IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40237 of 2017

(Arising out of Order-in-Appeal No. 50 & 51/2016 dated 19.04.2016 passed by the Commissioner of Customs & Central Excise (Appeals-II), No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

Shri. Ravi Sadanand, **: Appellant**
S/o Shri. Late Sadanand,
No. 510, 14th Main, IV Block, Nandhini Layout,
Bangalore – 627 424

VERSUS

The Commissioner of Customs, **: Respondent**
Custom House, New Harbour Estate,
Tuticorin – 628 004

WITH

Customs Appeal No. 40238 of 2017

(Arising out of Order-in-Appeal No. 50 & 51/2016 dated 19.04.2016 passed by the Commissioner of Customs & Central Excise (Appeals-II), No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

Shri. Karupiah @ Manoharan, **: Appellant**
S/o Shri. V. Subbiah,
Old No. 2/256, New No. 2/732,
Thiruvalluvar Street, M.A. Nagar, Red Hills,
Chennai – 600 052

VERSUS

The Commissioner of Customs, **: Respondent**
Custom House, New Harbour Estate,
Tuticorin – 628 004

<u>APPEARANCE</u>:

Shri. A. Thiyagarajan, Ld. Senior Advocate for the Appellant

Shri. M. Jagan Babu, Ld. Authorized Representative (A.R.) for the Respondent

<u>CORAM</u>:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 40028-40029 / 2020

DATE OF HEARING: 07.01.2020

DATE OF DECISION: **<u>30.01.2020</u>**

These appeals are filed against the common order of the Commissioner of Customs and Central Excise (Appeals-II), Tiruchirappalli dated 19.04.2016 in Orders-in-Appeal No. 50 & 51/2016.

2. It is the case of the Department that based on the specific intelligence that persons travelling in a black colour 'PULSE' car bearing Registration No. TN18 M 8059 were attempting to smuggle 'Red Sanders Logs' out of India and on enquiry after interception of the said car, persons travelling in the car identified themselves as S/Shri S. Karuppiah @ Manoharan, Ravi K. Sadanand, M.J. Girish, D. Seena and P. Ravi. The interception resulted in unearthing transportation of the contraband i.e., red sanders logs worth Rs. 4,33,35,000/- (9.63 MTs), which were loaded in a lorry/truck bearing Registration No. TN 63 AB 7825 along with bags of cabbage worth Rs. 10,000/-. There was no document for transportation of the entire goods nor was there any claim as to the ownership of either the lorry or the goods and therefore, the lorry/truck was seized along with the goods. The Revenue got the goods examined by the Forest Range Officer, Thoothukudi Range, who certified that the same was red sanders logs which is a prohibited item for export. All the seized goods i.e., the truck, the red sanders logs and the cabbage bags were handed over to the Customs House, Tuticorin on 10.10.2013.

3. The Senior Intelligence Officer, Directorate of Revenue Intelligence, Tuticorin, summoned all the five above persons, who were travelling in the car at the time of interception and their statements were recorded under Section 108 of the Customs Act, 1962. It appears that Revenue tried to ascertain the ownership of the aforesaid truck, with the Registration No. TN 63 AB 7825, which carried the contraband, but the Adjudicating Authority in the Order-in-Original has given a clear finding that it was a fake registration number fitted on the seized lorry/truck to avoid detection and thereby mislead the investigators. Based on the information thus gathered as also the

statements of various persons, the Revenue issued a Show Cause Notice to the appellants as to why:-

i) the seized 9.63 MTs of Red sanders, valued at Rs.4,33,35,000/- should not be confiscated under Section 113 (d) of the Customs Act, 1962.

ii) the seized 2.910 MT of Cabbage, valued at Rs.10,000/- should not be confiscated under Section 119 of the Customs Act, 1962.

iii) the said 2.910 MT of cabbage found to be rotten and unfit for consumption which was destroyed, should not be held as properly disposed off; and

iv) penalty should not be imposed on them under Section 114 of the Customs Act, 1962.

4. After due process of law, the Adjudicating Authority vide Order-in-Original No. 60/2015 dated 29.05.2015, after considering the statements, Mahazars, reply to the Show Cause Notice and arguments during the personal hearing, has :-

i) Ordered confiscation of 9.63 MT of red sanders valued at Rs.4,33,35,000/- under Section 113 (d) of the Customs Act, 1962;

ii) Ordered confiscation of 2.910 MT of Cabbage, valued at Rs.10,000/- used for concealing red sanders, under Section 119 of the Customs Act, 1962;

iii) Held that the said 2.910 MT of cabbage found to be rotten and unfit for consumption which was destroyed, as properly disposed off;

iv) Ordered confiscation of Ashok Leyland Truck bearing fake registration No. TN 63 AB 6825 (actual registration no. being AP 03 U 7977), valued at Rs. 6,40,000/-, under Section 115(2) of the Customs Act, 1962;

v) Imposed penalty on the following persons including appellants herein, under Section 114 of the Act ibid as follows:-

