the KYC documents of M/s Kirat Sales.

10. The request of the appellant for cross-examination of Ajay Sagar, Purshottam and Jaskirat Singh whose statement were used against the appellant was denied holding that the respective depositions clearly disclose the roles of Saurabh Aggarwal, the appellant and Jaskirat Singh. Further that the main noticee-Rahul Sehgal deliberately failed to join the investigation. No purpose would be served by cross-examination except causing delay moreover, Rahul Sehgal has been held to be the importer of the seized consignment.

11. The CESTAT while dismissing the appeal noted that the penalties imposed on the other persons allegedly involved in the import of firecrackers by mis-declaration were set aside and the proceedings against Jaskirat Singh were dropped during adjudication.

12. The AA held albeit, the role of the appellant in import of the seized consignment was not proved but penalty was leviable for: (i) the appellant having knowledge of mis-declared goods and (ii) for

arranging meeting with Rahul Sehgal, Ajay Sagar and Purshottam and two other persons.

13. There was no evidence against the appellant except the statements of the co-noticees. The persons with whom the appellant had arranged the meeting were not proceeded against. In other words no role was attributed to them in the import of the consignment. The knowledge of misdeclaration to the appellant was inferred from the statement of Jaskirat Singh and the fact that in the contact details of M/s Rahul Traders the phone number of the appellant was mentioned. The case set up by the Department that M/s Rahul Traders was the actual importer fell flat when Rahul Sehgal succeeded before the CESTAT whereby vide order dated 17.08.2021 the penalty was quashed. The foundation of the allegations against the appellant for proceeding under Section 112(i)(b) of the Act were eroded by quashing of penalty against Rahul Sehgal.

14. Another aspect is that the appellant made a specific request for cross-examination of Ajay Sagar, Purshottam and Jaskirat Singh whose statements were being relied upon against the appellant. The request was denied stating that no useful purpose would be served and the matter would be delayed and in view of the fact that Rahul Sehgal was held to be the importer of the seized consignment. However, the CESTAT proceeded on a wrong factual premise that the appellant had not sought cross-examination of these three persons.

15. There cannot be quarrel with the proposition that the cross-examination is not an absolute right yet falls withing the ambit of

principle of natural justice and is in consonance with Section 138(B) of the Act.

16. Another aspect is that the penalty against another co-noticee Saurabh Agarwal was also quashed by the CESTAT vide order dated 11.02.2020 by holding that apart from the statement of the appellant, there was no evidence against Saurabh Agarwal. The penalty imposed on the appellant was upheld despite the fact that the goods were seized before filing of the BOE and no documentary evidence directly indicating the role of the appellant in import of the goods came in the possession of the Department. In absence of independent evidence against the appellant the different treatment of the appellant from co-noticees cannot be sustained.

17. In view of the above discussions, the substantial question of law is answered in favour of the appellant and the impugned order and the penalty order are set aside.

18. The appeal is allowed.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 06, 2026
Ch

Reportable:- **Yes**