CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 199 OF 2012

[Arising out of OIO-6- COMMR- ACC- AHMEDABAD-2012 dated 30/05/2012 passed by Commissioner of CUSTOMS-AHMEDABAD]

SAMIR AHMED MANSURI **Appellant**
4, Gulzar Park, Near Fatehwadi Bus Stop, Sarkhej Road,
Ahmedabad, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-AHMEDABAD **Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

Appearance:
None appeared for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

CORAM:

HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10303/2025

Date of Hearing : 12.03.2025
Date of Decision: 05.05.2025

Per : Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the Order-in-Original dated 30.05.2012 passed by Commissioner of Customs, Ahmedabad through which he imposed a penalty of Rs. 3,00,000/- upon Shri Samir Ahmed Mansuri under section 114 (i) of the Customs Act, 1962.

2. The facts of the case in brief are that according to the department intelligence was collected by the Director of Revenue Intelligence Ahmedabad (DRI) that some export cargo of prohibited nature was scheduled to be booked and exported through Air Cargo Complex, Ahmedabad on 21.11.2010 by Jet

Air ways flight no. 9W2004. Based on the above intelligence, the officers of the Zonal Unit were deputed to intercept the export cargo of prohibited goods. The officers noticed an orange colored Eicher Truck bearing no. GJ-01 BY / 5397 parked near the export godown at Air Cargo Complex within the Customs Area and 9 packages were found loaded in the truck which were ready to be unloaded and despatched for export. Upon inquiry with the office of Jet Airways at Air Cargo Complex, Ahmedabad, a print out for the booking details of the said cargo was recovered from the system which confirmed that the booked cargo was of 9 packages approximately weighing 254 kgs and contents were declared as 'Carpets' in the booking details. It was also revealed that this was the only International Cargo booked for export by flight no. 9W2004 on the day and the same was destined for Hongkong via Mumbai and was booked by the IATA agent M/s. Freight Experts International Pvt Ltd. The 9 packages loaded in the orange colored Eicher truck bearing no. GJ-01 BY/ 5397 were found to be wrapped with white colored packing material and duly strapped. No marks and number were available on the packages. All the 9 packages were unloaded in the export shed of Air Cargo Complex, Ahmedabad within the Customs Area for detailed examination and the examination was carried out in presence of two independent panch witnesses and a panchnama was drawn on the spot.

2.1 During the course of panchnama, it was observed that all the 9 packages contained peacock feathers packed in bundles and not containing carpets as declared in the booking documents obtained from Jet Airways. It was also observed that the 'peacock feathers' were first packed into small bundles of about 195 pieces and then 10 such small bundles were packed to form one large bundle. Gross weight of each package was checked separately and each bundle was separately counted to ascertain the exact quantity of the 'peacock feathers'. All feathers were found to be about 10 inches to 12 inches in length. During the course of panchnama an inquiry was undertaken with the driver of the truck Shri Bhimrao Bheram Gaikwad regarding the place of loading, contents of the 9 packages and related documents of the goods loaded in the truck. Inquiry was also undertaken with Shri J. D. Mahesuria, Superintendent of Customs, Air Cargo Complex, Ahmedabad.

2.2 After going through the material available on record and statements of various witnesses the department came to the conclusion that Shri Manpreet Singh has consciously and knowingly conspired with Shri Ramesh Nandlal Motiani alias Sai, Sameer Ahmed Mansuri, Shri Shiv Kumar Sisodia and Shri R B Datta in the attempt of smuggling out of India 1303575 pieces of prohibited goods i.e. peacock feathers of Indian Origin which is a prohibited item under the provisions of Section 11 of the Customs Act, 1962 read with section 3 (2) of the Foreign Trade (Development and Regulation) Act, 1992 and as per Sr. no. 37 of chapter 5 of the ITC – HS of the import export policy 2010. By their acts of commission and omission, the above named persons have rendered the ceased goods i.e. 9 packages containing 1303575 pieces of peacock feathers of Indian Origin, totally valued INR 1,60,60,044/- in the International market and Rs. 16.94 lakhs in the local market, liable for confiscation under section 113 (b) and 113 (h) (i) of the Customs Act, 1962 read with Sub-section (1) of Section 11 of Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 of Foreign Trade (Development and Regulation) Rules, 1993.

2.3 Show cause notice was issued to the appellant Shri Samir Ahmed Mansuri by the Commissioner of Customs dated 13th May, 2011 through which the appellant was called upon to show cause within 30 days as to why penalty should not be imposed upon him under section 114 (i) of the Customs Act, 1962 for the acts and omission on his part as mentioned in the show cause notice.

3. The show cause notice dated 13th May, 2011 was adjudicated by the Commissioner of Customs, Ahmedabad vide order-in original dated 13th May, 2012. In the order-in-original, the Adjudicating Authority, Commissioner, came to the conclusion that Shri Sameer Ahmed Mansuri of Ahmedabad has consciously and knowingly conspired with Shri Manpreet Singh Lakhmir Singh Gambhir, Shri Ramesh Nandlal Motiani alias Sai and Shri Shiv Kumar Sisodiya in the attempt of smuggling out of India 1303575 pieces of peacock feathers of Indian origin which is a prohibited items under the provisions of Section 11 of the Customs Act, 1962 read with Section 3 (2) of the Foreign Trade (Development and Regulation) Act, 1992 and as per Sr. no.37 of chapter 5 of the ITC – HS of the import export policy 2010. He has actively and knowingly concerned himself in violating the prohibitions / provisions of Section 11 of the Customs Act, 1962 read with Section 3 (2) of the Foreign Trade (Development and Regulation) Act, 1992. By his acts of commission and omission Shri Samir Ahmed Mansuri has rendered the seized goods i.e. 9 packages containing 1303575 pieces of 'peacock feathers' of Indian origin totally valued INR Rs. 1,60,60,044/- in the International market and Rs. 16.94 lakhs in the local market, liable for confiscation under relevant provisions of Customs Act, 1962 read with relevant provisions of Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Development and Regulation) Rules, 1993. His acts of omission and commission have rendered himself liable to penalty under Section 114 (i) of Customs Act, 1962.

4. On the basis of above discussion, the learned Commissioner imposed penalty of Rs.3,00,000/- upon Shri Samir Ahmed Mansuri under Section 114 (1) of the Customs Act, 1962. Feeling aggrieved from the above mentioned

order-in-original dated 30th May, 2012 the present appeal has been filed by the appellant.

5. The learned counsel for the appellant submitted during the course of arguments that the learned Commissioner of Customs failed to appreciate that the appellant has not played any role in securing the consignment or shipment or preparation of export documents misrepresenting the nature of goods as 'carpets' instead of 'peacock feathers'. The learned counsel for the appellant has also submitted that Manpreet Singh Gambhir had not even mentioned the name of the appellant in his statement. Gambhir made it clear that the said consignment for the invoice no. Exp/48 dated 20th November, 2010 wherein the name of the exporter is mentioned as Bharat Pattern Works belongs to Manpreet Singh Gambhir alone. The statement of Shri Manpreet Singh Gambhir does not implicate the appellant with the export of peacock feathers either in the past or on 21st November, 2010. He also argued that the learned Commissioner failed to appreciate that the statement recorded under Section 108 of the Customs Act, 1962 was categorically denied by the appellant as having been recorded under coercion. The learned counsel for the appellant also submitted that the learned Commissioner wrongly relied upon the statements of the co-accused recorded under Section 108 of the Customs Act, 1962 and erroneously came to the conclusion that the appellant by his acts of omission and commission rendered the seized goods liable for confiscation under relevant provisions of Customs Act and also rendered himself liable to penalty under Section 114 (i) of Customs Act, 1962.

5.1 The learned counsel for the appellant also submitted that neither the appellant booked the consignment nor any document such as shipping bill or invoice was filed by the appellant and he was not aware about the goods attempted to the exported by Shri Manpreet Singh and as soon as the appellant came to know about the prohibited goods, the appellant warned Shri Ghambir that such transaction is dangerous.

5.2 The learned counsel for the appellant has also submitted that the only mistake of the appellant is that he is a friend of Shri Manpreet Singh and he was aware about the attempt of export made by Shri Manpreet Singh. The appellant cannot be penalized only because he is acquainted with the person who has attempted to make illegal export. The learned counsel for the appellant also submitted that the goods were not procured by the appellant. The appellant did not process any documents and he warned the exporter not to indulge into such export which shows bonafide of the appellant.

5.3 The learned counsel for the appellant also submitted that adjudicating authority failed to appreciate the fact that even in the statement of Shri Manpreet Singh, the name of the appellant is missing and no inference could be drawn that the appellant was in any way involved in the said transaction.

5.4 The learned counsel for the appellant also submitted that the export never occurred and the attempt was frustrated by the DRI officers and therefore, the role and conduct of the appellant in the entire transaction is visibly non existing.

5.5 The learned counsel for the appellant also submitted that the penalty under the provisions of Section 114 of the Customs Act is not tenable as requirements of none of the provisions could be satisfied and none of the acts of the appellant rendered the goods liable for confiscation.

5.6 The learned counsel for the appellant also submitted that the appellant has no role to play in the entire case and only because the appellant was present in the premises along with Shri Manpreet Singh, who made the attempt to export the prohibited goods, he should not be penalized.

5.7 The learned counsel for the appellant while concluding his arguments submitted that the penalty imposed by the adjudicating authority is illegal and unjustified therefore proceedings must be dropped against the appellant and the order-in-original dated 30th May, 2012 may be quashed and set aside and appeal may be allowed.

6 The learned Authorised Representative reiterated the order-in-original and submitted that the learned Commissioner has rightly imposed penalty upon Shri Samir Ahmed Mansuri under Section 114 (1) of the Customs Act, 1962. During his statement, Mansuri confessed that he was assisting Shri Manpreet in the export shed. Manpreet had introduced him to Shri Shivkumar common supplier, Shri Ramesh, CHA and Shri Dutta, Customs Officer. Mansuri also confessed that initially he was not aware that export of peacock feathers was prohibited. However, later on, he came to know that export of said goods was prohibited and then he informed Shri Manpreet that the said business was very dangerous. In his statement, he confessed how he assisted in the attempt to export the cargo.

6.1 He prayed that the order-in-original dated 30th May, 2012 may be confirmed and the appeal may be dismissed.

7. I have heard the learned counsel for the appellant and the learned Authorized Representative for the department and perused the record.

8. After hearing the arguments from both the sides and perusing the record, I am of the view that impugned order dated 13.05.2012 has been passed without taking into consideration the facts of the case, the role of the appellant in the alleged attempt of Shri Gambhir to export the prohibited items i.e. Peacock Feathers from India.

8.1 I agree with the learned Counsel for the appellant that even according to the department neither the appellant booked the consignment nor prepared any document such as shipping bills or invoices and he was not aware that the goods attempted to be exported by Shri Manpreet Singh Gambhir were prohibited goods. As soon as the appellant came to know about the prohibited goods, he warned Shri Manpreet Singh Gambhir that such transaction is dangerous. Merely because the appellant was present in the premises alongwith Shri Manpreet Singh Gambhir does not make him liable for an attempt to export of prohibited goods. It is also pertinent to mention here that the export never occurred as the attempt was frustrated by DRI officers.

8.2 It is also pertinent to note that in the impugned order, penalty was imposed upon the appellant on the basis of statement recorded under Section 108 of the Customs Act, 1962. In the statement of Shri Manpreet Singh Gambhir, the name of the appellant is missing. The learned AR has stated during his argument that the appellant Shri Samir Ahmed Mansuri has confessed during his statement under Section 108 of Customs Act, 1962 that he was assisting Shri Manpreet Singh Ghambir in the export shed and Shri Manpreet Singh had introduced him to Shri Shivkumar, common supplier, Shri Ramesh, CHA and Shri Dutta, Customs Officer. Shri Mansuri also confessed that initially he was not aware of that export of peacock feathers was prohibited and then he informed Shri Manpreet Singh that the said business was very dangerous. Section 108 of the Customs Act, 1962 provides as under:-

> **"108. Power to summon persons to give evidence and produce documents.**
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> (1) Any Gazetted Officer of Customs [xxx] shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject, respecting which they are examined or make statements and produce such documents and other things as may be required:

PROVIDED that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).**”**

It is also pertinent to mention here that Section 108 of Customs Act makes it clear that it does not enable the empowered authority to record a confessional statement from a person summoned thereunder. The confession statement can only be recorded under Section 164 Cr. PC after compliance with the formalities of Section 164(2)Cr.PC. While recording the confessional statement the authorised officer must administer warning or caution to the person making the confessional statement that the same would be used against him.

8.3 The Hon’ble Punjab & Haryana High Court in the case of *Jindal Drugs (Infra) - 2016 (340) ELT 67 (P & H)* wherein the Hon’ble High Court laid down a detailed procedure, inter alia, providing for cross-examination of the witness of the Revenue by the Adjudicating Authority and thereafter, if the Adjudicating Authority is satisfied that the statement of the witness is admissible in evidence than the Adjudicating Authority is obligated to offer such witnesses for cross-examination by the other side/assessee. Such view has also been affirmed by the Hon’ble Supreme Court in the case of *Andaman Timber (Infra) - 2015 (324) E.L.T. 641 (S.C.).*

8.4 The learned Commissioner has wrongly relied upon the statement of the co-accused and the appellant recorded under Section 108 of the Customs Act, 1962 and has wrongly come to the conclusion that appellant by act of omission and commission rendered the ceased goods liable for confiscation under relevant provisions of Customs Act and rendered himself liable to penalty under Section 114(i) of Customs Act, 1962.

8.5 The Hon'ble Punjab & Haryana High Court in the case of *Sukhwant Singh - (1995) 3 SCC 367*, observed that Section 138 of the Evidence Act is relevant to refer for admission of confessional statement of any witness, which is reproduced :-

> **"138. Order of examinations.** - Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.
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> **Direction for re-examination**. - The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."

9. In view of the above discussion, it is clear that in adjudication, the adjudicating authority is required to first examine the witness in chief and also to form an opinion that having regard to the facts and circumstances of the case, the statements of the witness are admissible in evidence. Thereafter, the witness is offered to be cross-examined then only the statement of the witness can be relied upon for fastening the liability upon him for omission and commission.

10. In view of the above observations and findings, I am of the view that the impugned order passed by learned Commissioner imposing penalty of Rs. 3,00,000/- on the appellant Samir Ahmed Mansuri, under Section 114(i) of

the Customs Act, 1962 is not sustainable and is liable to be set-aside and the appeal is liable to be allowed.

11. Accordingly, the appeal is allowed and the impugned order dated 30.05.2012 passed by Commissioner is set-aside to the extent it imposes penalty of Rs. 3,00,000/- (Rupees three lakhs) on Samir Ahmed Mansuri.

(Pronounced in the open court on 05.05.2025*)*

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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