IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40360 of 2021

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 120/2021 dated 12.03.2021 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri D. Sahil, Proprietor of M/s. Mahadev Granites : Appellant
S.F. No. 222/2-B, Seemanoor Road,
Near SIDCO Industrial Area,
Bargur, Krishnagiri District,
Tamil Nadu – 635 104

VERSUS

The Commissioner of Customs : Respondent
Chennai-IV Commissionerate,
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 42325 / 2021

DATE OF HEARING: 01.09.2021

DATE OF DECISION: **17.09.2021**

Order :

Brief facts, as could be gathered from the Show Cause Notice, *inter alia* are that the Directorate of Revenue Intelligence, Chennai Zonal Unit (DRI-CZU) had specific intelligence to the effect that Red Sanders logs, an item prohibited for export under the Foreign Trade Policy, were smuggled in the guise of Polished Granite Slabs in the export consignment of M/s. Mahadev Granites [IEC No. 0416921540], S.F. No. 222/2-B, Seemanoor Road, Near SIDCO Industrial Area, Bargur, Krishnagiri – 635 104, covered under Shipping Bill No. 6322375 dated 19.07.2018 in a 20 feet container No. GESU 2299359 to the overseas buyer M/s. Megamax Import & Export Lot 1054, Tingkat I Komplex Karamunsing, 88000 Kota Kinabalu, Sabah, Malaysia; that in pursuance of the said intelligence, DRI-CZU had recalled the said container, which was already exported in vessel BALTHASAR SCHULTE from CITPL Terminal, Chennai; that the said container was offloaded at M/s. Adani Kattupalli Private Port Limited [AKPPL] from the same vessel on 10.08.2018; that the detained container was moved to M/s. Sattva Hi-Tech & Conware Private Limited, No. 126A, TPP Road, Manali, Ponneri High Road, Chennai – 600 103, and on detailed examination of the wooden logs and the container on 20.08.2018 in the presence of Tamil Nadu Forest Officials, IEC holder, CHA staff, Liner Agent, M/s. Excellmax Surveyors International among others, it was confirmed that the said wooden logs weighing 15.665 Metric Tons were Red Sanders logs.

2. The allegation in the Show Cause Notice, as reflected at paragraph 43, reads as under:

> *"43. Shri D. Sahil, the IEC holder of M/s. Mahadev Granites, Bargur appears to have acted in a reckless manner in allowing his IEC to be misused by Shri Ramesh and allowing himself to be manipulated by Shri Ramesh by projecting Shri N.P.N. Pugazhenthi as his staff thereby facilitating the illegal export of red sanders out of India and hence appears to be liable for penal action under Section 114AA of the Customs Act, 1962."*

And as a consequence of the same, it was proposed to levy penalty under Section 114AA of the Customs Act, 1962, which is at paragraph 46.

3. The Show Cause Notice was thereafter adjudicated and vide Order-in-Original No. 72905/2019 dated 29.11.2019 penalty under Section 114AA ibid., as proposed in the Show Cause Notice was fastened on the appellant at Rs.35,00,000/- and the reasons for imposing the penalty *inter alia* are that the appellant lent his licence (IEC code) for the attempted smuggling of Red Sanders; that the same was done without checking the credentials of the overseas buyers and that the export was allowed to be handled by one Shri Ramesh who owned a fictitious firm, whose whereabouts were not known to the Revenue; that the appellant did not attempt to obtain the KYC details of Shri Ramesh; that by his various acts of omission and commission, the appellant had abetted the offence committed by Shri Ramesh to file the Shipping Bills and other documents, for which he received huge amount in cash; that the above act of omission and commission had rendered the goods in question liable to confiscation under Sections 113(d), 113(f), 113(g), 113(h), 113 (i) and 113 (k) of the Customs Act, 1962, etc. The penalty was challenged before the First Appellate Authority and the Commissioner of Customs (Appeals-II), Chennai vide impugned Order-in-Appeal Seaport C.Cus.II No. 120/2021 dated 12.03.2021 having rejected the appeal, the present appeal has been filed before this forum.

4.1 Shri N. Viswanathan, Learned Advocate, appeared for the appellant and submitted that there was no scope at all in the first place to levy penalty under Section 114AA ibid. and hence, the impugned order is liable to be set aside. His submissions can *inter alia* be summarized as under:

(i) That neither the Notice nor the impugned order having cited or relied upon any single document or declaration made, signed, used by him with intentions and knowledge that the same are false or incorrect in any material particulars, the consequent imposition of the penalty under Section 114AA of the Act is highly improper and incorrect, being contrary to the statutory provisions;

(ii) That the provisions of Section 114AA of the Act do not apply to the facts of this case since the appellant was only the exporter and the polished granites cleared for export were duly stuffed and sealed in the presence of Customs officials at the ICD, and the information and declaration made in the Shipping Bill No. 6322375 dated 19.07.2018 with regard to the material particulars were correct and there was no mis-declaration or furnishing any wrong information whatsoever and hence, holding him guilty under Section 114AA ibid. is legally unsustainable; and

(iii) That his responsibility towards the export consignment ceased to exist the moment the goods were stuffed in the container and sealed by the Customs officers and handed over to the custodian of cargo.

