CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No.40650 of 2014

(Arising out of Order-in-Original No.163/2014-AIR dated 27.02.2014 passed by Commissioner of Customs (Airport & Aircargo), New Custom House, Meenambakkam, Chennai 600 027)

Shri G. Seenivasan **... Appellant**
Proprietor, M/s.G. Seenivasan, CHA,
No.23/11, Ramalingam Street,
Ullagaram,
Chennai 600 091.

VERSUS

The Commissioner of Customs
(Airport & Aircargo) **... Respondent**
New Custom House, Meenambakkam,
Chennai 600 027.

WITH

(2) Customs Appeal No.40940 of 2014

(Arising out of Order-in-Original No.163/2014-AIR dated 27.02.2014 passed by Commissioner of Customs (Airport & Aircargo), New Custom House, Meenambakkam, Chennai 600 027)

Shri S. Murugaram **... Appellant**
No.2/367A, Venkatesapuram,
Vandalur,
Chennai 600 048.

VERSUS

The Commissioner of Customs
(Airport & Aircargo) **... Respondent**
New Custom House, Meenambakkam,
Chennai 600 027.

APPEARANCE :

Shri Gokulraj. L, Advocate, for the Appellant (Sl.No.1)
Ms. Mercy. J, Advocate for the Appellant (Sl.No.2)

Shri Harendra Singh Pal, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)

FINAL ORDER Nos.40379-40380/2024

DATE OF HEARING : 02.04.2024
DATE OF DECISION : 02.04.2024

As both these appeals arise out of common impugned order, they are heard together and disposed of by this common order.

2. Brief facts are that on 20.07.2012 at about 18.30 hours, the Customs Intelligence Officers of Air Cargo Intelligence Unit, Chennai were informed by the officers at the Export Examination, Air India Shed, Air Cargo Complex, Chennai that Air India Security personnel, during the course of regular scanning of the consignments, suspected contraband concealed in cardboard cartons. Thus, the officers of the Customs immediately rushed to the Air India Export Shed and ascertained that 80 cartons of pomegranate fruits covered under Malaysian Airlines Airway Bill dt. 20.07.2012 and Shipping Bill dt. 20.07.2012 was filed by the Custom House Agent (CHA) M/s.G. Seenivasan (Appellant in Appeal No.C/40650/2014). The exporter of the consignment was mentioned in the shipping bill as M/s.A.M. Exporters, Tamil Nadu and the consignee name was mentioned as M/s.V.M.R. Express, Malaysia. The consignment was already examined and Let Export Order given on 20.07.2012. The

consignment of 80 cardboard cartons was called back to the Customs room and was examined in the presence of two independent witnesses. On scrutiny of the cartons, it was seen 20 cartons contained only of pomegranate fruits and other 60 cartons was found to contain white crystalline powder kept concealed in Rexene packets covered by polythene pouches. A test was conducted using the Narcotic Drugs Detection Kit and the White Crystalline powder in the 60 black coloured Rexene packets was found to be Pseudoephedrine and Ketamine Hydrocholoride (29.791 kgs + 4,970 kgs.). The two samples of the impugned items were drawn and a mahazar was drawn for further action under the provisions of the Customs Act, 1962 read with Narcotic Drugs and Psychotropic Substances Act, 1985. The materials were seized and submitted before the Special Court for EC & NDPS Act, Chennai.

3. The Department of Customs took up investigation in the matter. Shri S. Murugaram (Appellant in Appeal C/40940/2014) stated that he was the "G" card holder and was working for appellant Shri G. Seenivasan who is the customs broker. Statements were recorded from S/Sh G. Seenivasan, S. Murugaram, Arivazhagan, V. Radhakrishnan and others. It was revealed that Sri V. Radhakrishnan had handed over the cartons to S. Murugaram who had filed the documents for export of consignment. Sri Murugaram had used the blank signed documents handed over by Sri G. Seenivasan for use in emergencies. Show cause notices were issued to all the appellants proposing to impose penalties alleging abetment

of export of prohibited goods. After due process of law, the original authority imposed penalty of Rs.1 lakh on Sri G. Seenivasan under Section 114 (i) of Customs Act, 1962 and also imposed penalty of Rs.50,000/- on Sri S. Murugaram under Section 114 (i) of Customs Act, 1962. Aggrieved by such order, the appellants are now before the Tribunal.

