

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

REGIONAL BENCH COURT-2

Customs Appeal No 1916/2012

[Arising out of Order-in-Original Sl.No.02/CUS/2012,C.No.VIII/10/1/2010 Adjn /3026 dated 30.03.2012 Passed by the Commissioner of Central Excise, Customs & Service Tax, Mysore.]

M/s. B.K. MANJUNATH,
Adarsh Road Carriers,
No. 4/1, UPSTAIRS,3rd Main Road,
New Tharugpet,
Bangalore – 560 002.

.....Appellant

Versus

**COMMISSIONER OF CENTRAL
EXCISE,CUSTOMS & SERVICE TAX,**
Mysore Commissionerate,
S1 & S2, Vinaya Marga,
Sidharthanagar,
Mysore – 570 011.

.....Respondent

Appearance:

None 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)

FINAL ORDER No. 20035 of 2024

Date of Hearing: 06.09.2023

Date of Decision: 08.01.2024

Per P. A. AUGUSTIAN:

1. In the present appeal, Appellant is challenging the penalty of Rs. 1,00,000/- imposed on the Appellant under Section 114(1) of the Customs Act, 1962. When the matter came up for hearing, none appeared on behalf of the appellant. As per the records, the appeal was posted on 28.06.2023, 04.08.2023 and thereafter posted today. Hence appeal is taken up for hearing.

2. Brief facts of the case are that the exporter M/s Pacific Impex had brought consignment stated to be Bentonite Powder for export and during examination, it was found that the container is loaded with Muriate of Potash. Thereafter DRI conducted investigation and on conclusion of the investigation, SCNs were issued to different noticees including Appellant herein proposing penalty under Section 114(i) of the Customs Act, 1962. As per the impugned Order, it is alleged that the Appellant had assisted the exporter to arrange lorry for export of the goods and thereby abetted illegal export of goods.

3. In the memorandum of appeal, appellant submits that there is no reason or justification to allege involvement of the Appellant in illegal export of goods. There is no averment either in the SCN nor in the impugned order that Appellant was aware about the presence of Muriate of Potash in the container while arranging lorries for shipment of the goods. Though it is admitted that the Appellant had arranged lorries, same cannot be a reason for imposing penalty under Section 114(i) of the Customs Act, 1962. It is further finds that while recording statement from the Appellant on 22.07.2010, he furnished the details of 15 lorries arranged for transportation of the goods and there is no admission on the part of Appellant that he was aware about the presence of Muriate of Potash for transportation.

4. Learned AR reiterated the findings in the impugned order and submitted that the Appellant had arranged lorries for transportation of the goods knowing that the goods being exported is prohibited goods for export.

5. On bare perusal of the SCN and impugned order, it is admitted that the Appellant had arranged 15 lorries for transportation of goods. But there is no evidence adduced by the investigating agency to allege that the Appellant had knowledge regarding the presence of Muriate of Potash in the above containers at the time of arranging transport. While considering the very same issue, this Tribunal vide Final Order No.25574/2013 dated 15.07.2013, set aside the penalty on the ground that "It is that the appellant or his agent or driver of the vehicle or person in-charge of conveyance did not have knowledge of nature of the goods being

transported. Moreover it is not the case of the department that the Appellant who had arranged the vehicles had knowledge regarding presence of offending goods for transportation". In the present case also, in the absence of any admissible evidence, penalty imposed on Appellant is not sustainable. Considering the same, Appeal is allowed with consequential relief if any.

(Order pronounced in Open Court on 08.01.2024.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Ganesh