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

Date of decision: 06th October, 2025

+ **CUSAA 81/2019 & CM APPL. 7106/2019**

SUSHIL SHARMA

.....Appellant

Through: Mr. Bharat Bhushan, Ms. Nidhi
Gupta & Mr. Anunay Mishra, Advs.

versus

COMMISSIONER OF CUSTOMS [EXPORT]Respondent

Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mathur, Mr. Jai Ahuja, Mr.
Sanidhya Sharma, Mr. Akshya
Saxena & Ms. Shivali Saxena, Advs.

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WITH

+ **CUSAA 83/2019 & CM APPL. 7737/2019**

SHEKHAR

.....Appellant

Through: Mr. Bharat Bhushan, Ms. Nidhi
Gupta & Mr. Anunay Mishra, Advs.

versus

COMMISSIONER OF CUSTOMS [EXPORT]Respondent

Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mathur, Mr. Jai Ahuja, Mr.
Sanidhya Sharma, Mr. Akshya
Saxena & Ms. Shivali Saxena, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present appeals have been filed under Section 130 of the Customs



Act, 1962, *inter alia*, challenging the impugned final orders passed by Customs, Excise and Service Tax Appellate Tribunal (hereinafter, 'CESTAT') dated 10th July, 2018 by which penalties of Rs.10 lakhs have been imposed upon the Appellants- Sh. Shekhar and Sh. Shushil Kumar Sharma.

3. The brief background of these appeals is that one M/s. Digital Exports had imported a consignment *vide* bill of entry No. 8358278. The same was inspected on 30th October, 2012 and the said bill of entry was filed by the Customs House Clearing Agent - M/s Dilip Kumar Thakur on behalf of the importer. The inspection of the consignment revealed that cigarettes of foreign origin were concealed in the declared cargo of mattresses and the total value of the said cigarettes was to the tune of Rs.3,40,74,000/-.

4. Thereafter, a Show Cause Notice (hereinafter, 'SCN') was issued on 23rd April, 2013. *Vide* Order-in-Original dated 06th September, 2017, a penalty to the tune of Rs. 50 lakhs was imposed by the Original Authority upon three persons, including the two Appellants herein, namely Sh. Shakti Nath Jha, Sh. Sushil Kumar Sharma, and Sh. Shekhar, who were the Appellants before the CESTAT. The operative portion of the said Order-in-Original passed by the Original Authority reads as under:

"38.1 The goods as detailed in table 2 in para 10 above are liable for confiscation under section 111(d) and section 111 (m) of the Customs Act,1962. Since no claimant has come forward to claim these goods they are confiscated absolutely.

38.2 Penalty as indicated in table below imposed on Noticee 1 to 7 under the provisions of Section 112 (a) and 112 (b) for various acts of omission or commission leading to illegal importation of the said goods and making them liable for confiscation under Section

*111(d) and 111 (m) of the Custom Act,1962*

Details	Noticee	Penalty (Rs)
Sh. Shuab Malik , Prop M/s Digital Exports, F-60 West Jawahar Nagar, Laxmi Nagar Delhi 92.	1	3,50,00,000
Sh. Arif Siddiqui , S/o Sh. Yasin Siddiqui, Prop M/s International Shipping Corporation, 208, Bakshi House Nehru Place New Delhi.	2	3,50,00,000
Sh. Anwar Aziz , S/o Sh. Abdul Aziz, R/o 8154, Gali No 5 Chimni Mill Rani Jhansi Road Delhi.	3	3,50,00,000
Sh Navin Kumar , S/o Sh. Shyam Kishore Sharma, R/o HR-62 Sohan Lal Marg Pul Prahaladpur, New Delhi 44. Prop M/s S N Shipping HR-62C Sohan Lal Marg Pul Prahaladpur, New Delhi 44.	4	3,50,00,000
Sh Shakti Nath Jha , S/o Lt Sh. Mishri Lal Jha R/o b-70/1 H-Biock Rajnagar II, Palam Colony New Delhi 110045. (G Card Holder of CHA Firm M/s Dilip Kumar Thakur)	5	50,00,000
Sh. Sekhar , S/o Sh. Ramadhar Singh R/o 277, DDA Janta Flats Pul Prahaladpur, New Delhi 44. (H Card Holder of CHA Firm M/s Dilip Kumar Thakur)	6	50,00,000
Shri Sushil Sharma S/o Lt Sh. Amrit Lal Sharma, R/s 30/107, Street No 7, Vishwas Nagar, Shahadra Delhi-32. (Marketing Manager of CHA Firm M/s Dilip Kumar Thakur)	7	50,00,000