4. The Ld. Counsel Sri L. Gokulraj appeared and argued for the appellant viz. G. Seenivasan. It is submitted that the appellant had been issued license as a Customs Broker for operating in Chennai. The license was valid upto 2015. Appellant had no knowledge about the contrabands in the cartons and had absolutely no knowledge about the incident unless and until the customs officers proceeded for taking steps.

5. Ld. Counsel adverted to the findings recorded in para-83 of the impugned order. It is pointed out that the adjudicating authority has categorically held that investigation did not reveal anything to establish that appellant had knowledge of the concealment of prohibited drugs in the consignment. In spite of such a finding, the adjudicating authority has imposed a penalty of Rs.1 lakh. It is argued that main allegations levelled against the appellant are for violating provisions under CHALR / CBLR Regulations. The department alleged that the appellant has not verified the antecedents of the exporter and therefore violated Regulation 13 (o) of Custom House Agents Licensing Regulation, 2004 as amended. The license of the appellant was revoked consequent to the proceedings initiated under CHALR 2004.

The appellant is out of business and revocation of license has caused much hardships to the appellant as his livelihood is badly affected.

6. Ld. Counsel submitted that when there is no finding against the appellant that he had knowledge about the attempt to export contraband concealed in the pomegranate cartons, the imposition of penalty on the appellant is not justified and prayed the same may be set aside.

7. The Ld. Counsel Ms. J. Mercy appeared and argued for the appellant viz. Shri S.Murugaram. It is submitted that appellant was the "G" card holder of CHA Shri G. Seenivasan. The documents for export as well as the pomegranate cartons were handed over to him by one Sri V. Radhakrishnan. Shri Radhakrishnan had told him that M/s.A.M. Exporters was his own company with his own IEC code. The appellant had believed these words and accepted the goods as well as the documents for export. The only finding recorded by the original authority in para-84 is that appellant has received the documents and cartons from Sri V. Radhakrishnan and therefore has connived in the attempt to export prohibited goods. The appellant did not have any knowledge that prohibited items were concealed in the cartons. There is nothing brought out from investigation that the appellant had knowledge that cartons contained prohibited goods. It is prayed that the penalties imposed on the appellant may be set aside.

8. The following decisions were relied by both the counsels :

(i) *Jeena and Company Vs CC Bangalore - 2021 (378) ELT 528 (Tri.-Bang.)*

(ii) *Neptune's Cargo Movers Pvt. Ltd. Vs CC (Export) Chennai – 2007 (219) ELT 673 (Tri.-Chennai)*

(iii) *Prime Forwarders Vs CC, Kandla – 2008 (222) ELT 137 (Tri.-Ahmd.)*

(iv) *Sarosh Nagarwala Vs CC (Export), Nhava Sheva – 2017 (358) ELT 542 (Tri.-Mumbai)*

9. Ld. A.R Shri Harendra Singh Pal appeared and argued for the Department. The findings by the adjudicating authority in para-81 were adverted to by the Ld. A.R to submit that it was brought out from investigation that the appellant, G. Seenivasan, had violated the obligations as required under Customs Regulations as he has not verified the details of the actual exporter firm M/s.A.M. Exporters. So also, the appellant accepted the documents related to the exports in the name of M/s.A.M. Exporters, which were signed by Shri V. Radhakrishnan, without any authorization. The appellants have therefore abetted in the export of prohibited goods and penalties imposed require no interference.

10. Heard both sides.

11. The facts narrated above bring out that there was an attempt to export contraband items concealed in cartons containing pomegranate fruits. The master mind behind the incident is Shri V. Radhakrishnan who had handed over the cartons to Sri S. Murugaram. Shri V.

Radhakrishnan had made Sri Murugaram believe that he is the owner of M/s.A.M. Exporters. He had signed the documents on behalf of M/s.A.M. Exporters. However, when the officers of the Department questioned M/s.A.M. Exporters it came to light that the said firm had no knowledge about the export of pomegranate fruits.