Name S/Shri.	**Amount of Penalty (in Rupees)**
Karuppiah @ Manoharan	25,00,000/- (Rupees Twenty five lakh only)
Ravi K. Sadanand	10,00,000/- (Rupees Ten lakh only)
Senthil Ram	2,00,000/- (Rupees Two lakhs only)
Subba Reddy	5,00,000/- (Rupees Five lakhs only)
Ramesh	2,50,000/- (Rupees Two lakh fifty thousand only)
Mohamed Saleem	5,00,000/- (Rs. Five lakhs only)

5. Aggrieved by the said Order-in-Original, the present appellants filed appeal before the Commissioner of Central Excise (Appeals-II), Tiruchirappalli, contending *inter alia* that the order imposing penalty under Section 114 of the Customs Act was bad. The Commissioner (Appeals), however, vide the impugned Order-in-Appeal dated 19.04.2016 rejected the appeals thereby upholding the order of the Adjudicating Authority. Seriously aggrieved by the Order-in-Appeal of the Commissioner (Appeals), the present appellants viz., Shri. Karuppiah @

Manoharan and Shri. Ravi. K. Sadanand are before this forum by these appeals.

6. Heard Shri. A. Thiyagarajan, Learned Senior Advocate appearing for the appellants and Shri. M. Jagan Babu, Learned Assistant Commissioner (Authorized Representative) appearing for the Revenue and perused the documents placed in the appeal paper book and also gone through the documents referred to by both the parties, during the course of hearing.

7. The only issue to be decided is whether the Revenue was justified in levying penalty on the appellants under Section 114 of the Customs Act, 1962.

8. During the course of hearing, the Ld. Sr. Advocate appearing for the appellants submitted that primarily the penalty has been levied based solely on the inculpatory statements. The other submissions of the Ld. Advocate could be summarized as under:-

(i) The appellants never claimed themselves to be the owner of the goods that was seized;
(ii) The appellants are not the owners of the truck/lorry seized or even the landed property where the truck was stranded;
(iii) One of the appellants namely Shri. Karuppiah was not present during the seizure;
(iv) The appellants had no financial capacity or having no means to arrange for transportation of the goods worth over Rs. 4.5 crores;
(v) The inculpatory statements alone is not sufficient without there are being any corroboratory evidence;
(vi) The penalty being quasi-criminal in nature, the burden is on the Department;
(vii) The seller or the purchaser of the contraband were not known even to the Department nor were they identified, etc.

9. *Per contra*, Ld. Authorized Representative for the Revenue argued that the weight of the contraband article found in the truck tallied with the voluntary statements given by the appellant. His further submissions can be summarized as under:-

(i) They have not denied their presence at the time and spot on the eventful day;

(ii) The appellant Shri. Karuppiah @ Manoharan was the mastermind behind the operation since he had purchased the red sanders logs on earlier occasions also, illegally;

(iii) That the appellants jointly contributed to the attempted export of 1.6MTs of red sanders by illicit means;

(iv) The entire scheme/*modus operandi* has been very succinctly recorded at paragraphs 31, 32, 33, 34 and 36 of the Order-in-Original as also at paragraphs 7 and 8 of the Order-in-Appeal which have not at all been questioned;

(v) Voluntary statements of all the persons stand against them so also the chain of events narrated by each of them speaks of the scheme to smuggle contraband in which they almost succeeded but for timely interception, which would have resulted in the revenue loss to the Nation;

(vi) Irrespective of whether the appellants are the buyers or sellers, they having abetted in the commission of the offence of attempting to smuggle the contraband, penalty has rightly been imposed.

(vii) Statements are not retracted and therefore, there was no chance for the Revenue to suspect their motive;

He therefore pleads that the appeals are required to be dismissed.

10.1 I have considered the rival contentions and have also meticulously gone through the record. The statement of the appellant Shri. Karuppiah recorded on 09.10.2013 under Section 108 of the Customs Act reveals the *modus operandi* and this appellant has very clearly explained not only the whole transaction but also named various persons involved, in the smuggling activity and has also clearly identified the destination i.e., foreign buyer M/s. Haiphong Petro Trading JSC, No. 782, Chua Ve, Doana, 2nd Street, Dong Hai, 1 Ward, Hai An Dist. HP, Vietnam.

10.2 Shri Karuppiah, the second appellant, also explains the involvement of one Shri. Subba Reddy, one of the brokers, one Shri. Saleem of Tirunelveli whose mobile Nos. were 7299508440 & 9786860485, who arranged the overseas buyer for a commission of Rs. 3,00,000/- per MT; Mr. Ravi of Bangalore, who was into the red sanders business, who according to the appellant, had agreed to store 8 MTs of red sanders in Bangalore; Shri. Senthil Ram of Chennai, Lorry broker who was to transport red sanders logs to Bangalore, who also sent lorry bearing Registration No. TN 63 7825 to Bangalore, etc. Further, this appellant has also explained that Shri. Ravi having loaded the logs of red sanders in the lorry was called by Shri. Saleem to get the logs of red sanders near the District Collector's office in Virudhunagar etc.

