IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
MISC Application Nos. C/MISC/70019 & 70020/2017
APPEAL Nos. C/2812, 2876, & 2877/2012-CU[SM]

(Arising out of Order-in-Original No.28/Commr./Mrt-I/2012 dated 13/06/2012 passed by Commissioner, Customs & Central Excise, Meerut-I)

Shri Dinesh Singh Panwar,
(In Appeal No.2812/2012)

Shri Abad Ahmad &
(In Appeal No.2876/2012)

Shri Saddam Ahmad
(In Appeal No.2877/2012) **Appellants**

Vs.

Commissioner of Central Excise, Meerut-I **Respondents**

Appearance:

Shri Aalok Arora (Advocate) &
(In Appeal No.2812/2012)
Shri Prateek Dawar (Advocate)
(In Appeal Nos.2876 & 2877/2012) for Appellants
Shri Pradeep Kumar Dubey (Supdt.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 30/01/2018
Date of Decision/Pronouncement : 10.09.2018

FINAL ORDER NOs-72250-72252/2018

Per: Anil Choudhary

A specific intelligence that a Chennai based gang is involved in smuggling of Red Sanders logs through Nhavasheva Port from Saharanpur ICD by concealing red sanders in cartons, in the guise of wooden crafts/articles, in containers and cleared the same from Saharanpur ICD using the import export code (IEC) of M/s Bharti Grameen Wooden Art, Madina Colony, Chilkana Road Saharanpur. The intelligence was passed to DIR Zonal unit Mumbai to intercept the container at Nhava Sheva Port.

On examination of the container No.TGHU8891820 covered by S/B No.00313 dated 24/12/2010, at container freight station Nhava Sheva, District Raigarh, Maharashtra, they found wooden articles looking like craft pillar with a square at the bottom and top. The pillars had vertical rib like structure all around it and they were in black color. On removing the square top and base it was seen that the pillars were actually made of carvings made of wooden planks (strips) pasted on the wooden log using iron nails and plaster of paris. On removing the planks (strips) made of some other kind of wood, the log was taken out and examined by the Wild Life Inspector present on spot, who suggested that the inner concealed wood log was red sanders wood.

2. Subsequently on the same day the DRI, Lucknow rushed to Saharanpur and searched the premises of M/s Bharti Grameen Wooden Art (Exporting Firm), at Madina Colony, Chilkana Road, Saharanpur (U.P.).

3. The same day a Panchanama dated 07/01/2011 was drawn on the spot, it was found that there was a workshop to manufacture furniture on ground floor and a godown on the

first floor. Certain documents such as unsigned invoices and packing list, order sheet of M/s Marketing Firm London Ltd. and receipt of Western Union Money Transfer through which amount of Rs.4 lacs was received by Smt. Chhammo Bharti (Noticee number one) from M/s Marketing Firm London Ltd. was found.

4. The statement of Smt. Chhammo Bharti was recorded on 07/01/2011 under Section 108 of Customs Act, 1962, stating that she was the proprietor of M/s Bharti Grameen Wooden Art and the financial transactions of the concern takes place by her signature, but all the business activities are carried out by her husband Shri Iqbal Bharti. In her statement she also stated that the packed material were meant for export to M/s Marketing Firm London Ltd., but since there was no space left in the container, the said packages could not be exported.

5. In compliance with summons issued under Section 108 of the Customs Act, 1962, by the Superintendent Central Excise and Customs Division, Saharanpur, Shri Iqbal Bharti appeared before the Authorities on 08/01/2011 and stated that one person named Ahmad Imthy as resident of Tamil Nadu contacted him and said that one London based firm requires supply of swings and furniture, and also assured him giving 40% as advance, and the rest on production of B/L. On being asked about the wood of which swings and

sideboard were made up of, he stated, the top and pillars of swings were made up of logs which were supplied by Shri Ahmad Imthyas. He further told that in his workshop the work of pasting half round of mould over the logs to give it the shape of tops and pillars and swings was done. The logs provided by Shri Ahamad Imthyas for manufacture of tops and pillars of swings were blackish in color and on cutting it appeared dark red in color. The aforesaid export was made from ICD Saharanpur, by the authorized person of his firm namely Shri Dinesh Singh Panwar, operating godown of Shri Ahmad Imthyas located near Kailashpur Petrol pump in Saharanpur, who informed him that the container exported by his firm had been detained at JNPT by Customs.

6. A search at godown near Kailashpur Petrol pump was conducted on 08/01/2011 by officers DRI Lucknow, along with officers of Central Excise & Service Tax Division, Saharanpur, whose owner is one Shri Asif Ali Khan and was taken on rent by Shri Ahmad Imthyas in the month of November. On knocking the door at the address, one person appeared namely Shri Ahmad Imthyas and another named Shri Gufraan was found. Thereby during the search, the officers found above 123 logs of wood, which *prima facie* appeared to be red sanders. On further enquiry Shri Ahmad Imthyas told that the wood was brought in a truck from Manglore to Saharanpur by concealing under husk and

vegetables. He further stated that the wooden logs were to be exported through M/s Grameen Wooden Art to M/s Marketing Firm London Ltd. by covering them under moulding of top and pillars of swings.

7. Shri Ahmad Imthyas worked as a cook for one Shri Pranav Patel at Andaman for four years, who informed him about his one firm M/s Marketing Firm London Ltd. at U.K. and told him to contact parties at Saharanpur who can manufacture swings and export it to the said firm, in result of which Shri Iqbaal Bharti was contacted and explained the requirements of Shri Pranav Patel for arranging solid logs of wood for manufacture of pillars and tops of swings. Shri Ahmad Imthyas clearly stated that on instruction of Shri Pranav Patel he went to Mangalore where a truck was loaded with logs and concealed with vegetables and husks and sent to Saharanapur. The said 123 logs appearing as red sanders, total weighed 4065Kgs having an estimated value of Rs.16,26,000/-.

8. Similarly on summons issued dated 08/01/2011 under Section 108 Customs Act, 1962, Shri Gufraan stated that he knew Mr. Ahmad Imthyas since the past five months and the goods were brought from south and kept in the godown near Kailashpur Petrol Pump, Saharanpur, where Shri Iqbal Bharti was monitoring the preparation of his (Ahmad Imthyas) articles.

9. A search was also conducted at godown located at Vardhaman Colony (Old Rice Mill) Chilkana Road, Saharanpur, on 10-11.01.2011 which resulted in detection of 191 logs of red sanders wood, total weight of 6815Kgs and were detained under Panchanama detention memo. On being asked about the said godown, Shri Ahmad Imthyas replied that it was taken on rent by him 08 days before on Rs.7,000/- per month and the goods were loaded in presence of Shri Iqbaal Bharti who himself went to ICD for sealing of the container.

10. On 11/12.01.2011 Shri Ahmad Imthyas appeared before the senior intelligence officer, where he stated that he had taken the godown on rent for carrying out the work related to red sanders wood and has also made the godown at his residence on the directions of Shri Pranav Patel.

11. On 31.01.2011 and 01.02.2011, Shri Dinesh Singh Panwar, appeared before the Senior Intelligence Officer, DRI, Lucknow, where he *inter alia* stated that he has signed the documents as Authorised Signatory (which is relied upon as RVD-18 to the show cause notice). He also stated that Iqbal Bharti has informed him that swings made of ordinary wood were to be exported and has never talked of red sanders with him.

12. Accordingly, a show cause notice dated 16.06.2011 was issued to the various persons including the Appellants herein wherein it was proposed why the red sanders logs should not be confiscated under Section 113(d) & 113(e) of the Customs Act, 1962; drawback claim should not be rejected and penalty should not be imposed under Section 114(i) of the Customs Act, 1962. As far as the present Appellants are concerned, only penalty has been proposed in the show cause notice under Section 114(i) of the Customs Act, 1962. The Appellants filed reply to the show cause notice before the learned Commissioner.

13. The said show cause notice has been adjudicated by the learned Commissioner, Meerut-I, vide order dated 14.06.2012, wherein he has confiscated the red sander wood and imposed penalties on various noticees. As far as the present appellants are concerned, he imposed penalty of Rs. 5,00,000/- each on the present Appellants under Section 114(i) of the Customs Act, 1962. Aggrieved by the said impugned order, the Appellants are before this Tribunal.

14. Shri Alok Arora, learned counsel for the Appellant – Dinesh Singh Panwar, argued that the Appellant was not authorized signatory. He was authorized by the proprietor of M/s Bharti Grameen Wooden Art, Saharanpur to complete formalities of Customs for shipment of Cargo. It has been submitted, in the statement recorded by DRI Officers on

31.01.2011, that he was not aware where the stuffing of container was done as the question of his presence there does not arise. He stated that Shri Iqbal Bharti has told him that he is sending swings made of Mango & Sheesham wood. He never spoke of Red Sanders. Again statement of Appellant was recorded on 01.02.2011 wherein he has given similar replies to questions which clearly speaks of no knowledge of Red Sanders. It has been categorically submitted while deciding the matter, but the learned Commissioner has not properly dealt with the statement of the Appellant recorded by the Officers of DRI. The penalty has been imposed by holding since the Appellant has signed the documents, he is supposed to ensure genuineness and correctness of contents. The learned counsel further submitted that without proving the Appellant has role in the transaction of contraband goods, no penalty can be imposed. To support his contention, he placed reliance on the following case laws :

(i) **Syndicate Shipping Services Pvt. Ltd. vs CCE, Chennai,** 2003 (154) ELT 756 (Tri-Chennai);

(ii) **Neptune's Cargo Movers Pvt. Ltd. vs CC (Export), Chennai,** 2007 (219) ELT 673;

(iii) **Sethu Samudhra Shipping Services Vs CCE, Tuticorin,** 2010 (262) ELT 570; and

(iv) **Parvej J. Irani vs CCE, Nhava Sheva,** 2016 (333) ELT 333 (Tri-Mum).

15. Shri Prateek Dawar appearing on behalf of Noticees/Appellants, Shri Abad Ahmad and Shri Saddam Ahmad, submits that, Shri Masood Ahmad, owner of godown at Vardhaman colony had given the godown on rent jointly to Shri Abad, Shri Saddam, and were only taking care of the storing of the concealed articles at the godown. They had no knowledge of the concealments done, prior to the storing of the pillars and swings being done, at the godown of Shri Ahamd Imthyas at Madina Colony, Chilkana Road, Saharanpur, from where the concealed goods were sent for storage and thereafter the said export was made from the ICD Saharanpur by Shri Dinesh Singh Panwar - Appellant, proprietor of firm M/s Panwar Freight Forwarders, who was authorized by Smt. Chhammo Bharti, who also had no knowledge of the red sanders concealed inside wooden pillars made out of plaster of paris.

16. Shri Abad Ahmad is running a general merchant shop (Kirana) and Shri Saddam Ahmad runs a book shop, had no relation with the business of wooden articles and was only concerned with the business of storing, being carried out at the rented godown and have never known Shri Ahmad Imthyas and Pranav Patel.

17. Shri Iqbaal Bharti was aware of the existence and storage of red sanders wood in the godown situated in Kailashpur taken on rent by Shri Ahmad Imthyas, and Shri

Abad and Shri Saddam Ahmad were only involved with the renting of godown being residents of Saharanpur.

18. He, therefore submits that the penalty imposed be set aside.

19. The learned AR for the Department reiterated the findings of the impugned order and submitted that the present case is of export of Red Sander Wood, which is prohibited and, therefore, prayed to reject the appeals filed by the Appellants as the impugned order has been passed correctly, confiscating the prohibited goods and imposing penalty.

20. Having heard the rival contentions and considering the facts and circumstances of the case, I find that the learned Commissioner in para 71 of the impugned order has correctly observed that the Appellant – Shri Dinesh Panwar has not merely acted as a Customs House Agent but acted as an authorized signatory of the exporting firm. I further find that the goods which were to be exported were prohibited goods. Therefore, in view of above, I find the Appellant – Shri Dinesh Panwar, has violated the provisions of Section 114(i) of the Customs Act, 1962. However, in the given facts and circumstances of the case, I find that the penalty imposed is on higher side and, therefore, I reduce the same from Rs. 5,00,000/- to Rs. 50,000/- on Shri Dinesh Panwar.

21. As far as other Appellants are concerned, I find that both – Shri Abad Ahmed and Shri Saddam Ahmed have taken godown on rent, where the Red Sander Wood, which is prohibited item, were found stored. I find that they have not done any act violating the provisions of the Customs Act. Therefore, on the facts and circumstances of the case, I hold both Shri Abad Ahmed and Shri Saddam Ahmed are not liable for penalty under Section 114(i) of the Customs Act, 1962. Accordingly, the penalty imposed on both of them is set aside.

22. In view of the above, the appeal of Shri Dinesh Singh Panwar is allowed in part and the appeals of Shri Abad Ahmed and Shri Saddam Ahmed are allowed.

(Pronounced in Court on 10.09.2018)

(Anil Choudhary)
Member (Judicial)

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