12. On perusal of the impugned order at para-83, the original authority has recorded findings for imposing penalty on appellant viz. G. Seenivasan who is the CHA. It has been categorically stated by the adjudicating authority that there is no evidence to show that the appellant G. Seenivasan had knowledge that the cartons contained prohibited items. The relevant findings is reproduced for better appreciation as under :

> "83. I find the contention of Advocate representing the CHA (Custom House Agent)/CB (Customs Broker) that their client had signed the shipping bill in blank which was misused by part time employee and the act of the CHA/CB at best can only be termed as negligence, (however, the fact is that in the present EDI system, CHA could not have signed the shipping in blank and the Advocate may be referring to annexures which are required to be filed in the service centre at the time of fling shipping bill in ICES), is contrary to provisions and a belated justification to cover up the CHA/CB failure to carry out the mandatory due diligence of the prospective exporter. In fact there is a clear obligation on the part of the CHA/CB as per the Regulation 13(0) of the Custom House Agents Licensing Regulation (CHALR), 2004 which inter-alia states, the Custom House Agent shall verify antecedents, correctness of Importer and Exporter Code (IEC) Number, Identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The fact that he had signed in blank copies and delegated his obligation to a third person on monetary consideration despite knowing that his acts are contrary to the

> provisions upon which CHA/CB licence was issued to him by the department. Further such acts of CHA/CB would enable unlawful activities as happened in the instant case, to use the existing system for export/import to meet their dubious objectives in illicit export/import of banned substances. The fact that he was not actively involved in the particular clearance and his part time employee/contractor only involved, do not absolve the CHA of his obligation. **I accept the contention that the investigation do not reveal anything about his knowledge about the concealment of the prohibited drugs**. However, the fact remains that, if the CHA/CB had exercised proper due diligence, at least the identity of the persons behind entire operation would have been clearly known. As seen, in the instant case, the suppliers of the contrabands are not yet identified."

(emphasis supplied)

13. From the above, it can be seen that the investigation has not brought out that appellant Sri G. Seenivasan had any knowledge about the attempt to export the contraband items. In such circumstances, the penalty imposed under Section 114 (i) of the Customs Act, 1962 is not justified.

14. The Ld. A.R has argued that there is violation of provisions of Customs Brokers Licensing Regulations by the appellant G. Seenivasan. The Department had initiated proceedings under the regulations and the license has already been revoked. The appellant has been out of business till today. The proceedings having been initiated under CBLR Regulations for revoking the license and the license having already been revoked, I am of the view that the penalty imposed under Section 114 (i) of the Customs Act, 1962 is not legal and proper, and harsh on the appellant.

15. The next issue to be addressed is the penalty imposed on the appellant viz. S. Murugaram. His involvement in the incident is that he has accepted the cartons from Shri V. Radhakrishnan. However, in the statement it is stated that only because Sri Radhakrishnan made him believe that he is the owner of M/s.A.M. Exporters, the cartons along with documents were accepted by him. Other than this act of accepting the documents and cartons from Sri Radhakrishnan, no positive act stands established against Sri S. Murugaram by the Department. The penalty of Rs.50,000/- has been imposed by the Department on Shri S. Murugaram. Since it is clearly brought out that Sri S. Murugaram had no knowledge that contraband items were concealed in the cartons, I find that the penalty of Rs.50,000/- imposed on him is liable to be set aside.

16. My view is supported by decisions of the Tribunal in the case of *Sarosh Nagarwala* (supra). In the said case the appellant therein had attempted to illegally export prohibited goods viz. Red Sanders. The Tribunal observed that as there was no allegation that the appellant CHA had active involvement in the incident, the penalty imposed under Section 114 (i) of the Customs Act, 1962 was set aside as not sustainable.

17. In the case of *Prime Forwarders* (supra), the penalty imposed on the CHA was set aside observing that the there is nothing to show that the CHA was aware that the contraband was stuffed with Ferro Titanium instead of brass scrap as declared by them. The penalty

imposed under Section 111 and 112 of the Customs Act, 1962 was set aside.

18. In the case of *Neptune's Cargo Movers Pvt. Ltd.* (supra), the facts show that the incident was of attempt to export sandalwood logs. The Tribunal found that the investigation did not bring out any active role of the CHA or their Manager in the unauthorized export of prohibited goods, penalty imposed under Section 114 (i) of Customs Act, 1962 was set aside.

19. In the case of *Jeena and Company* (supra), the Tribunal held that as there is no evidence to show that the Custom House Agent had knowledge of the illegal import of goods, the penalty imposed under Section 112 of the Customs Act, 1962 was set aside.

20. From the analysis made above, I hold that the impugned order to the extent of imposing penalty of Rs.1,00,000/- on the appellant viz. G.Seenivasan and Rs.50,000/- on the appellant viz. S. Murugaram under Section 114 (i) of the Customs Act, 1962 is to be set aside.

The appeals are allowed with consequential relief, if any.

(Order dictated and pronounced in open court)

sd/-

(SULEKHA BEEVI. C.S)
Member (Judicial)

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