CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 702 of 2010

(Arising out of Order-in-Original No. 15/2009 dated 30.12.2009 passed by the Commissioner of Customs, Mangalore.)

Habithullah Enterprises
J M Road, Bunder, Mangalore
Karnataka – 575001. ……….**Appellant**

VERSUS

Commissioner of Customs, Mangalore
New Customs House,
Penambur, Mangalore, Karnataka – 575010. …....**Respondent**

WITH

i. **Customs Appeal No. 703 of 2010 (Rathan Kumar, Accounts Assistant, Falcon Express Lane Vs. CC, Mangalore)**
ii. **Customs Appeal No. 704 of 2010 (Shahir Mohammed, K.P. M/s. Habithullah Enterprises Vs. CC, Mangalore)**
iii. **Customs Appeal No. 705 of 2010 (Mohammed Haris, M/s. Habithullah Enterprises Vs. CC, Mangalore)**

(Arising out of Order-in-Original No. 15/2009 dated 30.12.2009 passed by the Commissioner of Customs, Mangalore.)

iv. **Customs Appeal No. 709 of 2010 (CC, Mangalore Vs. Habitullah Enterprises)**

(Arising out of Order-in-Original No. 15/2009 dated 30.12.2009 passed by the Commissioner of Customs, Mangalore.)

APPEARANCE:

Mr. M. S. Nagaraja, Advocate for the Appellant.
Mr. M. Sreekanth, Authorized Representative (AR) for the Respondent.

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20918-20922 /2026

Date of Hearing: 18.12.2025
Date of Decision: 17.06.2026

PER: P.A. AUGUSTIAN

The issue in the present appeals is regarding penalty imposed on the Appellants.

2. The brief facts are M/s. Hibathullah Enterprises were regularly exporting roofing tiles and similar products for construction in UAE. Alleging that the export of roofing tiles arranged by the Appellant were containing 462 logs of Red Sanders, proceedings were initiated and show cause notice was issued on 19.09.2008. Thereafter an addendum to the said show cause notice was issued on 23.07.2009. Thereafter Adjudication authority as per the impugned order imposed penalty on Appellant and others. Adjudication authority also ordered confiscation of the Red Sanders which were attempted to be illegally exported. Aggrieved by said orders, M/s. Hibathullah Enterprises (Appellant no. 1) filed Appeal No. C/702/2010. Appellant Shri. Muhammed Haris, Managing Partner of M/s. Hibatullah Enterprises (Appellant no. 2) filed Appeal No. C/705/2010, Shri. Ratan Kumar, employee of M/s. Hibatullah Enterprises (Appellant no. 3) filed Appeal No. C/703/2010 and Shri. Shahir Muhammed, employee of the Appellant (Appellant no. 4) filed Appeal No. C/704/2010. Further aggrieved by the impugned order, Revenue also filed Appeal No. C/709/2010, on the ground that the impugned order is not issued in accordance with law.

3. When the appeals came up for hearing, the Learned Counsel for the Appellant submits that M/s Hibattullah Enterprises (Appellant No.1) was regularly exporting roofing tiles and Shri. V Anilkumar alias Anil Nair, co-noticee in the present proceedings approached the Appellant for associating in the business of export of tiles to UAE. To facilitate the export of goods, Appellant had instructed his employee Shri. Ratan Kumar working in his office to provide necessary assistance. Accordingly, roofing tiles were sourced from the factory of M/s. Raj

Brother Clay Industries and exported similar goods under 2(two) shipping bills to third party through Shri. Anil Kumar and the containers were stuffed under the supervision of jurisdictional Central Excise office on 24.05.2008 at the factory of M/s. Raj Brother Clay Industries. It was sealed with One Time Bottle Seal (OTL) by Central Excise Officer and OTL of the container liner. The sealed container stuffed with the roofing tiles were taken by the shipping agent to the container yard for export. On the basis of the information, DRI conducted examination of the sealed container and it is found that the container were containing 460 logs of Red Sanders weighing 12140 kg and tiles. On enquiry, it is found that the containers in respect of the above shipping billings are arranged by Shri P. Anil Kumar, a third party exporter has clandestinely substituted the tiles with 'red sanders' wood.