4.2 He relied on the following decisions:

(a) S.P. Bahl v. Commissioner of Customs (Import), Mumbai [2015 (319) E.L.T. 157 (Tri. – Mum)];

(b) Sameer Santosh Kumar Jaiswal v. Commr. of Cus. (Import-II), Mumbai [2018 (362) E.L.T. 348 (Tri. – Mum.)];

(c) M/s. Sree Ayyanar Spinning & Weaving Mills P. Ltd. v. C.C., Tuticorin [2019 (370) E.L.T. 1681 (Tri. – Chennai)];

(d) Commissioner of Customs, Mumbai v. M/s. Toyo Engineering India Ltd. [2006 (201) E.L.T. 513 (S.C.)];

(e) Commissioner of C.Ex. & Cus., Surat v. M/s. Sun Pharmaceuticals Inds. Ltd. [2015 (326) E.L.T. 3 (S.C.)];

(f) M/s. Swapne Nagari Holiday Resort v. Commissioner of C.Ex., Raigad [2019 (21) G.S.T.L. 559 (Tri. – Mum.)];

(g) *M/s. ABM Knowledge Ltd. v. Commissioner of Cus. (Appeals), Mumbai-III [2019 (27) G.S.T.L. 694 (Tri. – Mum.)];*

(h) *M/s. Hindustan Aeronautics Ltd. v. Commissioner of Customs, Bangalore [2019 (370) E.L.T. 699 (Tri. – Bang.)];*

(i) *Hamid Fahim Ansari v. Commr. of Cus. (Import), Nhava Sheva [2009 (241) E.L.T. 168 (Bom.)];*

(j) *M. Natarajan v. Commissioner of Customs, Tuticorin [2010 (261) E.L.T. 629 (Tri. – Chennai)];*

(k) *Atul D. Sonpal v. Commissioner of Cus. (Acc & Import), Mumbai [2012 (275) E.L.T. 248 (Tri. – Mum.)];*

(l) *Proprietor, Caramel Exports & Imports v. Commr. of Cus., Cochin [2012 (276) E.L.T. 505 (Ker.).*

5. *Per contra*, Ms. K. Komathi, Learned Additional Commissioner (Authorized Representative) appearing for the Revenue, defended the Commissioner. She also relied upon the findings of the lower authorities.

6.1 Section 114AA of the Customs Act, 1962 reads as under:

> *"SECTION [114AA. Penalty for use of false and incorrect material. –*
>
> *If a person 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, shall be liable to a penalty not exceeding five times the value of goods."*

6.2 As per the Section, the confiscation of goods is not necessary, but the only requirement is the knowledge of the person. That means, the appellant in the case on hand against whom the liability is fastened must be aware as to what is happening right from the beginning.

7.1 It is interesting to note a part of the Show Cause Notice dated 01.02.2019, at paragraph 2, which reads as under:

> *"02. ….*
>
> *…On closer examination of the said container,* ***Shri M. Annamalai, Surveyor, representing M/s. Excellmax Surveyors International informed that the container was tampered with by way of replacing the one time rivets of both the handles on the right side of the said container with screw type rivets****. Thereafter, the said Red Sanders logs weighing 15.665 Metric Tons, totally valued at Rs.6,26,60,000/- and the Container number GESU 2299359 valued at Rs.80,000/- were seized under the Customs Act, 1962 vide Mahazar dated 20/08/2018 (RUD-2) and handed over to the CFS authorities for safe custody."*

(Emphasized by me in bold)

7.2 From the above, the Surveyor, who is not an interested party, has categorically opined that the container was in fact tampered with and surprisingly, it is not the case of the Revenue that it was the appellant who was responsible for the tampering with, as indicated by Shri M. Annamalai. It is not even the case of the Revenue that the appellant had acquaintance with the so-called mastermind i.e., Shri Ramesh which prompted the appellant to act in a reckless manner. Nor is it the case of the Revenue that the appellant had knowingly or intentionally signed any statement or document which was false. So also, the Revenue has failed to establish the *mala fides* of the appellant since nowhere has the Revenue alleged that the appellant was aware or had acted deliberately. The above observation by a neutral party throws reasonable suspicion as to the bona fides of the appellant which alone is sufficient to doubt the knowledge or intention of the appellant, in order to attract the mischief under Section 114AA ibid.

8. In view of the above peculiar facts, I do not see any justification to sustain the penalty and accordingly, the impugned order deserves to be set aside. Hence, the impugned order is set aside and the appeal is allowed.

(Order pronounced in the open court on **17.09.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd