

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 11448 of 2016-DB

(Arising out of OIA-MUN-CUSTOM-000-APP-144-149-16-17 dated 12.05.2016 passed by Commissioner of Mundra)

EDEN OVERSEAS

F-122/123/124, SHAKTI CHAMBER, NEAR ICICI BANK,
HIGHWAY 8A, MORBI-GUJARAT

.....Appellant

VERSUS

COMMISSIONER OF CUSTOMS - MUNDRA

OFFICE OF THE PRINCIPAL COMMISSIONERATE OF CUSTOMS,
PORT USER BULD., CUSTOM HOUSE MUNDRA,
KUTCH, GUJARAT-370421

.....Respondent

WITH

- (i) **CUSTOMS Appeal No. 11449/2016 (Uday Pvc);**
- (ii) **CUSTOMS Appeal No. 11450/2016 (Shri Kishor Vikrambhai Patel)**
- (iii) **CUSTOMS Appeal No. 11451/2016 (Shri Vipul Shershiya)**
- (iv) **CUSTOMS Appeal No. 11452/2016 (Shri Ganesh Maganbhai Shershiya)**
- (v) **CUSTOMS Appeal No. 11553/2016 (Shri Kamal Borar)**

(Arising out of OIA-MUN-CUSTOM-000-APP-144-149-16-17 dated 12.05.2016 passed by Commissioner of Mundra)

APPEARANCE:

Shri Paresh Sheth & Arun Goyal, Advocate appeared for the Appellant
Shri Himanshu P. Shrimali, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA (JUDICIAL)

Final Order No. A/ 11512-11517 /2023

DATE OF HEARING:11.07.2023
DATE OF DECISION:11.07.2023

RAJU

This appeal has been filed by Eden Overseas, Uday Pvc, Shri Kishor Vikrambhai Patel, Shri Vipul Shershiya, Shri Ganesh Maganbhai Shershiya and Shri Kamal Borar.

2. Learned Counsel pointed out that Eden Overseas is a merchant exporter, Uday Pvc is the manufacturer of PVC Pipes, Shri Kishor Vikrambhai Patel is partner of Eden Overseas, Shri Ganesh Maganbhai Shershiya is partner of Uday Pvc, Shri Vipul Shershiya is an Accountant and Shri Kamal Borar is the Shipping Line Agent.

2.1 He pointed out that admitted facts are that the goods were stuffed in the factory under supervision of the officers. During the

transit somewhere the transporter substituted the goods with Red Sander Wood. The Red Sanders was replaced by the transporters by breaking the seal. A case was booked against the aforementioned people for penalty under Section 114(i). He pointed out that there was no role or knowledge on the part of these people and there was no connivance whatsoever. Even the records suggest that the transporter has admitted his connivance and role in substitution of the goods after clearance of container. In these circumstances, he pleaded that no penalty can be imposed.

2.2 The Counsel appearing for Shri Kamal Borar pointed out that he is only a Shipping Line Agent and his role was limited to supplying the container. There is no confession on the part of the Shri Kamal Borar and he had no knowledge of the manner in which the container was used after he supplied the same to the exporter.

3. Learned Authorized Representative relies on the impugned order.

4. We have considered the rival submissions. We find that the show cause notice in para 43 states as follows:

"43. All of them were fully aware that the export of red sander wood is prohibited under Foreign Trade Policy. These persons knowingly or unknowingly somehow have facilitated the entire operation of smuggling of the Red Sander wood as stated above. Therefore, for the acts of said commissions and omissions on their part, it appears that penalty under Section 114 and 114AA clearly attracted against them. Moreover, the detained truck bearing forged registration no GJ 26 T 3536 which was used for transportation of prohibited goods i.e. red sander wood logs is also liable for confiscation under Section 115(2) of the Customs Act, 1962."

It is apparent that even show cause notice does not allege any active knowledge of the appellants nor does it point to any act or omission on the part of these appellants. Section 114(i) of Customs Act, 1962 reads as follows:

"114. Penalty for attempt to export goods improperly, etc.—Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1[2[not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;"

A plain reading of the Section clearly implies that there has to be active knowledge or any act or omission before penalty under Section 114(i) can be imposed. In these circumstances, we find no merit in the impugned order in so far as it relates to imposition of penalty on these appellants. The appeals are allowed.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha