

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40323 of 2021

WITH

Customs Cross Objection No. 40202 of 2021

(Arising out of Order-in-Appeal Seaport C.Cus. II No. 83/2021 dated 22.02.2021 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

The Commissioner of Customs

Chennai-IV Commissionerate,

No. 60, Rajaji Salai, Custom House, Chennai – 600 001

: Appellant

VERSUS

Shri B. Dhananjayan

M/s. Thirumalai & Co.,

No. 9, Errabalu Chetty Street,

Chennai – 600 001

: Respondent

APPEARANCE:

Shri R. Rajaraman, Authorized Representative for the Appellant

Shri U. Rajaram, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. 42471 / 2021

DATE OF HEARING: 01.12.2021

DATE OF DECISION: **17.12.2021**

Order :

This appeal is filed by the Revenue against the impugned Order-in-Appeal Seaport C.Cus. II No. 83/2021 dated 22.02.2021 passed by the Commissioner of Customs (Appeals-II), Chennai, wherein the Commissioner (Appeals) has set aside the penalties imposed on the assessee-respondent under Sections 114

and 114AA of the Customs Act, 1962. The assessee-respondent has also filed a cross-appeal supporting the findings in the impugned order.

2. Brief undisputed facts, as could be gathered from the orders of the lower authorities, *inter alia*, are that there was an attempt to export red sanders illegally in the guise of "Polished Granite Slab"; that the Directorate of Revenue Intelligence (DRI), based on the specific intelligence, seized 13.700 MTs of red sanders valued at Rs.5.48 crores from container no. TTNU3093730; and that based on investigations conducted, they found an elaborate conspiracy in an attempt to smuggle red sanders logs. The assessee in this case is a Customs Broker.

3. Accordingly, Show Cause Notices were issued to seven persons connected with this case. The Adjudicating Authority, while passing the Order-in-Original, has imposed penalty of Rs.10,00,000/- each under Sections 114 and 114AA of the Customs Act, 1962 on the assessee-respondent for not verifying the antecedents of the overseas buyers, correctness of the IE Code and identities of their clients or the functioning of their clients at the declared address by using reliable, independent, authentic documents, data or information, thereby turning a blind eye towards blatant misuse of the Customs Brokers Licensing Regulations, 2013. The assessee-respondent herein preferred an appeal before the First Appellate Authority, who vide impugned order allowed the appeal, thereby deleting the penalties imposed, *inter alia* holding that the Revenue had not established *mens rea* to prove that the assessee-respondent herein had directly or indirectly facilitated the smuggling of red sanders; that the Revenue's investigation had not established that the assessee-respondent herein had created false / incorrect documents for smuggling of red sanders and that there

was no evidence to prove that the assessee-respondent herein was involved in the smuggling of red sanders. Aggrieved, the Revenue has filed this appeal before this forum.

4. Heard Shri R. Rajaraman, Learned Assistant Commissioner for the appellant-Revenue and Shri U. Rajaram, Learned Advocate for the assessee.

5. Learned Assistant Commissioner for the appellant seriously contended that the Commissioner (Appeals) had erred in deleting the penalties and further argued *inter alia* that *mens rea* was not *sine qua non* for imposition of penalty under Sections 114 and 114AA *ibid.*, for which proposition he relied on the decision in the cases of:

- (i) *M/s. Oceanic Shipping Agency Pvt. Ltd. v. Collector of Customs, Calcutta* [1996 (82) E.L.T. 57 (Tribunal)];
- (ii) *M/s. Gujarat Travancore Agency v. Commissioner of Income Tax* [1989 (42) E.L.T. 350 (S.C.)]; and
- (iii) *Dinesh Chandra Jamna Das Gandhi v. State of Gujarat* [1989 (40) E.L.T. 230 (S.C.)].

6. *Per contra*, Learned Advocate for the assessee-respondent supported the findings of the First Appellate Authority. He would also refer to the investigation report (paragraph 20 (viii) of the Show Cause Notice) to urge that the mischief had taken place en route Chennai Port from CFS and that the responsibility was with the custodian. He would also rely on the observations at paragraph 18 of the Show Cause Notice wherein a third party i.e., M/s. Excellmax Surveyors International, Chennai has mentioned, after inspection, that "*...the fastener found existing on Customs sealing area was not meeting with the mandatory requirements / non-conformity with customs TIR Regulations*" and "*we certify that the container TTNU3093730 has been Tampered*".

7. Surprisingly, the Revenue, even though has noted the above discrepancies, has never bothered to investigate further, but rather levied the impugned penalties on the assessee without there being any direct or even circumstantial evidence against the assessee. The Hon'ble High Court of Delhi in the case of *M/s. Kunal Travels (Cargo) v. Commissioner of Customs (Import & General), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.) had an occasion to consider a more or less identical issue, for violation of Customs Brokers Licensing Regulations and had *inter alia* ruled that the agent is not an inspector, but rather a processing agent of documents with respect to clearance of goods through Customs House; that the mentioning of IE Code of the exporter in the shipping bill would itself reflect that before the grant of such IE Code, a background check of the importer / exporter had been undertaken by the Customs Authorities and therefore, there could be no scope to doubt the identity of the exporter. Further, it was observed by the Hon'ble High Court that when such Code was mentioned, there was a presumption that an appropriate background check would have been done by the Customs Authorities; there was nothing on record to show that the appellant therein had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported and in the absence of such knowledge, there cannot be any *mens rea* attributed to the appellant or its proprietor.

8. Viewed from this angle, as observed in the impugned order, the Revenue has not made any attempt to attribute the prior knowledge as to the involvement of the assessee-respondent right from the beginning in the alleged illegal import of red sanders. Further, the Revenue has also not established as to which act or omission on the part of the assessee-respondent herein that rendered the goods in question liable for

confiscation, because such act or omission would have to be a deliberate act or omission.

9. In view of the above discussion on the facts of this case, coupled with the ratio of the decision of the Hon'ble Delhi High Court (*supra*), I am of the view that the Revenue has not established its case as regards penalty under Sections 114 and 114AA of the Customs Act, 1962 against the Customs Broker-respondent herein and hence, I do not see any reasons to interfere with the findings of the First Appellate Authority.

10. Accordingly, the Revenue's appeal is dismissed as being devoid of any merits and the cross-appeal is treated as allowed.

(Order pronounced in the open court on **17.12.2021**)

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

Sdd