

**Customs, Excise & Service Tax Appellate Tribunal, West
Zonal Bench : Ahmedabad**

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 204 of 2011

[Arising out of Order-in-Appeal No OIA-64-66/2011/CUS/COMMR-A-/KDL dated 21.02.2011 passed by Commissioner (Appeal) Customs, Ahmedabad]

Awin Exim Company Appellant Arunodaya, Bapu Bhai Vashi Road, Vile Parle,
W, Mumbai, Maharashtra

VERSUS
S

Commissioner of Customs, Ahmedabad Respondent Custom House, Near All
India Radio Navrangpura, Ahmedabad, Gujarat

AND CUSTOMS Appeal No. 205 of 2011

[Arising out of Order-in-Appeal No OIA-64-66/2011/CUS/COMMR-A-/KDL dated 21.02.2011 passed by Commissioner (Appeal) Customs, Ahmedabad]

Subhash Choudhary Appellant Authorized Signatory Arunodaya, Bapu
Bhai Vashi Road, Vile Parle, W, Mumbai, Maharashtra

VERSUS
S

Commissioner of Customs, Ahmedabad Respondent Custom House, Near All
India Radio Navrangpura, Ahmedabad, Gujarat

WITH

CUSTOMS Appeal No. 206 of 2011

[Arising out of Order-in-Appeal No OIA-64-66/2011/CUS/COMMR-A-/KDL dated 21.02.2011 passed by Commissioner (Appeal) Customs, Ahmedabad]

Satish Choudhary Appellant Partner of M/s. Awin Exim Company Arunodaya,

Bapu Bhai Vashi Road, Vile Parle, W, Mumbai, Maharashtra

VERSUS
S

Commissioner of Customs, Ahmedabad Respondent Custom House, Near All India Radio Navrangpura, Ahmedabad, Gujarat

APPEARANCE :

Shri Hardik Modh, Advocate for the Appellant Shri S. Airam, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

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Appeal No. C/204-206/2011

FINAL ORDER NO. A/12494-12496 / 2019

DATE OF HEARING : 10.12.2019 DATE OF DECISION: 20.12.2019 **RAJU :**

These appeals have been filed by M/s. Awin Exim Company, its partner Shri Satish Choudhary and by Shri Subhash Choudhary, Power of Attorney holder, against the change of classification and confiscation of goods imported by them and imposition of penalties.

2. Learned Counsel for the appellant pointed out that their unit is located in Special Economic Zone, Gandhidham and are engaged in the manufacture of Made-ups and Readymade garments. They were granted letter of permission by the Development Commissioner, Kandla Special Economic

Zone (KASEZ), Gandhidham. The appellant had imported certain goods and filed Bill of Entry No. 3791 dated 22.12.2003 declaring the goods as “Shirting/ Dress Material & Pens” classifying the same under CTH 54075400 and CTH 96081000 respectively. The appellant had also filed KASEZ Bill of Entry No. 4714 dated 16.02.2004 classifying the said goods under CTH 54071016. On 25 May 2004, the officers of SIIB of Custom House, Kandla visited the factory premises and drew some samples of fabric under Panchnama. The said samples were sent to Customs Laboratory for testing and out of 10 samples, 7 samples were found “dyed, knitted fabrics made wholly of Polyester filament yarn” whereas other three samples were found to be “woven fabrics”. On the strength of the above test report, it was alleged that appellant had imported dyed knitted fabrics made wholly of polyester filament yarn falling under Chapter heading 6001 of the Customs Tariff Act along with the woven fabrics falling under Chapter heading 5407 of the Customs Tariff Act. On 05 July 2004, the officers of the Customs SIIB Section visited the factory premises again and detained 1458 Rolls of knitted

fabrics under Panchnama, found available in the premises. On 25

September 2004, the officers again visited the factory premises and with the assistance of the appellant, segregated the 1458 Rolls of fabrics declared as “woven fabrics” and found that 131 Rolls were of dyed, knitted fabrics made wholly of Polyester filament yarn falling under Chapter heading 6001 of the Customs Tariff Act. The said 131 Rolls of knitted fabrics were weighted and placed under seizure. The statement of Shri Omprakash Jhunjhunwala, partner of the said unit was recorded wherein, he stated that he was not aware of the export-import activities and he had signed the paper given by Shri Satish Choudhary under pressure from his brother-in-law Shri Sattu Choudhary, who is brother of Shri Satish Choudhary. Various summons were issued to Shri Satish Choudhary, Partner of M/s. Awim Exim Company and Shri Subhash Choudhary, Power of Attorney holder however, they did not appear.

3. Learned Counsel for the appellant pointed out that the goods have been confiscated and they are giving up their claim on the said goods. He pointed out that there is no duty involved as the goods were imported into SEZ and there was no restriction for import of such goods and therefore, there could not have been any intention to evade any duty. In these

circumstances, the penalty imposed on the appellant M/s. Awin Exim Company, Shri Satish Choudhary and Shri Subhash Choudhary should be set-aside.

4. Learned Counsel further pointed out that since penalty has been imposed on M/s. Awin Exim Company, no penalty on its partner can be imposed in view of the decision of Hon'ble Gujarat High Court in the case of

Commissioner of Central Excise vs. Jai Prakash Motwani – 2010 (258) ELT 204 (Guj.)

5. Learned Authorised Representative relied on the impugned order. He argued that there was a gap between the date of import and initiation of investigation. He argued that since the appellant had noticed some knitted fabrics along with woven fabrics, they should have taken up the issue with the supplier. He pointed out that failure to take the issue with the supplier meant that they were aware of the entire import of knitted fabrics along with woven fabrics.

6. We have gone through the rival submissions. We find that appellant M/s. Awin Exim Company is a unit in KASEZ having Letter of Permission to manufacture garments. For the purpose of said manufacturing, they are entitled to import various fabrics without payment of duty. The allegation of Revenue is that while the appellant had declared that the goods imported by them are falling under Chapter heading 5407 but some of the goods were woven fabric falling under Chapter heading 6001. We find that while making these imports the appellant would not have gained any monetary benefit as no duty is involved. We also find that appellant have not contested confiscation of the goods and abandoned the goods. In these circumstances, we find that penalty of Rs. 3 Lakh imposed on M/s. Awin Exim Company under Section 112 of Customs Act, 1962 is excessive and the same is reduced to Rs. 1,50,000/- (Rupees one lakh fifty thousand only).

7. It has been argued that while penalty is imposed on the M/s. Awin Exim Company, penalty has also been imposed on its partner Shri Satish Choudhary. It has been argued that in terms of decision of Hon'ble Gujarat

High Court in the case of *Commissioner of Central Excise vs. Jai Prakash Motwani (supra)*, when penalty is imposed on partnership firm, penalty cannot be imposed on its partner. In view of this, penalty imposed on Shri Satish Choudhary is set-aside.

8. It is noticed that penalty of Rs. 2 Lakh has been imposed on Shri Subhash Choudhary, Power of Attorney holder under Section 112 of the Customs Act, 1962. Shri Subhash Choudhary has not appeared to answer the summons and his role is relatively limited and keeping in view the fact that Shri Subhash Choudhary would not have gained any monetary benefits, the penalty of Rs. 2 Lakh is excessive and the same is reduced to Rs. 1,00,000/- (Rupees one lakh only).

9. As discussed above, the appeal of Shri Satish Choudhary, partner is allowed. Appeals of M/s. Awin Exim Company and Shri Shri Subhash Choudhary are partly allowed.

(Pronounced in the open court 20.12.2019)

(Ramesh Nair) Member (Judicial)

(Raju) Member (Technical) KL