## Customs, Excise & Service Tax Appellate Tribunal
## West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

**Customs Appeal No. 10795 of 2021 - SM**

(Arising out of OIA-MUN-CUSTM-000-APP-50-21-22 dated 31/05/2021 passed by Commissioner of CUSTOMS-MUNDRA)

**KARAN BABUBHAI CHAUHAN** ........**Appellant**
C/O Combinedn Global Enterprises
Plot No 139 Maruti Nagar Meghpar Borrichi, Kutch
Kutch, Gujarat

*VERSUS*

**C.C.-MUNDRA** ......**Respondent**
Office of the Principal Commissionerate of Customs, Port User Buld. Custom House Mundra, Mundra, Kutch, Gujarat - 370421

**APPEARANCE:**
Shri Vikas Mehta, Consultant appeared for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

**Final Order No. A/ 11130 /2023**

DATE OF HEARING: 31.01.2023
DATE OF DECISION: 01.05.2023

**RAMESH NAIR**

The brief facts of the case are that the appellant is dealing as a mediator providing containers to the exporters M/s. Sanyo Ceramics Morbi, Gujarat for stuffing and export of washbasin. Shri Deepak Kotak was indulged in fraudulent export of red sander under the guise of sanitary ware in the present case wash basin from M/s. Sanyo Ceramics. The present appellant Shri Karan Babubhai Chauhan has arranged container and the container charges made by the M/s. Sanyo Ceramics to the appellant. The container was initially loaded with wash basin at the factory of M/s. Sanyo ceramics and after stuffing and sealing of container the goods were replaced enroute and after unloading the washbasin, red sander were stuffed which was intercepted by the custom official at the port of exports and on examination it was found that the red sanders was attempted to be exported under the guise and documents of export of wash basin. The present appellant was imposed penalty under Section 114(i) and 114(AA) for an amount of Rs. 15 Lacs each respectively by the Adjudicating Authority. On an appeal filed by the appellant before the Commissioner (Appeals), the Learned Commissioners (Appeals) reduced the penalty to Rs. 3 Lacs under Section 114(i) and Rs. 1 Lac under Section 114 AA of the Customs Act, 1962.Therefore, the present appeal filed by the appellant.

2. Shri Vikas Mehta, Learned Consultant appearing on behalf of the Appellant submits that in the main offence of fraudulent export of prohibited red sanders the appellant had no knowledge, his job was to only arrange the container. From the entire proceeding it is admitted fact that the appellant was not aware of the offence made by Shri Deepak Kotak. He submits that the penalties were imposed on the allegation that the appellant after knowing the check package did not inform the Custom authority. He further submits that though the Learned Commissioner (Appeals) reduced the penalty substantially but given clean chit to the appellant in his findings therefore, as observed by the learned Commissioner (Appeals) no penalty should have been upheld.

3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. The penalties were imposed only on the ground that the appellant after knowing about the illegal export of prohibited red sander has failed to inform to the authorities about the same. From the fact, I find that the appellant was absolutely unaware about the concealment of prohibited goods in the container for export. His job is to provide the empty container to the exporter. Therefore, as admitted by the Learned Commissioner (Appeals) he had no ulterior motive or knowledge for any act of commission or omission therefore, merely because he did not inform after knowing about the concealment penalty cannot be imposed, for the

reason that he came to know about the illegal export of red sander before the custom has already intercepted the containers at the port of export and the containers were put on the check packages. In this fact there is no question or need to inform the authorities as neither he was aware of the offence nor he was involved therein. The Learned Commissioner (Appeals) while reducing the penalty given the following finding :-

> *"I find merit in the contention of the appellant that the show cause notice did not whisper about any ulterior motive or knowledge or any act of commission or omission or even abetment on the part of the appellant that have rendered the subject goods liable to confiscation under Section 113 of the Customs Act, 1962. However, at the same time, the facts remains that the goods and the container in which the goods were stuffed were used for the attempt to illegally export the prohibited red sanders and when the appellant come to know about the concealment of prohibited goods in the containers meant for export, he failed to inform the authorities about the same. Thus, the appellant cannot be absolved completely from the penal provisions provided in the statute. In view of the above , the penalties under Section 114 (i) and under Section 114 AA need to be reduced to meet the ends of justice."*

From the above finding the Learned Commissioner appeal has clearly held that the appellant had no knowledge about any of the act which make the goods liable to confiscation. Despite his clear finding he upheld the reduced penalty.

5. As per my above discussion and finding I do not see any reason or role of the appellant to attract penalties under Section 114 (i) and Section 114 (AA). Accordingly, the penalties are set aside. Appeal is allowed.

(Pronounced in the open court on 01.05.2023 )

**RAMESH NAIR**
**MEMBER (JUDICIAL)**