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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10605 of 2021- DB

(Arising out of OIA-MUN-CUSTM-000-APP-175-176-20-21 dated 22/03/2021 passed by Commissioner of CUSTOMS-MUNDRA)

MSK SHIPPING & LOGISTICS PVT LTD ....Appellant
Unit No. 405, 4th Floor, Ellora Fiesta, Opp. Juinagar Rly Station,
Plot No.8 Sector-11, Sanpada
Navi Mumbai
Navi Mumbai, Maharashtra

VERSUS

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

WITH

Customs Appeal No. 10560 of 2021- DB

(Arising out of OIA-MUN-CUSTM-000-APP-175-176-20-21 dated 22/03/2021 passed by Commissioner of CUSTOMS-MUNDRA)

RAJESH KHIMANI ....Appellant
Plotno.76/A, Arihant Nagar, Baroi Road
Mundra
Mundra, 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 Sanjay Kalra, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12446-12447 /2023

DATE OF HEARING: 04.10.2023
DATE OF DECISION: 03.11.2023

RAMESH NAIR

The brief facts of the case are that appellant M/s. MSK Shipping &Logistics Pvt Ltd is a custom broker and Shri Rajesh Khimani is the employee of M/s. MSK Shipping & Logistics Pvt Ltd. The Adjudicating Authority imposed penalty of Rs. 10 Lacs each under Section 114 (i) and under Section 114 AA on M/s. MSK Shipping & Logistics Pvt Ltd and Rs. 15 Lacs each under Section 114 (i) and under Section 114 AA on Shri Rajesh who have filed the shipping bill on behalf of the exporter of wash basins on behalf of M/s. Sanyo Ceramics. On investigation by DRI officers it was revealed that the containers loaded wash basins from M/s. Sanyo Ceramics was opened enroute and the same was replaced with red sanders which was attempted to be smuggled out of India under the Shipping Bill of wash basins filed by the appellant. It was alleged against the appellant that they have not taken immediate action to inform the customs authorities regarding knowledge of red sander being stuffed in the containers therefore, they are liable for penalties. Against the Order-In-Original the appellant filed appeal before the Commissioner (Appeals) who vide impugned order reduced the penalty to Rs. 3 Lacs and 1 Lac respectively against M/s. MSK Shipping& Logistics Pvt Ltd and Rs. 3 Lacs and Rs. 1 Lac against Rajesh Khimani.Therefore, the present appeal filed by the appellants.

2. Shri Sanjay Kalra, Learned Advocate appearing on behalf of the Appellants submits that the appellants were not aware of smugglings of red sander. They were appointed as CHA and G-Card Holder by M/s. Sanyo Ceramics who have loaded the goods viz wash basins for export. The replacement of the goods enroute with red sander was not in the knowledge of the appellant therefore they cannot be implicated and no offence is established against them with regard to smuggling of red sanders. It is his submission that the appellant knew about the red sander in the container only in the evening of 22nd June, 2018 when he was in Mumbai and he informed Shri Karan Bhai that he will disclose the fact about the red sander to the custom authorities and on next day 23.06.2023 it was informed to the custom officer therefore, there is no offence on the part of the appellant. This fact has also been accepted by the Learned Commissioner (Appeals). Therefore, no penalty can be imposed on the appellant. He further submits

that in the case of identically placed person involved in present case namely Shri Karan Chauhan, this tribunal has set aside the penalty. In view of the aforesaid judgment in the present case also penalty is liable to be set aside.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the penalties were imposed by the Adjudicating Authority only on ground that the appellant have not informed the customs authoritiesimmediately about the stuffing of red sander in the container and informed only on the next day. In this regard we find that the appellant has given a statement that in the evening when he knew about the stuffing of red sander in the container he was in Mumbai and after returning from their next day itself heinformed the customs authorities. The act of the appellant was not found malafide by the Learned Commissioner (Appeals) in his order. The relevant para of the Commissioner (Appeals) order is reproduced below: -

