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

C/41473/2013

(Arising out of Order-in-Appeal No. 51/2013 dated 23.05.2013 passed by the Commissioner of Customs (Appeal), Trichy).

Shri V. Thiruvalagan — Appellant

Vs.

CC, Tuticorin — Respondent

Appearance

Shri A.K. Jayaraj, Advocate
for the appellant

Shri B. Balamurugan, AC (AR)
for the Respondent

CORAM:

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing: **02.08.2017**
Date of Pronouncement: 10/8/17

FINAL ORDER No. 41583 **/2017**

The challenge in the present appeal is imposition of penalty of Rs.1,00,000/- on the appellant, who is a CHA, in terms of the provisions of Section 114 AA of the Customs Act, 1962.

2. It is seen that three shipping bills were filed on 17.03.2011 at Tuticorin Customs on Electronic Filing System using the User-ID

Customs, Excise & Service Tax Appellate Tribunal and Password of the appellant for export of goods declared as T-shirts and vests.

3. On examination of the container it was seen that the same also had red sander wood, which was a prohibited item for export. The same were concealed with T-shirts and vests. It was also seen that the quantum of T-shirts and vests was declared on the higher side than the actual numbers in the container and the value was also on the higher side, so as to claim the higher benefit of drawback.

4. The lower authorities, imposing penalty upon the appellant have observed that he signed certain blank documents and has thus aided and ab~~a~~etted the exporters for claim of higher drawback as also facilitated him for export of prohibited item. Accordingly, he is so held liable to penalty.

5. The appellant's contention is that there was no allegation of signing of blank document in the SCN, which has been observed by the adjudicating authority for the first ~~we~~ time in the order passed by him. As such, the OIO was beyond the scope of SCN. It was also contended that shipping bills were filed using Icegate Module and goods were arranged for examination and clearance, in which case there can be no question of signing of blank document. Apart from that, there is no evidence produced by the Revenue to show that the appellant was in knowledge of the illegal activities of the exporter and as such penalty imposition under Section 114 AA was not called for.

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6. After hearing the Ld. DR, I note that Section 114 AA of the Customs Act requires imposition of penalty on a person, who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act.

7. In the present case, I find that apart from the bald allegations that the shipping bills were filed by using the appellant's User ID and Password, there is nothing on record to show that the appellant was aware of the fact of presence of red sanders in the container or over valuation of T-shirts and vests. In the absence of any such evidences, the imposition of penalty upon him cannot be held to be justifiable. Accordingly, the same is set aside and appeal is allowed with consequential relief to the appellant.

(Order pronounced in the open Court on 10/8/17

10/8/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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अपील अधिकरण / (CESTAT)
चेन्नै / Chennai