CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/1044/2009-DB

[Arising out of Order-in-Original No. 114/2009 dated 25/08/2009 passed by the Commissioner of Customs, Cochin]

M.O. John & Sons (Exports)
TC 16/1382, Sasthri Road,
Nellikunnu, Thrissur

Appellant(s)

VERSUS

Commissioner of Customs
Cochin
Custom House,
Willingdon Island
Cochin – 682 009
Kerala

Respondent(s)

Appearance:

Mr. Keshavraj, Advocate	For the Appellant
Mr. Rama Holla, Supdt. (AR)	For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20851 / 2019

Date of Hearing: 26/09/2019
Date of Decision: 26/09/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 25/08/2009 passed by the Commissioner of Customs whereby the Commissioner has imposed a penalty of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) on the appellant under Section 114(i) and 114AA of the Customs Act, 1962.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture and marketing of various food products. A show-cause notice was issued to the appellant as to why the rice and wheat products should not be confiscated under Section 113 (d) (e) (h) and (i) of the Customs Act, 1962 and as to why penalty should not be imposed under Section 114(i) and 114AA of the Customs Act, 1962. Appellant submitted their reply to the show-cause notice and submitted that the export of the said prohibited items were done without the knowledge and consent of the appellant, that the exports were done under the control and supervision and at the instance of Mr. Anto Kurien, Marketing Manager of the appellant, that the appellant was virtually ignorant of the said activities of the Marketing Manager and the appellant had not given any instruction to the marketing staff to export the prohibited items. After considering the submission of the appellant, the Commissioner of Customs vide the impugned order confiscated the products with the option to redeem the rice and wheat products on payment of Rs. 4,00,000/- (Rupees Four Lakhs only) and other products on payment of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) and imposing a penalty of Rs. 1,50,000/- each (Rupees One Lakh Fifty Thousand only) on the appellant and on Mr. Anto Kurien under 114(i) and 114AA of the Customs Act, 1962. The appellants have paid the redemption fine and penalties and have challenged only the penalty while filing this appeal.

3. Heard both the parties and perused the records.

4. Learned counsel appearing for the appellant submitted that the appellant was not aware of the fact of the Marketing Manager who because of the serious pressure from the overseas client has exported the prohibited items without the consent and knowledge of the appellant. He further submitted that there is no *mens rea* on the part of the appellant and therefore he should not be penalized. In support of his submission, he relied upon the decision in the case of ***Anchor Logistics Vs. CC – 2013 (290) E.L.T. 334 (Guj.).***

5. On the other hand, the learned AR defended the impugned order and submitted that the Commissioner has taken a very liberal view as far as imposition of penalty is concerned. He further submitted that export of prohibited item is admitted and the only defense of the appellant is that he had no knowledge of the said export which was done by the Marketing Manager without his knowledge.

6. After considering the submissions of both the parties and perusal of the material on record, we find that in this case prohibited items are being exported but the same was intercepted. The only defense of the appellant was that export was done by the Marketing Manager without his knowledge and consent and he had not given any instruction to his Marketing staff to export the prohibited items. This defense does not inspire confidence. We are not convinced that the Marketing Manager has exported the prohibited goods without the knowledge of the appellant under whom the Marketing Manager is working. Further we find that the decision relied upon by the appellant is not applicable to the facts of this case as the said goods relate to Custom House Agent whereas in the present case the export has been done by the Marketing Manager in the course of his employment on behalf of the

appellant. Further, we find that the penalty imposed is also not very exorbitant and therefore, we do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **26/09/2019**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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