CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 60151 Of 2021

[Arising out of OIA No. JNK-EXCUS-APP-160/19-20 dated 05.09.2019 passed by the Commissioner (Appeals) of Central Excise and Customs, Jammu]

Royal International : **Appellant (s)**
12/7 City Centre, Amritsar, Punjab

Vs

Commissioner of Customs, Amritsar : **Respondent (s)**
Preventive Customs House, C.R. Building
The Mall, Amritsar Punjab

APPEARANCE:
Shri Vivek Salathia, Advocate for the Appellant
Shri Narinder Singh, Shri Ravinder Jangu, Authorised Representatives for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)

ORDER No. A/60034/2024

Date of Hearing:15.11.2023

Date of Decision:31.01.2024

Per : S. S. GARG

The present appeal is directed against the impugned order dated 05.09.2019 passed by the Commissioner (Appeals) of Central Excise & Customs, Jammu whereby the appeal of the appellant is rejected and the order of the Adjudicating Authority is confirmed by imposing penalty of Rs. 1,00,000/- under Section 114(i) of the Customs Act, 1962.

2. Briefly the facts of the case are that the appellant exported Alprazolam tablets, which were manufactured by M/s Hindustan Pharmaceuticals, Amritsar, under the trade name of Axemex and Axamex, to M/s Sehat Co. Ltd, Khaitkhana, Kabul, Afghanistan
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through the ICD/CFS, Ludhiana. The details of exports of Alprazolam Tablets made by the appellant are given in table herein below:-

Sr. No.	Shipping Bill No.	Date	Quanitity (Number of boxes)	Value (Rs.)	ICS/CFS
1	00321	26.07.2008	2160	161406	OWPL, Ludhiana
2.	1106716	03.11.2008	3240	241299	OWPL, Ludhiana
3.	1116669	20.01.2009	7230	431643	OWPL, Ludhiana
4.	1120901	24.09.2009	5440	329119	OWPL, Ludhiana
5.	1148071	24.09.2009	4320	261090	OWPL, Ludhiana
6.	1157893	08.12.2009	5644	266159	OWPL, Ludhiana
7.	2387472	01.02.2011	6048	340578	OWPL, Ludhiana
8.	1100367	09.03.2010	20640	1179060	OWPL, Ludhiana

2.1 For making the above exports of Alprazolam tablet, which appears at Sr. No. 30 and Salts thereof at Sr. No. 111 of the Schedule of the Psychotropic Substances notified under Section 2(xxiii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short the "NDPS Act"), the appellant was required to obtain export authorization from the Competent Authority, i.e Narcotics Commissioner, Central Bureau of Narcotics, Gwalior in terms of Rule 58 of the NDPS Rules, 1985 read with Section 8 of the NDPS Act.

2.2 As per the Department, the appellant exported the said goods without obtaining the export authorization from the Competent Authority and the said goods were prohibited and were liable to confiscation under Section 113 (d) of the Act and the appellant also appeared liable to penal action in terms of Section 114(i) of the Act.

2.3 On these allegations, a show cause notice dated 01.05.2015 was issued to the appellant by the Adjudicating Authority as to why the penalty should not be imposed on the appellant in terms of Section 114 (i) of the Customs Act, 1962.

2.4 After following due process, the Adjudicating Authority vide its order dated 15.02.2016 imposed a penalty of Rs. 1,00,000/- under Section 114(i) of the Customs Act, 1962.

2.5 Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who upheld the order of the adjudicating authority.

2.6 Hence, the present appeal.

3. Heard both the parties and perused the material on records.

4. Ld. Counsel for the appellant submits that the impugned order imposing penalty of Rs. 1,00,000/- under Section 114(i) of the Customs Act, 1962 is not sustainable in law as the same has been passed without appreciating the provisions of Section 28 of the Customs Act, 1962. He further submits that imposing penalty under the Act *mens- rea* is a pre-requisite whereas the appellant did not have any intention to export by violation of the Customs Act and NDPS Act. He further submits that the appellant has been regularly exporting the impugned goods for the last 7-8 years and no objection was raised by the Customs Authorities at any point of time. He further submits that the appellant has not concealed any material facts from the department and onus to prove that the appellant has violated the provisions of the Act is on the department. In support of his submission, he relied on the decision of the Hon'ble Apex court in the case of Commissioner of Customs, Mumbai vs. M.M.K. Jewellers & Another bearing Civil Appeal No. 813-814 of 2004 as decided on

11.03.2008 wherein while discussing the already set precedents of the Hon'ble Supreme Court only, it was categorically held that:-

> "...In view of the clear legal position crystallized by a series of judgments that in case where the assessees are not guilty of suppression of facts, collusion or willful misstatement of facts, therefore, the extended period of limitation cannot be invoked under proviso to section 28(1) of the Customs Act, 1962 in the instant appeal and the other connected appeals. Consequently, this appeal and other connected appeals filed by the appellant have to be dismissed being time barred.."

