

GOVERNMENT OF PAKISTAN
COLLECTORATE OF CUSTOMS (APPEALS)
81-C, BLOCK-6, P.E.C.H.S,
KARACHI

Dated:- 26/2/2015

PASSED BY: - DR. ZULFIQAR AHMAD MALIK,
COLLECTOR OF CUSTOMS (APPEALS),
KARACHI.

No. Cus/6095/2014/A-WEST/13467
ORDER-IN-APPEAL No. 9893 /2015

- i. This copy is granted free of charge for the private use of the person to whom it is issued.
- ii. An appeal against the order lies to the Appellate Tribunal, Customs, Central Excise and Sales Tax, Karachi, within sixty days from the date of receipt of this order. An appeal should bear a court Fee stamp of Rs.1000/- (Rupees one thousand) only as prescribed under schedule-II item 22 of the Court Fee Act, 1870 and must be accompanied by a copy of this order.
- iii. An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.
- iv. If an appeal is filed, the appellant should state whether he desires to be heard in person or through an Advocate.

Subject: - **APPEAL UNDER SECTION 193 OF THE CUSTOMS ACT, 1969
AGAINST THE ORDER-IN-ORIGINAL No. 400/2012-2013 DATED
05.06.2013.**

1. Appellant : M/s. Flying Horse
2. Respondent : Deputy Collector of Customs
Adjudication-I, Custom House, Karachi
3. Date(s) of Hearing : 23.10.2014
4. Date(s) of Judgment : 23.10.2014
5. Present : a) for the appellant: Mr. Mohammad Aleem Khan
Advocate
b) for the respondent: Mr. Abdul Aziz,
Appraising Officer

RECEIVED
DATE 28-2-15
LAW BRANCH

RECEIVED
DATE 27-2-15

This appeal has been filed against order-in-original No. 400/2012-2013 dated 05.06.2013 passed by Deputy Collector of Customs, Adjudication-I, Custom House, Karachi.

2. Briefly, facts of the case as stated in the impugned order are that the importer filed a goods declaration (GD) bearing Machine No.KAPR-HC-43854 dated 01.11.2011, through the appellants, declaring the description and quantity as Auto Parts, R/Bush, 20 Packages/cartons weighing 600Kgs-gross and 540Kgs-net. The same goods were presented before the customs examination staff and the examination report was

endorsed on the GD accordingly. The differential quantity of goods weighing 2284Kgs-net of Auto Parts R/Bush, remained un-assessed and non-duty paid with alleged active connivance of the concerned staff of the custodian M/s. Pak Shaheen Container Services (Pvt) Ltd, Off-Dock Terminal Operator and their other associates, as the same was neither presented for the examination nor weighed as the integral part of the consignment and as such the said goods were not presented to the Customs Examination Staff for examination/inspection. It has been conceived that at the time of delivery, again with the alleged active connivance of the concerned staff of the M/s. Pak Shaheen Container Services (Pvt) Ltd, Off-Dock Terminal Operator five gate passes as well as vehicles were used for the purpose to take delivery of 20 packages of Auto parts, R/Bush weighing 540Kgs-net as declared in the GD as well as assessed for duty and taxes by the customs which otherwise would have been carried out on single vehicle. It has been alleged that importer succeeded to get the delivery along-with undeclared/un-manifested and non-duty paid quantity of Auto Parts, R/Bush weighing 2284Kgs. The said vehicles were gate out with the alleged connivance of the concerned staff posed at the Exit Gate of the Terminal. The aforesaid modus operandi of fraudulent importation, illegal warehousing of un-manifested goods and illegal removal of the same without payment of legitimate duty and taxes could not have been possible without the premeditated, active and willful connivance of the importer M/s Khadim Motors, the appellants, the shipping agent M/s Facilities Shipping Agency, Karachi, M/s. Pak Shaheen Container Services (Pvt) Ltd, Off-Dock Terminal Operator and other associates-in-crime. Thus, all of them were associated in commissioning the aforesaid crime and succeeded in illegal removal of un-assessed/un-manifested/un-declared/non-duty paid auto parts R/Bush weighing 2284Kgs valuing Rs3,42,809/- and illegally severally/individually and jointly/in league with each other defrauded the state exchequer of its revenue amounting to Rs3,42,809/- and thus, they have contravened the relevant provisions of law. Thus accordingly to all concerned were found guilty of an offense in violation of the relevant provisions of law and the adjudicating officer held that the charges against the appellant had been proved. The operative part of the impugned order reads as under:-

