IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. C/111/2012

(Arising out of Order-in-Original No. 18626/2012 dated 31.3.2012 passed by the Commissioner of Customs, Chennai)

Gunwantral S Joshi Appellant

Vs.

Commissioner of Customs, Chennai Respondent

Appearance

Shri Neerav Mainkar, Advocate for the Appellant
Ms. T. Usha Devi, DC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **03.08.2018**

Final Order No. **42389 / 2018**

Per Bench

Acting on intelligence, that "Murate of Potash" (MOP) a restricted item for export was being smuggled out of India in the guise of industrial salt, a consignment of export goods covering six shipping bills was filed by M/s. Forever Export, Proprietor Shri B.S. Venkatesh and kept in export godown on M/s. Gateway Distriparks (South) Pvt. Ltd. (CFS) was detained by the officers of Dock Intelligence Unit on 24.7.2009 on reasonable belief that the exporter had mis-declared the description of goods in the consignment in order to smuggle the goods out of the country. The goods were totally weighing about 150 MTs and were valued at Rs.53,76,000/- being the market value.

2. Representative samples of the goods were drawn on 28.7.2009 and sent for chemical analysis, after which it was confirmed that the goods conform to MOP as laid down in Fertilizer (Control) Order, 1985. The said consignment was seized on the reasonable belief that it is liable for confiscation. During the course of investigation, it was revealed that the very same M/s. Forever Export had exported 38 consignments to Vietnam and the customs recalled the said consignment which totally weighed 950 MTs. Samples were also drawn and it was found that the goods are MOP. Based upon such evidence, show cause notice was issued to M/s. Forever Exports and also the appellant herein alleging that the appellant had issued invoices to the exporter so as to abet him in fraudulent export of MOP. After due process of law, the original authority inter alia confirmed the demand in the show cause notice and imposed penalty of Rs.4,00,000/- under Section 114A of the Customs Act,1962. Aggrieved, the appellant is now before the Tribunal.

3. Ld. Counsel Shri Neerav Mainkar appearing for the appellant submitted that the allegation against the appellant is that they have issued invoices so as to abet the exporter to export MOP in the guise of industrial salt. He submitted that the invoices were issued by intermediary and the appellant did not know the said invoices were being used for fraudulent export. Thus, the appellant has no role in fraudulent export or mis-declaration of the goods and therefore the penalty under section 114A cannot sustain. He relied upon the decision in the case of V.K. Singh Vs. Commissioner of Customs, Hyderabad – 2010 (253) ELT 685 (Tri. Bang.).

4. The ld. AR Ms. T. Usha Devi supported the findings in the impugned order. She argued that without issue of invoices, the exporter would not be able to export the MOP and therefore it is very much clear that the appellant had abetted the fraudulent export.

5. Heard both sides.

6. The issue is with regard to whether penalty can be imposed under section 114 of the Customs Act, 1962 on the appellant alleging abetment of fraudulent export of MOP. It is brought out from the evidence that appellant has issued invoices and that there was no physical transaction or delivery of goods which were raised in the invoices. It is submitted by him that he issued sale invoices for monetary consideration of

1% commission. Although, it may be true that by such invoices the exporter was able to indulge in fraudulent export, the involvement of the appellant in mis-declaration of the goods is not brought out. For this reason, we find that though penalty is attracted for abetment, imposition of penalty of Rs.4 lakhs is on the higher side and requires to be reduced. We therefore, hold that the appellant is to pay a penalty of Rs.1,00,000/- (Rupees one lakh only). The impugned order is modified in this appeal to the limited extent of reducing the penalty of the appellant to Rs.1,00,000/-. The appeal is partly allowed in the above terms with consequential benefits if any as per law.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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