4.1 On the other hand, Learned Authorized Representative defended the impugned order and submitted that the exported goods fall in the schedule of psychotropic substances of NDPS Act, 1985 and thus export authorization was required in terms of Rule 58 of the NDPS Rules, 1985 read with Section 8 of the NDPS Act, 1985. He further submits that Alprazolam tablet has been mentioned at Sr. No. 30 of the schedule of psychotropic substances and the salt thereof at Sr. No. 111 of the NDPS Act.

4.2 Learned Authorized Representative also took me through Rule 58 and 53 of the NDPS Rules and submits that no narcotic drugs, or psychotropic substances as mentioned in the schedule of psychotropic substances, notified under Section 2(xxiii) of the NDPS Act shall be exported from India without an export authorization issued by the Competent Authority.

4.3 Further, Section 8 of the NDPS Act among others prohibit any export from India of any narcotic drugs or psychotropic substance, except with the permission of the competent authority.

4.4 He further submits that the show cause notice as well as the impugned order clearly bring out that the appellant was required to obtain export authorization for export of Alprazolam tablets under NDPS Act and the NDPS Rules and admittedly, the appellant had not obtained any such authorization from the competent authority.

4.5 Learned Authorized Representative further submits that the limitation under Customs Act, 1962 only prescribes for recovery of duty and not for confiscation or imposition of penalty. For this submission, he relied upon the judgement of the Division Bench of CESTAT, Mumbai in the case of Gulbir Singh Anand vs. Commissioner of Customs (import), Raigarh-2019 (370) ELT 1588 (Tri.-Mumbai).

4.6 He further submits that the *mens-rea* is not required for imposition of penalty in the present case as only the penalty under Section 114(i) of the Customs Act has been imposed which does not require intend to be proved and the only condition that has to be satisfied is that goods should be liable for confiscation which is clearly satisfied in the present case.

5. After considering the submissions of both the parties and perusal of material on record and the decisions relied upon by both sides, I find that admittedly in the present case, the appellant has exported Alprazolam tablets which fall in the schedule of psychotropic substances of NDPS Act, 1985 and is mentioned at Sr. No. 30 of the schedule of Psychotropic and the salt thereof at Sr. No. 111 of the Act for which the export authorization is required from the Competent Authority i.e. Narcotics Commissioner, Central Bureau of Narcotics, Gwalior in terms of Rule 58 of the NDPS Rules, 1985 read with Section 8 of the NDPS Act.

5.1 The defence of the appellant that he was not aware of the requirement of law to obtain export authorization from the

Competent Authority before exporting the said goods is not tenable in law in view of the specific provisions made in the NDPS Act with regard to export of goods falling in the schedule of psychotropic substances of NDPS Act, 1985.

5.2 Further, I find that the defence of the appellant that previously no objection was raised by the customs authorities and he has been exporting the said goods for the last 7-8 years is not a proper defence to justify the export of the impugned goods without proper export authorization.

5.3 Further, I find that the Division Bench of the CESTAT Mumbai in the case of Gulbir Singh Anand cited (supra) has held as under:-

> "**10.** Customs Act, 1962 prescribes limitations for the recovery of duty under Section 28 of Customs Act, 1962. However, there is no such limitation insofar as confiscation proceedings are concerned and, likewise, on the imposition of penalty. There is no doubt that a reasonable proximity of detriment with the cause is a consummation devoutly to be sought for. Nevertheless, that cannot be a reason, or a ground, for failing to act within the confines of the statute that is intended to protect the country from the ill-effects of smuggling. We find no illegality in the imposition of penalties for incidents that have occurred more than five years prior."

5.4 Further, in the present case, I find that the goods were liable for confiscation as per Section 113(d) of the Customs Act, 1962 and penalty has been rightly proposed under Section 114(i) of the Customs Act and no limitation of 5 years has been prescribed under both the sections.

5.5 Further, I find that clearances in the past cannot be justified subsequent exports which are prohibited according to the provisions of law and required authorization for its exports.

5.6 Further, I also hold that under Section 114(i) of the Customs Act under which penalty has been imposed in this case, does not require intend to be proved and the only condition that has to be satisfied is that the goods should be liable for confiscation which is clearly satisfied in the present case.

5.7 In view of this, I do not find any infirmity in the impugned order which I uphold subject to the reduction of the penalty to the extent of Rs. 50,000/-.

6. Appeal is accordingly disposed of in the above terms.

(Pronounced on 31.01.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

G.Y.