38.3 The show cause notice issued by Additional Director General, Directorate of Revenue Intelligence vide DRI F No 50D/59/2012/C.I/1085 dated



23.04.2013 is disposed accordingly.”

5. The said Order-in-Original was challenged by the aggrieved persons before CESTAT which in turn has reduced the penalty in respect of the two of the Appellants namely, Sh. Shekhar and Sh. Sushil Kumar Sharma, from Rs. 50 lakhs to Rs.10 lakhs. Insofar as Sh. Shakti Nath Jha is concerned, the penalty has been waived *vide* the impugned order. The operative portion of the order of CESTAT is set out below:

“11. We are of opinion that CHA firms are the most important link between the importer/exporter and the custom department .It is expected of CHA firm that the credentials of importer/exporter are properly verified by them before undertaking the work of clearances in the various custom house. We find that Shri Sushil Sharma and Shri Shekhar both the employees of M/s Dilip Kumar Thakur CHA firm were in the forefront of handling the clearance work of their CHA firm. It was their responsibility to ensure that no unwarranted person make use of the CHA firm for clearing misdeclared or contravened goods. We find that both these appellants have failed in ensuring the clean credentials of the importer M/s Digital Exports and, therefore, we are of the opinion that the penalty under Section112 (a) & (b) of the Customs Act, 1962 has rightly been imposed on both of them. However, considering their financial condition and the fact that they are paid employees with limited means we reduce the quantum of penalty from Rs. 50 lakhs to Rs. 10 lakhs on each. The penalty on Shri Shakti Nath Jha is waived. The impugned order-in-original stands modified to above effect.”

6. It is this order passed by CESTAT which is under challenge by both the Appellants. Ld. Counsel for the Appellants has vehemently urged that



these two persons, *i.e.*, Sh. Shekhar and Sh. Sushil Kumar Sharma were mere salaried employees of the Customs House Agents (hereinafter, 'CHA') and their role was quite limited in nature. Ld. Counsel for the Appellants submits that they are unable to afford the penalty which is being imposed by CESTAT. Hence, Ld. Counsel for the Appellants prays that the same may be reduced.

7. Mr. Harpreet Singh, Id. SSC on the other hand submits that Sh. Shekhar was the 'H' card holder and Sh. Sushil Kumar Sharma was the supervisor. Their role has been discussed in detail by CESTAT and they have been held liable. CESTAT has also taken a sympathetic view and has reduced the penalty imposed upon them from Rs.50 lakhs to Rs.10 lakhs. and hence, the same does not deserve to be reduced further.

8. The Court has heard the Id. Counsels for both the parties. The order passed by CESTAT records the role of the Petitioners as under:

"4. We have heard both sides and we are of opinion that M/SDilip Kumar Thakur who is the license holder of Custom House Agents has three employees with him Shri Shakti Nath Jha who is G Card Holder, Shri Shekhar who was having H Card and Shri Sushil Kumar Sharma. Though Shri Sushil Kumar Sharma was not having any custom authorization for signing of the documents or visit of the custom house for clearance purposes but he was supervisor of both Shri Shekhar and Shri Shakti Nath Jha. We have examined role of all the three persons in the attempted smuggling of the cigarettes and we find that so far as Shri Shakti Nath Jha is concerned, he has neither signed any documents nor he has interacted with any of the main accused which are notice to the show cause notice. During the investigations it has also transpired that his signatures on the custom clearance papers



were also forged by Shri Shekhar and he was not even aware about the admitted clearance of consignment under bill of entry No. 8358278 dated 30/10/2012. Shri Shakti Nath Jha's involvement is also not reflected in any of the statements recorded during investigation and which are the subject matter of the present order-in-original.

5. So far as the involvement of Shri Shekhar who is notice No. 6 to the show cause notice is concerned it's a matter of record that Shri Shekhar has been working with custom house agent M/s Dilip Kumar Thakur and was issued H Card by the custom department for handling the clearance work of import export cargo on behalf of the above-mentioned CHA firm. He was as per the statement of owner of the CHA license was responsible for clearance of goods at the ICD, Tughlakabad, Patparganj and for soliciting new business for the firm. It has also transpired from various statements of all the accused persons that Shri Shekhar in connivance with Shri Navin Kumar was also instrumental in clearance of the previous two consignments of M/s Digital Exports in the month of August 2012 and October 2012. Shri Shekhar was fully aware that everything with the present consignment was not legal as Shri Navin Kumar has asked him to keep the name of importer as well as others as a secret. It has also come out from various statements that Shri Shekhar has discussed the clearance of the present consignment as well as previous two consignments with Shri Sushil Sharma and thus it appears that both were aware about the sensitivity of the cargo which is being handled by them. It is also a matter of record that the main person who is holding the CHA license was not even aware about the fact that such consignments of M/s Digital Exports are being cleared under the CHA firm name and the import clearance details were not being recorded in their (CHA) statutory records. This has primarily dropped because



ShriShekhar and Sushil Sharma has not declared to their employer about the clearances of M/s Digital Exports with an objective to keep the same as secret.

6. So far as role of Shri Sushil Sharma in the attempted smuggling is concerned, it comes out very categorically that he was supervising the work of the clearances of imported consignments on behalf of M/s Dilip Kumar Thakur, CHA and Shri Shekhar as H Card Holder and Shri Shakti Nath Jha of G Cardholder were reporting to him, thus it appears that without his concurrence no consignment could be cleared under the name of CHA firm M/s Dilip Kumar Thakur. It also transpired from the statements of Shri Shekhar and Shri Sushil Kumar Sharma himself that the clearance of the seized consignment wherein foreign made cigarettes were being attempted to be smuggled into the country was discussed with him by Shri Shekhar. It also transpired that Shri Sushil Sharma was aware about clearance of previous two consignments of M/s Digital Exports.”

9. As can be seen from the above, the CESTAT has categorically recorded that, insofar as Sh. Sushil Kumar Sharma was concerned, he did not have any Customs Authorisation for signing of the documents, but he was the supervisor for both Sh. Shekhar and Sh. Shakti Nath Jha.

10. The ‘G’ card holder, Sh. Shakti Nath Jha did not sign any documents nor did he interact with any of the main accused in the SCN. The documents were signed by Sh. Shekhar and therefore, the penalty *qua* Sh. Shakti Nath Jha has been waived by the CESTAT.

11. Insofar as Sh. Shekhar is concerned, he was working with M/s Dilip Kumar Thakur and was issued an ‘H’ card. The statement which was recorded and the statement of other persons would show that Sh. Shekhar



was in connivance with Sh. Navin Kumar and was also involved in the clearance of previous two consignments. He was aware of all the facts and therefore, he was held liable and complicit in the illegal imports which were taking place.