> *"6. The appellants, on the other hand had contended that, though they were made notice in the subject show cause notice, the directors of M/s MSK Shipping and Logistics Pvt Ltd was never questioned or called for statement before the investigating agency and it implied that the investigating agency did not assume any role or involvement of the CB in the case. The appellants submitted that the adjudicating authority had erred in his findings at para 17.12 of the impugned order stating that Ms MSK Shipping & Logistics were attending the work of Shri Deepak Kotak assigned to them through Shri Karan Chauhan without obtaining required KYC details of Shri Deepak Kotak. The appellants submitted that adjudicating authority himself held M/s Sanyo Ceramics as exporter vide para 17.06 and para 17.12 of the impugned order. Adjudicating authority had not denied that subject shipping bills were not filed by M/s Sanyo Ceramics. It is on record that exporter had confirmed filing of shipping bills, issue of authority letter to CB M/s MSK Shipping & Logistics. Shri Rajesh Kimani had submitted all requisite documents like IEC, PAN number, GST Registration certificate, factory stuffing permission etc issued in name*

of exporter M/s Sanyo Ceramics and also complete KYC documents duly issued by the exporter to the CB. After going through the findings of the adjudicating authority as discussed at paragraph 17.2 (xiv) and 17.2 (vii) of the impugned order, it is observed that the adjudicating authority only stated that the involvement of Shri Rajesh Khimani cannot be ruled out in the scam of attempt to illegally export the prohibited goods of Red Sanders Logs. Appellant has contended that at the time of receiving documents and container from exporter Shri Rajesh Khimani, employee of the CB took due diligence in getting export documents like export invoice, packing list. BL etc with duly issued factory stuffing permission and there is no incriminating statement or documentary evidence against Shri Rajesh Khimani or the Customs Broker. The appellants have also contended that the show cause notice did not whisper about any ulterior motive or knowledge or any act of commission or omission or even abetment. In view of the above, there is no evidence of direct involvement of appellants. 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 Shri Rajesh Khimam did know about the concealment of prohibited goods in the containers meant for export. He failed to inform the authorities about the same. Thus the Customs Broker and the G-Card holder cannot be absolved completely from the penal provisions provided in the statute. In view of the above the penalties under Section 114(1) and under Section 114AA need to be reduced on each of the appellants to meet the ends of the justice.

7. In view of the above, I reduce the penalty to (i) Rs.3,00,000/- (Rupees three lakhs only) under Section 114(i) and Rs.1,00,000/- (Rupees one lakh only) under Section 114AA of the Customs Act 1962 on Customs Broker M/s MSK Shipping & Logistics and (ii) Rs.3,00,000/- (Rupees three lakhs only) under Section 114(i) and Rs.1,00,000/- (Rupees one lakh only) under Section 114AA of the Customs Act 1962 on Shri Rajesh Khimani, who holds G-card of Customs Broker M/s. MSK Shipping & Logistics Pvt Ltd."

4.1 The learned Commissioner (Appeals) accepting that the appellant did not have direct involvement in the illegal export of prohibited good red sander reduced the penalty substantially. In our view oncethe Commissioner (Appeals) is of the view that the appellant have no direct involvement, the penalty even reduced cannot be upheld.

4.2 As per the facts which is not under dispute the appellants came to know about this fact from one Shri Karan Chauhan against whom also for the same reason the penalties were imposedwhich was reduced by the Commissioner (Appeals). In an appeal against the Commissioner (appeals) order this Tribunal set aside the penalty vide order No. A/11130/2023 dated 01.05.2023. The said order is reproduced below:-

> *"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 :-*
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> *"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."*
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> *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.*
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> *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."*

4.3 From the above decision it can be seen that identical facts and same allegation was made against the appellant in the above decision and the Tribunal has set aside the penalties. We are therefore of the view that in the present case also the appellants being identically placed as appellant in the above decision the penalty are not sustainable. Hence, the same are set aside.

5. The impugned order is modified to the above extent. Appeals are allowed.

(Pronounced in the open court on 03.11.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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