4. Learned Counsel draws our attention to the allegation in the Show Cause Notice, where it is specifically held that Shri. Anil obtained a Godown by furnishing fictitious address on monthly rental basis and utilised the same for storage of contraband 'Red Sanders' which he procured clandestinely. In the notice, it is alleged that Mr. Anil colluded with Sri. Mohammed Haris of M/s. Hibathullah Enterprises for clandestine export of contraband goods for which Mr. Haris provided patronage; Shri. Anil used the godown for illegal stuffing of the contraband 'red sanders' by illegally de-stuffing the loaded goods for export from the sealed containers; he procured expertise and services of Mr Kannan, who was involved in similar cases of illegal export of Red Sanders, for tampering of the containers and to open the same without braking the OTL locks. Shri. Anil also obtained active assistance of Shri. Madhu Bopanna and his truck for movement of the container with the contraband; Anil obtained the services of Kishore, Bopanna, Kannan and other Labourers for actual act of illegal destuffing of 'tiles' and stuffing of contraband 'red sanders' in to the containers.

5. Learned Counsel further submits that the first Show Cause Notice dated 19.09.2008 was issued making false allegation against the Appellant only based on the retracted statements and without

examination of the main accused Shri. Anil Nair and his companions. Therefore, the conclusion drawn in the show cause notice is without proper material facts and legal basis. Learned Counsel further submits that on perusal of the addendum dated 23.09.2009, it is evident that two persons involved in the conspiracy of illegal export of 'Red Sanders wood' who actually conspired, colluded/ aided or abetted or participated in the act. As per the statement of the main accused, there is no averment that neither Appellant No. 1 nor its employees had knowledge regarding the illegal export as held in the impugned order.

6. Learned Counsel submits that even as per the statement recorded from Shri. M.A Bhopana (Madhu) on 06.07.2009 relied in the addendum, it was specifically stated that the logs were stuffed illegally in the night at godown near Yadhapadavur that as per the direction of Shri. Anil Kumar @ Anil Nair when the truck was diverted to godown and all the operations were entirely done under the supervision of Shri. Anil, who is presently under detention. Statement recorded from others also support the fact that the Shri. Anil Kumar was the only person involved in illegal smuggling of Red Sanders and there is no evidence on record to substantiate the allegation regarding the involvement of the Appellants in the illegal export as alleged.

7. Learned Counsel further draws our attention to the finding in the impugned order where it is concluded that there is no conclusive evidence to link the Appellants to stocking of these goods into the yard. On such finding the only presumption is that the Appellant and their employees were not aware of the activity carried out in the godown hired by Shri. Anil Kumar. As regards the reliance of the statement recorded, Learned Counsel submits that the statement relied by the Adjudication authority cannot be considered as admissible evidence since no opportunity of testing the admitted oral statement by extending cross examination of such witnesses. Law is well settled that in the absence of cross examination by the Adjudication authority, the statements of witnesses have no evidentiary value. In this regard, Learned Counsel relied on the following decisions;

i. **Surya Wires Pvt Ltd & Others Vs. Pr. Commissioner of Central Tax and Central Excise, Raipur 2025-TIOL-736-CESTAT-DEL**
ii. **G Tech Industries Vs. UOI 2016 (339) ELT 209 (P & H)**
iii. **Prakash Raghunath Autade Vs. UOI 2022 (380) ELT 264 (Bom.)**
iv. **Additional Director General (Adjudication) Vs. Its My Name Pvt Ltd - 2021 (375) ELT 545 (Del)**
v. **JINDAL DRUGS PVT. LTD Vs. UNION OF INDIA 2016 (340) E.L.T. 67 (P & H)**

8. Learned Counsel further submits that the issue regarding imposing penalty on such co-noticees were considered by this Tribunal in large number of cases and it is settled that only if the Appellant having knowledge regarding use of their IE code or extended any assistance in the attempted export of Red Sanders or evidence regarding knowledge of the Appellant about or they had acted deliberately for such illegal export, penalty can be imposed. There is no admissible evidence to allege that neither the Managing Partner nor the employees of the Appellant had knowledge regarding such illegal export of goods. As regards the personal penalty on the Appellants 2 to 4, the Learned Counsel reiterated the above submissions. Further there is no evidence regarding involvement of the Appellants having actively connived in the substitution of cargo or any financial benefit from this transaction, specifically, when the roofing tiles intended for export were stuffed in the presence of Central Excise officers and such clandestine activity could not have been in the knowledge of the appellant. Learned Counsel draws our attention to the decision in the matter of **M/s. Baba Rocks Vs. Cc & Ce-2019-Tiol-2203-Cestat-Hyd** where in a similar case of attempt to export of 'red sanders' in the guise of black galaxy rough blocks was considered and *inter alia* held as follows:-