12. The role of Sh. Sushil Kumar Sharma is that he was supervising the work of clearance of imported consignments. Both these persons were reporting to him and without his concurrence, as per CESTAT, the consignment could not have been cleared and the documents could not have been filed. Hence, he has been held responsible. The findings of CESTAT are set out below:

7. In view of above, we are of opinion that so far as Shekhar is concerned, he was fully aware that everything was not legal and proper and up to the mark so far as the present consignment of M/s Digital Exports was concerned as he has been informed about the sensitivity of the matter by Shri Navin Kumar. Shri Sushil Sharma being responsible person of the CHA firm was also informed by Shri Shekhar about sensitive nature of consignment of M/s Digital Exports, however, both of them has willingly accepted the clearing work of M/s Digital Exports and did what was required for attempted clearance of the smuggled cargo.

8. From all the statement~ which have been recorded during the course of investigation, we find that element of connivance in the smuggling on the part of above-mentioned three appellants is clearly absent. We also find that all the three employees, though they have been handling the work of clearance of imported consignments it appears that they are salaried employees of the CHA firm and thus people of limited financial capability and means.

9. In view of above, we are of opinion that so far as



Shri

Shakti Nath Jha is concerned, we find that he was not at all involved with or informed about the seized consignment and its attempted clearance and, therefore, we fully waive the penalty which has been imposed on him. So far as Shri Shekhar and Shri Sushil Sharma are concerned, we find that they were aware about the consignments sensitivity of the cargo and they should have taken all the necessary step to verify the veracity of the importers credentials as well as they should have ensured that no unwarranted person makes use of their CHA license for clearance of contraband/misdeclared goods.

10. We, therefore, find that Shri Shekhar and Shri Sushil Sharma has failed to discharge their responsibility as delineated under Custom House Agent Regulation 2004.

11. We are of opinion that CHA firms are the most important link between the importer/exporter and the custom department. It is expected of CHA firm that the credentials of importer/exporter are properly verified by them before undertaking the work of clearances in the various custom house. We find that Shri Sushil Sharma and Shri Shekhar both the employees of M/s Dilip Kumar Thakur CHA firm were in the forefront of handling the clearance work of their CHA firm. It was their responsibility to ensure that no unwarranted person makes use of the CHA firm for clearing misdeclared or contravened goods. We find that both these appellants have failed in ensuring the clean credentials of the importer M/s Digital Exports and, therefore, we are of the opinion that the penalty under Section 112 (a) & (b) of the Customs Act, 1962 has rightly been imposed on both of them. However, considering their financial condition and the fact that they are paid employees with limited means we reduce the quantum of penalty from Rs. 50 lakhs to Rs. 10



lakhs on each. The penalty on Shri Shakti Nath Jha is waived. The impugned order-in-original stands modified to above effect.

13. This Court has already considered the role of CHAs and their employees in ensuring discharge of obligations under the Customs Brokers Licensing Regulations, 2018 (hereinafter, ‘CBLR, 2018’) in the decision in ***Commissioner of Customs (Airport and General) v. M/S Jaiswal Import Cargo Services Ltd., 2025: DHC:7566-DB***, wherein it has been observed as under:

*“13. The appeal filed by the Department now seeks to reinstate the revocation against the Customs broker which this Court is not inclined to do. **There is no doubt that Customs Brokers do have significant responsibility under the CBLR 2018 which ought to be performed with diligence and commitment. The fact that the Respondent did not oversee the clearance and the warehousing of the goods leading to diversion of the goods in the domestic market is a clear infraction.**”*

14. The Court, having considered the factual background of this case, as also the role played by the two Appellants, which was active and supervisory in nature respectively, is of the opinion that no question of law arises in this matter. The penalty has been rightly imposed and the CESTAT has already taken a sympathetic view of the matter and reduced the penalty.

15. Under these circumstances, no interference is warranted in respect of the impugned order passed by CESTAT.

16. Let the penalties imposed upon the Appellants be deposited within a period of three months.



2025:DHC:8887-DB



17. These appeals are dismissed. Pending applications, if any, are disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 6, 2025/*pd/ck*