CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 02

Customs Appeal No. 11485 of 2016-SM

[Arising Out Of OIO-MCH-PR-COMMR-PVR-039-2015-16 Dated- 30/03/2016 Passed By Commissioner of CUSTOMS-MUNDRA)

Orbit Shipping And Logistic **.....Appellant**
(Mumbai), 20, Plaza Centre,
Plot No. 117, Sector-8,
GANDHIDHAM(K)
GUJARAT

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. 11486 OF 2016 (Sachin Parnekar)**
- **Customs Appeal No. 11490 OF 2016 (Ashish Umraniya)**
- **Customs Appeal No. 11491 OF 2016 (Bharat Umraniya)**

APPEARANCE:
Shri. Vikas Mehta Consultant for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 12848-12851 /2024

DATE OF HEARING: 20.11.2024
DATE OF DECISION:20.11.2024

In the instant case, the appeals being contested out of the bunch by the advocate present in the matter, are of M/s. Orbit Shipping and Logistic, Shri. Sachin Parnekar, Shri. Ashish Umraniya and Shri. Bharat Umraniya against whom the allegation is made of assisting in export of concealed goods i.e. red sanders purportedly concealed by the person, who is at large. The appellants it is held provided logistic and other support and have, therefore, been penalized under Section 114 and 114AA. Further, role has been outlined in the show cause notice.

2. Learned Counsel pleads that in this matter no cross-examination was afforded to them and there was no in culpatory statement of any of the appellants being defended by him. Further, the only person i.e. Shri. Parag Karelia has stated (without being subjected to cross-examination) that at times certain small discrepancies were pointed out by him in documents which were not considered of any substantial consequence by M/s Orbit Shipping and Logistics or its partner/employees.

2.1 The Learned Counsel points out that there is absence of Cross-examination and there is no culpatory statement, therefore, no knowledge of offending goods on the part of the appellants, being represented by him. He points that even if certain discrepancies were pointed out by Shri. Parag Karelia in documents, the same were of no consequence and assuming that even if some negligence existed, the same cannot be the basis for imposition of penalties under Section 114 and 114AA as both require the knowledge of offending goods or deliberate attempt to mis-declare with objective of benefitting from the knowledge of offending goods. He also points out that the public notice No 05/2007 dated 08.02.2007 was in force at the relevant time which also required officers to look into various aspects of the export transactions and it was pointed out before the lower authorities that if the same had been followed by officers then the wrongful consignment could have been easily detected. However, there is non consideration of the points raised by him. Therefore, the orders suffers not only from the malice of lack of cross-examination but also from non consideration of the ground taken by him specially of non consideration of the point raised by the appellants on the Public Notice No. 05/2007 dated 08.02.2007 relating to cross-examination of exports consignments. He particularly place reliance on the following decisions, wherein, it is inter alia held that Custom House Agent is not liable to penalty under Section 114 unless mens rea is established on his part

- Sethu Samudhra Shipping Services, 2010 (262) ELT 570 (Tri.-Chennai

- Swaroop Shipping Services, 2008 (227) ELT 555 (Tri.-Chennai)
- Prime Forwarders, 2008 (222) ELT 137 (Tri-Ahmd.)
- Success Engineering, 2007 (215) ELT 220 (Tri.-Ahmd.)
- C. Ashok Kumar, 2010 (262) ELT 321 (Tri.-Chennai)
- Jha Shipping Agency, 2002 (145) ELT 83 (Tri- Kolkata)

2.2 On being asked to indicate as to whether he had sought cross-examination of Shri. Parag Karelia of which he is now making grievance of Learned counsel replied in negative but in the same breath relied upon the decisions of 2022 (380) ELT 264 (Bom.)-Prakash Raghunath Autade Vs. Union of India as also 2019 (366) ELT 280 (Cal.), Sampad Narayan Mukherjee Vs. Union Of India, 2016 (340) ELT 67 (P&H)-Jindal Drugs Pvt. Ltd Vs. Union of India, to emphasize the point that the cross-examination has to be offered after examination-in-chief is done by the adjudicating authority as per latest trending case law. Further, it was alternatively pleaded by him that if negligence in view of statement of Shri Parag Karelia is considered, still only penalty under Section 117 gets attracted.

3. Learned AR reiterates the findings and pleads for sustenance of penalty.

4. Considered the rival submissions. As reported in 1978 (2) ELT J399 (S.C) - N.B Sanjana Vs. Elphinstone Spinning and Weaving company Ltd. As also 1978 (2) ELT J335 (S.C) in J K Steel Vs. Union of India and 2000 (126) ELT 269 (Guj.) Petlad Bulkhi Das Mills Company Vs. Union of India, quoting of wrong penal provision cannot be a constraint on imposition of penalty. This Court after consideration of various aspects of knowledge involved of the offending goods in the factual narrative of the matter, coupled with alternate submission made by the learned advocate in its written submission dated 25.11.2024 holds that all the appellants were in business of doing clearance for years together and therefore could have been more diligent in dealing with the transaction which involved red senders and some discrepancies in documents were also brought on time to time to their knowledge, such facts concludes that negligence is involved.

5. In acts of such a nature, as the exporter involved was not thoroughly known to the CHA and logistic persons, as pointed by the learned advocate itself Section 117 gets attracted. Since, quoting of wrong rule as per above citation cannot be a constraint on imposition of penalty, this Court holds that the appellants i.e. M/s. Orbit Shipping & Logistic, Shri. Sachin Parnekar, Shri. Ashish Umraniya and Shri. Bharat Umraniya are subjected to penalty of Rs. 1 lakh each under Section 117 of the Customs Act, 1962.

6. Barring above modifications, order is sustained. Appeals partly allowed.

(Operative portion of the order pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi