CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,

BANGLORE-560009

REGIONAL BENCH COURT-2

Customs Appeal No 1699/2012

[Arising out of Order-in-Original No. 3026 dated 30.03.2012
Passed by the Commissioner of Central Excise, Customs
& Service Tax, Mysore.]

MR. ANJANAPPA
No.213/26, Kaveri Nagar,
KHBNSC Layout
Bangalore – 560 079 **.......Appellant**

Versus

THE COMMISSIONER OF CENTRAL TAX, **.....Respondent**
Vinaya Marga,
Siddharthanagar,
Mysore – 570 011

Appearance:

Mr. Sh. Gokulraj L., Advocate For Appellant

Mr. K. Vishwanath Authorized Representative (AR) FOR Respondent

CORAM:

HON'BLE Mr. P. A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 04.08.2023
Date of Decision: 08.12.2023

FINAL ORDER No.________21346______of 2023

P. A. AUGUSTIAN

1. In the present appeal, Appellant is challenging the impugned Order imposing penalty on appellant under Section 114 (i) and 114 AA of the Customs Act, 1962.
2. Brief fact of the case is that an exporter M/s Pacific Impex, Mysore had approached Appellant for arranging export of "Bentonite Powder". The goods were subject to assessment and Let Export order was issued on 20.01.2010. Thereafter alleging that the exporter mis declared the goods, the goods were seized on 23.01.2010. The samples were drawn and found that the exporter was attempting to export Muriate of Potash in the guise of Bentonite Power. The Department had issued Show Cause Notice dated 13.01.2011 to the Appellant also proposing imposition of penalty on the Appellant under Section 114(i) & 114AA of the Customs Act,. 1962 alleging abetment of export of Muriate of Potash. Thereafter adjudication authority vide impugned Order-in-Original confirmed penalty on the appellant under Section 114(i) & 114AA of the Customs Act, 1962. Aggrieved by said order, present appeal is filed.
3. When the appeal is taken up for hearing, Ld Counsel for the Appellant submits that the Appellant have no knowledge regarding the illegal export of Muriate of Potash under the description of Bentonite Powder as alleged. Ld Counsel also draw our attention to Paragraph 25 of the impugned order wherein it is stated that the main accused who is the exporter had visited

Hassan and attended the customs formalities by filing shipping bill under self-export procedure. Thereafter Learned counsel drew our attention to the finding against the appellant in the impugned order wherein it is held that "It is also forthcoming that he prepared a letter seeking permission for self-clearance of goods for which no signature of the exporter was obtained". Ld counsel for the appellant submits that both are contradictory. Only evidence available on record reveals that Shri. Anjanappa had assisted Shri. Ritesh G Jain in documentation and had received some gratification for the work done by him. Ld Counsel also produced copy of the Final order No. 25574/2013 dated 15.07.2013 of this Tribunal where the appeal filed by M/S Vikram Logistics And Maritime vs Commissioner of Custom, Mysore was considered and in Paragraph 5.2 it is held that:-

> "5.2. At this stage, learned Authorised Representative (AR) in the middle of dictation submits that the owner of the conveyance has not only to prove that the vehicle was used for the intended purpose without his knowledge but also without the knowledge of his agent or driver or the person in-charge of the conveyance. It is not the case of the department that driver or agent or person in-charge of the vehicle had knowledge nor such ground has been taken in the show-cause notice nor any statement of driver or agent or the person in-charge of the vehicle has been recorded. In such a situation, in my opinion, it is not necessary for the

appellant to prove that he or his agent or driver or person in-charge of the vehicle also did not have knowledge about contents of the containers".

4. Ld DR reiterated the finding of the Adjudicating authority and submits that the Appellant is one of the key persons responsible for illegal export of the goods held liable for confiscation and for that reason liable to be imposed with penalty. Ld DR also produced copy of the Final Order No. 22738-22741/2017 dated 24.10.2017 wherein the appeal filed by the Co-noticee was confirmed by this Tribunal. However set aside the penalty imposed on M/s Mehboob on the grounds that there is no evidence produced by Revenue to substantiate the allegation regarding supply of Muriate of Potash by the Appellant to main accused.

5. Heard both sides. The allegation by the department is that appellant assisted the main accused in illicit export of goods. Moreover after filing shipping bill, routine examination of the goods was done and Let Export order was also issued. There is no evidence available on record to establish that the appellant had knowledge regarding export of Muriate of Potash in the guise of Bentonite Powder. Based on the fact that the Appellant had prepared the documents without the signature of the exporter, no conclusion can be drawn that Appellant was aware about the presence of prohibited goods. While considering the very same issue, this Tribunal set-aside the penalty on the ground that "it is not the case of the department that driver or agent or person in-charge of the vehicle had knowledge nor such ground has been taken in the show-cause notice". Thus there is no concrete admissible evidence to prove

that the appellant had facilitated the mis-declaration of the goods so as warrant penalty on the Appellant. Considering the same, penalty imposed on the Appellant both under section 114 (i) and 114 AA of the Customs act, 1962 are set aside. Appeal is allowed with consequential relief if any in accordance with law.

(Order pronounced in open court on 08.12.2023.)

(P.A.AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER(TECHNICAL)

Ganesh