"I have, gone through the case record and considered / examined carefully the verbal as well as written arguments placed before me in this case. From the case record and written arguments, it transpired that the container No. MOAU-6715416 contained (5) Less Container Load (LCL) consolidated consignments consisting of 148 Packages, weighing 5907.60Kg having cumulative volume of 16.667M3. Out of the aforesaid five (5) LCL consolidated consignments, one consignment of 139 Cartons Automotive Rubber Parts of RBI Brand of Thai Origin, weighing 3106.600Kg-Gross & 2823.67Kg-Net, having volume of 5.815M3 pertained to M/s. Khadim Motors, Karachi. However, M/s. Facilities Shipping

Agency, Karachi while filling under Section 43, 45 of Customs Act, 1969, IGM No. 10011/2011 dated 23.10.2011, index No.258, illegally substituted / reduced and mis-declared the weight as 600Kg-Gross & 540Kg-Net instead of the actual 3106.600Kg-Gross, p823.67Kg-Net. The reduced weight also appeared in the House Bill of Lading No. BKAR-1110-6424-L dated 02.10.2011 relating to M/s. Khadim Motors, Karachi with the active connivance of the importers. Subsequently, the container was moved to Off-Dock Terminal, M/s, Pak Shaheen Container Services (Pvt.) Ltd., Karachi, where the terminal staff, conniving with the importers and their associates neither recorded nor reported / informed to the concerned customs authority regarding the difference of the actual quantity and weight as compared to the quantity and weight given in the relevant IGM at the time of de-stuffing / warehousing of the goods / container and illegally warehoused / stored un-manifested and undeclared cargo and concealed the same at the time of customs examination / assessment and facilitated the illegal removal / delivery of the same to the aforesaid importers / customs ring agent and issued five gate passes for the purpose of removal of the impugned goods with the collusion of the customs staff of MCC Preventive and terminal operator's staff posted at the exit gate of the terminal. M/s. Khadim Motors, Karachi while filing a Goods Declaration (GD) bearing Machine No. KAPR-HC-43854 dated 01.11.2011, through their customs clearing agent M/s. Flying Horse, (CHAL#1836), Karachi, suppressed / manipulated 2284Kg. Auto Parts R./Bush by declaring the description and weight / quantity as Auto Parts, R / Bush, 20 Packages Cartons weighing 600Kg-Gross and 540Kg-Net and got the GD processed accordingly. The differential quantity of goods weighing 2284Kg-Net of Auto Parts R / Bush. were kept away and not presented for customs examination / assessment, hence, the same remained un-assessed and non-duty paid with the active connivance of the concerned staff of the custodian M/s. Pak Shaheen Container Services (Pvt.) Ltd., Off-Dock Terminal Operators and their associates. Subsequently, the importers / customs clearing agent succeeded to get the delivery along-with undeclared / un-manifested and non-duty paid quantity of Auto Parts R / Bush weighing 2284Kg, with the connivance of the concerned staff posted at the exit gate of the terminal.



The aforesaid modus operandi of fraudulent importation, illegal warehousing of Un-manifested goods and illegal removal thereof without payment of legitimate duty and taxes could not have been possible without the premeditated, active and willful connivance of the importers, the customs clearing agent, the shipping agent, the custodian and the other associates. Thus the involvement of all the aforesaid stakeholders / entities in the illegal and clandestine removal of goods without payment of customs duty and other taxes leviable thereon established beyond any shadow of doubt.

This clandestine removal of the goods was not possible without the knowledge and willful connivance of the custodian, who did not timely inform the relevant customs authorities regarding arrival of un-manifested / without cover of any index / excess quantity of 2284Kg of Auto Parts (Rubber Bush) and illegally stored and warehoused that excess / un-declared / un-manifested goods and kept away the same from the customs examination staff and finally facilitated the importers and the customs agent to get the delivery of that excess / un-declared / un-manifested and non-duty paid quantity of the goods. In this way, they not only failed to safeguard the pilferage of government revenue but also contributed to the loss of the government revenue. Their involvement in this clandestine removal of the un-declared / un-manifested goods is proved without

any iota of doubt. The reply and the arguments submitted by their legal counsel bear no weight and are merely an attempt to shift the blame to the others associated in the crime. Therefore, a penalty of Rs. 200,000/- (Rupees Two Hundred Thousand) is also imposed on the custodian, M/s. Pak Shaheen Container Services (Pvt) Ltd (Off clock terminal), Karachi under the aforesaid provisions of law.

3. The learned counsel of the appellant principally reiterated the arguments which had already been submitted as grounds of Appeal. The same are reproduced below:-

i) According to invoice, bill of lading and packing list my client prepared the GD No. KAPR-43854 dated 01.11.2011 and presented in the respective section of the custom. Goods were examined and examination staff found on declaration as correct the only difference was 540 – 500 = 50 kg. The examination report passed through from Examiner, Appraiser, Principal Appraiser and even Deputy Collector. These officers have no objection. There was a remark at the time of examination that delivery subject to 100%. Pak Shaheen computerized weighment confirmed the weight of the consignment found 500 kg. After completion all the stage my client made the payment of duty and tax as worked out by custom my client took the delivery i.e. out of charge. All original papers such as Bill of Lading, Packing List, Invoice and original bill of entry No. KAPR-HC-43854 are with the custom. Bill of Entry having date of import 01.11.2011. The goods were examined on 11.11.2011 and out of charged on 11.11.2011 vide computerized weighment.

ii) After clearance of goods and payment of duty and taxes hearing memo issue on 27.11.2013, 11.12.2013, 13.03.2014, 26.05.204 & 10.06.2014 but defendant did not report and finally gave a brief which he did not gave in fact on paper. It came in the notice that there is some order in original passed against my client but not issued or not received to him. Additional Collector passed order on 12.06.2014 to concerned section to provide copy of order so that M/s. Flying Horse can file appeal. As per order of Additional Collector copy of order was provided. The order in original shows that it was lying in file and not issued. The charge imposed in order in original was as under:-

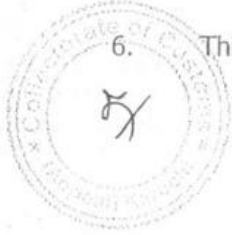
"IMPORTATION OF AUTO PARTS INCLUDING RUBBER BUSH VIDE IGM NO. 10011 DATED 23.10.2011, INDEX NO. 258 MACHINE NO. KAPR-HC-43854 DATED 01.11.2011 BY M/S. KHADIM MOTORS, KARACHI".

Charge is not correct. After supplying the order in original it came in knowledge that such order issued on different importer, clearing agent, shipping agent and Shaheen Agencies etc. In case of my client he took the delivery of goods after weighment and he paid duty and taxes.

4. The hearing in the case was fixed and held on 23.10.2014. Mr. Mohammad Aleem Khan, Advocate appeared on behalf of the Appellants and Mr. Abdul Aziz, appraising officer appeared on behalf of the Respondents.

5. I have examined the case record. The appellants have come up with the plea that order was passed against them unheard. It has also been stated in the order that no body appeared for the clearing agent, nor they furnished any reply to the show cause

notice. It is however not clear whether notice and order were issued in accordance with section 215 of the Customs Act, 1969. Keeping in view the above, delay in filing of appeal is condoned. The penalty imposed against the appellants is also set aside and matter is remanded to the original authority to pass fresh order after hearing the appellants. The order in original is modified to this extent only.



6. This order consists of (5) pages and each page bears my initials and office seal.


(DR. ZULFIQAR AHMAD MALIK)
Collector

Registered A/D.
M/S. FLYING HORSE,
C/O M. ALEEM KHAN, ADVOCATE,
4/C, OCEAN CENTRE, OPP: CUSTOM HOUSE,
KARACHI.

Copy to:-

1. The Member (Legal) Federal Board of Revenue, Islamabad.
2. The Collector of Customs, MCC, Appraisement-West, Custom House, Karachi.
3. Guard file.


(DR. ZULFIQAR AHMAD MALIK)
Collector