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

REGIONAL BENCH- COURT NO.2

Customs Appeal No. 10108 of 2024

(Arising out of No. AHD-CUSTM-000-APP-333-335-23-24 dated 13.12.2023 passed by Commissioner (Appeals)-Ahmedabad)

Jetal S Dave **...Appellant**
S/2, Satyam Flats, Near Uco Bank
Vallabhvidya Nagar
Dist. Anand-Gujarat-388120

VERSUS

C.C. - Ahmedabad **...Respondent**
Office of Pr. Commr. Of Customs
1st Floor, Custom House, Opp.
Old High Court, Navrangpura
Ahmedabad-Gujarat

WITH
Customs Appeal No. 10109 of 2024

(Arising out of No. AHD-CUSTM-000-APP-333-335-23-24 dated 13.12.2023 passed by Commissioner (Appeals)-Ahmedabad)

Malav Fadia **...Appellant**
D/53. Orchid Green,
Shahibaug, Ahmedabad-380004

VERSUS

C.C. - Ahmedabad **...Respondent**
Office of Pr. Commr. Of Customs
1st Floor, Custom House, Opp.
Old High Court, Navrangpura
Ahmedabad-Gujarat

APPEARANCE:
Shri Mahendra Kumar Kothari, Consultant appeared for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 13044-13045 /2024

DATE OF HEARING: 05.12.2024
DATE OF DECISION:05.12.2024

RAJU

Heard both the sides.

2. The matter involves over valuation of exports by main noticee M/s K R International. The appellants in this case Shri Malav Fadia are the freight forwarder and Shri Jetal S Dave, the person who introduced the freight forwarders to the exporter. He organises meeting between the freight forwarders and exporters. The role of both these persons is recorded in para 26.8 and 26.09 of the Order-in-Original as follows:

> "26.8 On the basis of evidences and documents on records, I find that Shri Malav Fadia did not verify as to why the exporter was exporting goods from Ahmedabad when the proprietary firm was established in Delhi. However, he has stated that Shri Jetal Dave had referred the exporter to him and had asked him to arrange CHA for Customs clearance of the impugned export goods. Shri Malav Fadia instead of verifying the details of exporter before accepting the work, arranged the Customs clearance of the said export goods through his known CHA. Thus, by his above act, Shri Malav Fadia had abetted the improper exports of M/s. KR International by arranging the CHA, providing the export invoice showing wrong value and quantity of export goods and KYC documents for fraudulently availing undue IGST refund by the Exporter that has made the goods liable for confiscation. Shri Malav Fadia have thus rendered himself liable for penalty under Section 114 (iii) of the Customs Act, 1962.
>
> 26.9 I find that Shri Jetal Dave through his Authorised Representative, Shri Mahendra Kothari, Consultant has submitted that he did not knew the party in person but knew one Shri Amit Tyagi for last ten years, who was working with Aditya Forging, Ghaziabad and came in contact with him while attending his work in Gujarat State; it was Shri Amit Tyagi, who approached him in April, 2020 and told that his (Amit Tyagi) known party namely M/s KR International wanted to export the goods from Ahmedabad and sought help if he could arrange for a Freight Forwarder and CHA in Ahmedabad. Since he knew Shri Malav Fadia, a Freight Forwarder, he referred the said request to Shri Malav Fadia."

3. The allegation is that the freight forwarder Shri Malav Fadia did not verify the details of exporters before accepting the work and he arrange for custom clearance for the said exported goods through the CHA known to him. On this ground, it has been alleged that Shri Malav Fadia had abated overvaluation of export of M/s K R International. It is noticed that Shri Malav Fadia is merely a freight forwarder and not a CHA. Just because he had organized the CHA and handled the export consignment, he cannot be charged with abating the over-valuation. In any case, freight forwarder is not supposed to be involved in valuation of goods. In these circumstances, I do not find any merit in the charge against Shri Malav Fadia. The penalty imposed under Section 114(iii) of the Cusotms Act 1962 is therefore, set aside.

4. The second appellant, Shri Jetal Dave. From the discussion in para 28.9, it is apparent that Shri Jetal Dave, was merely involved as an intermediary in introducing the service providers in Ahmedabad to the exporter M/s K R International. Though specific role of Shri Jetal Dave has been identified as liaisoning work. In these circumstances, imposition of penalty on Jetal Dave under Section 114(iii) of the Customs Act, 1962 cannot be sustained.

5. The appeals are therefore, allowed.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Neha