> *"15. Thus, it appeared to revenue that red sanders were attempted to be smuggled out of India, in the guise of black galaxy rough blocks and*

appeared to be liable for confiscation, along with the containers. The appellant - M/s Baba Rocks had made the export of the granite blocks to Shanghai United Granite Industry Trading Company, Shanghai, China on the basis of the purchase order received through one Mr. K. Prabhakaran, who had introduced himself as representative of the foreign buyer. The appellant without causing verification as to the representation of Mr. K. Prabhakaran, had received advance money in Indian currency, knowing well that export proceeds are to be received from the foreign consignee throughout the authorised channel. Appellant also did not verify the veracity of the purchaser/or his agent, transporter, etc. and thus he appeared to have facilitated the smuggling of the seized red sanders and thus appeared to be liable for penalty under Section 114 of the Customs Act. Accordingly, show cause notice dated 5 February 2008 was issued on the appellant jointly with others, proposing to impose penalty with proposal to confiscate the red sanders lying seized.

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21. Thus, from the facts on record and the statements of the responsible officers of the customs Department it appears that the appellant have not done any deliberate action or misdeed in the alleged smuggling of red sanders. Appellant have only unknowingly in good faith, allowed the use of their IE code. Thus, there is no case of imposition of penalty under Section 114 of the Customs Act made out. Accordingly, this appeal is allowed and the penalty imposed is set aside. The appellant is entitled to consequential benefits, in accordance with law."

9. Learned Counsel also draws our attention to the decision in the matter of **Sekar & Sekar Process Vs. Commissioner of Customs, Chennai - 2010-Tiol-575-CESTAT-Mad which** has *inter alia* has held as under:-

"3………… While I agree with the finding that an exporter cannot absolve himself from his responsibility for the export consignment, this cannot be stretched to hold that exporter is liable to penalty under Section 114 in the absence of any evidence on record to show that any acts of commission or omission on his part rendered the goods liable to

confiscation under Section 113. The goods were stuffed in the container under the Central Excise supervision and the red sanders logs were substituted en route to the Chennai Port. It is intriguing to find that the seals were not tampered with and they were intact at the time of examination of the consignments. The impugned order does not contain any material to conclude that the exporter either knew that the goods were liable to confiscation or did something or omitted to do something which commission or omission rendered the goods liable to confiscation. Therefore, penalty under Section 114 cannot be sustained."

10. In this regard, Learned Counsel relied on the following decisions:-

i. **CCE & C, Surat Vs. Suresh Synthetics 2016 (332) E.L.T. 385 (SC)**

ii. **Hanuman Singh Lakhavat Vs. Cc, Ahmedabad - 2024 (1) Tmi 986 - Cestat Ahmedabad**

iii. **M/S. Mahadev Granites Vs. The Commissioner of Customs - 2021-Tiol-626-Cestat-Mad**

iv. **Nanda Incorporated Vs. Commissioner of Customs - 2018 (363) E.L.T. 673**

v. **Marvelous Engineers Pvt.,. Ltd Vs. Commr. of Cus (Export), Mumbai - 2014 (300) E.L.T. 275**

vi. **Maheshwari Rocks (I) Pvt. Ltd. Vs. Commissioner of Customs, Chennai - 2010 (262) E.L.T. 574 (Tri. - Chennai)**

11. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that there are admissible evidence in the show cause notice (SCN) to conclude that Mr. Mohammed Haris and Mr. Anil colluded and entered into criminal conspiracy to smuggle out the prohibited 'Red Sanders'. Learned AR also draws our attention to the statement recorded from the other Appellants and submits that from the statement, Shri. Muhammed Haris was aware of the illegal export and aware of the prohibition imposed. But still extended full patronage to Shri. Anil Kumar in smuggling of Red Sanders logs by Shri. Anil. Further Shri. Muhammed Haris consented

and cooperated to transport container to the godown belongs to Shri Anil Kumar for illegal stuffing of Red Sanders logs. The creation of false contract and forcing his employees to sign on behalf of the foreign buyer is a clear indication of his involvement in attempted illegal export. As regards the appeal filed by Shri. Muhammed Haris, Learned AR submits that Sri. Mohammed Harris, Managing Partner, in his statements given under Section 108 of the Customs Act, 1962, has *inter alia* agreed that the Shipping Bill No.1029180 dated 24.03.2008 (related to the container from where the impugned goods were seized) was filed by his firm and he was the signatory to the documents. b) that the red sanders seized by DRI were concealed in Container No ILCU 5051139 was consigned to M/s. Al Awael General Trading Dubai; c) that the said customer belongs to Mr. Anil of M/s. MAA Logistics and Trading, Cochin and the export was handled by him d) that Anil told him that he has some good customers abroad for the roofing tiles and he will give him a commission of Rs.600 per 1000 tiles. By their omissions and commissions as detailed in the SCN with assistance from Shahir Mohammed K P, Kishore, and others. Hence the penalty imposed by the Adjudication authority on all the Appellants in Appeal Nos. C/702-705/2010 are sustainable.

12. As regards Appeal No. 709/2010, Learned AR submits that the impugned order has factual inaccuracies regarding the detention of Shri. Mohammed Haris, Shri. Shahir Mohammed and Shri. Kishore Kumar under COFEPOSA. Further submits that the adjudicating authority has confiscated the 'Red Sanders' without explaining or concluding the reasons to show that export of Red Sanders is prohibited under the EXIM Policy 2004-2009. Further, the findings portion of the impugned order does not quote even one act /section under which the fraud / smuggling can be confirmed. Any confiscation under the Customs Act, 1962 without explaining the reasons which have rendered the goods liable for confiscation is not legal and proper. Such an order makes the case ineffective to withstand scrutiny by judicial fora. Further, in Department Appeal No. C/709/2010, Adjudication authority also ignored the omissions on the part of Customs House Agent (CHA)

which aided the illegal export of Red Sanders by not imposing penalty on them and merely issuing warning to the CHA to be more careful in future. Thus, the persons involved in the illegal activity may escape appropriate punishment on account of the order passed by the adjudicating authority having serious legal infirmities. As such, the Order-in-Original passed by the Commissioner of Customs, Mangalore suffers from serious informative and factual inaccuracy. Therefore not legal and proper under the provisions of Customs Act, 1962. Thus, prayed that the matter may be remanded for Denovo Adjudication.

13. Heard both sides and perused the documents.

14. As regards the Appellants in Appeal No. C/702-705/2010, we find that there is no evidence to show that the appellants had assisted in loading of 'red sanders' or tampering the container or they were even aware that red sanders have been stuffed into the container somewhere on the way. Under these circumstances, in this case, apparently penalty has been imposed on the appellants on the ground that they has abetted in stuffing the attempted export of 'red sanders' in the container. Abetment means a positive act on the part of the appellants and as can be seen from the facts and circumstances, there is no evidence forthcoming to show that the appellant had given any assistance in the attempted export of 'red sanders'. In the facts and circumstances of the case, penalties imposed on the appellants are not sustainable and the same are liable to be set aside.

15. As regards Departments' Appeal No. C/709/2010, though we find that the impugned order is issued without explaining and concluding the reason to show that export of 'Red sanders' is prohibited by export policy and confiscation of goods is done without explaining the reason for confiscation, Necessary parties including prime accused are not arrayed as respondent in the Appeal. Further though it is alleged that Adjudication authority ignored the omissions alleged on the part of Customs House Agent (CHA) which aided the illegal export of Red Sanders, we find that there is no admissible evidence to give any finding that the Customs House Agent (CHA) have assisted in loading of

'red sanders' or tampering the container or they were even aware that 'red sanders' have been stuffed into the container somewhere on the way. In these circumstances, we find that adjudication authority rightly dropped the penalty against Customs House Agent. In the absence of any Appeal challenging the confiscation of goods by any of the aggrieved parties, there is no reason or justification to remand the matter for denovo adjudication as prayed in Departments' Appeal No. C/709/2010.

16. In view of the above discussion the impugned orders in the Appeal Nos. C/702/2010, C/705/2010, C/703/2010 and C/705/2010 are set aside and the appeals are allowed. Department appeal No. C/709/2010 is dismissed.

17. Accordingly, the appeals are disposed in the above terms.

(Order was pronounced in Court on 17.06.2026)

(P. A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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