10.3 The above statement of this appellant matches with that of the first appellant Shri Ravi Sadanand and their statements lead to a plausible conclusion that it was a pre-planned move to smuggle red sander logs out of India. For this, I completely rely on the findings of the Original Authority who has very succinctly extracted the whole scheme of the attempt to smuggle red sanders by the appellant in connivance, though in a small way, with the other occupants of the car. These findings have not at all been challenged. There is also nothing on record to even suggest that the statements of the appellants have been retracted and nor is there any attempt to deny their presence at the eventual spot on the eventful day.

10.5 The Adjudicating Authority has also traced the owner of the truck/lorry that was carrying the contraband and arrived at the conclusion that the same was with a fake registration number to mislead the investigation. This also stands unchallenged.

10.6 The appellants having accepted in their voluntary statements about their involvements, have not brought anything on record to doubt the veracity of the findings or conclusions drawn by the Adjudicating Authority. Even though it has all along been argued that they did not claim ownership of either the truck or the contraband that was seized, they have not submitted any documentary evidence about their role/activity at the time, date and place when the interception took place. Having accepted in their voluntary statements as to their role, they prevented further investigations into the issue and therefore, on a much later date they cannot turn around to say that their statements were not voluntary. Moreover, it is not a case where the penalty was levied based only on their statements; Revenue has linked each and every chain in the whole loop of the master plan to smuggle the contraband by identifying the involvement and role of each and every person whereas nothing is brought on record by the appellants to dislodge even a small link in the above chain. Their contention that they did not claim ownership nor did they have wherewithal, etc., would not help them since in an activity of the nature involved in the present case, the recipient/buyer would be least interested in knowing this. Because, otherwise, the buyer would have rightroyally bought from the open market after paying all necessary/applicable duties rather than choosing a shortcut of smuggling.

10.7 I, therefore, do not see any reasons to interfere with the meticulous findings of the Original Authority as upheld vide impugned Order-in-Appeal by the Commissioner of Central Excise (Appeals-II), Tiruchirappalli. In this connection, I find that the decision of the Hon'ble High Court of Madras in the case of *CC, Trichy Vs. S. Janarthanan [2015 (325) E.L.T. 510 (Mad.)]* is useful in this regard, wherein it has been held as under:-

> *"**12.** Admittedly, the goods attempted to be exported are prohibited under the Customs Act, the Foreign Trade (D&R) Act and the EXIM Policy 1997-02. Since Sandalwood was attempted to be exported in the guise of roofing tiles, the provisions made under Section 113 of the Customs Act gets attracted. Similarly, the goods entered for exportation did not correspond in respect of value or in any material particulars with the entry made under the Act. On this admitted fact, the only question arises for consideration is whether the respondent is liable for penalty under Section 114 of the Customs Act.*
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> ***13.** The wording in Section 114 of the Customs Act is clear that any person who, in relation to any goods does or omits to do any act which act or omission would render the goods liable for confiscation under Section 113, or abets the doing or commission of such an act shall be liable for penalty. For better clarity, it is apposite to refer Section 114 of the Customs Act, which reads as follows :*
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> *"SECTION 114. Penalty for attempt to export goods improperly, etc. - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscatio n under section 113, or abets the doing or omission of such an act, shall be liable, -*
>
>> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*
>>
>> *(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;*
>>
>> *(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the*

> *value as determined under this Act, whichever is the greater."*

> ***14.*** *In this case, the evidence on record and the statements of various persons clearly goes to show the complicity of the respondent in the act, which render the goods liable for confiscation under Section 113 of the Customs Act. He also abetted in doing such acts, which render the goods liable for confiscation. That finding of the Commissioner is not in dispute. The Tribunal on an erroneous interpretation of Section 113 read with 114 of the Customs Act has come to hold that no penalty is leviable.*

> ***15.*** *Here is a case where the findings of the Commissioner, on fact, supported by documents and the statement of individuals, clearly established the act of the respondent, which render the goods liable for confiscation under Section 113. The respondent is one among the culprits, who attempted to export sandalwood in the guise of roofing tiles. Since the respondent had knowledge about the sandalwood being part of the consignment of roofing tiles, but did not intimate the same to the Customs Authorities, he is liable for penalty.*

> ***16.*** *On a reading of the evidence and the findings of the Commissioner, we find that the Tribunal has come to the erroneous conclusion that the act of the respondent in not disclosing the information is not liable for confiscation. Accordingly, the issue is answered in favour of the Department and against the assessee. The order of the Tribunal stands set aside and the adjudication order restored. This Civil Miscellaneous Appeal stands allowed. No costs. Consequently, M.P. No. 1 of 2009 is closed."*

11. In the result, both the appeals are dismissed being devoid of any merit.

(Order pronounced in the open court on **30.01.2020**)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd