REGISTERED / AD

FAX : 011-26108426

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **02/05/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51828/2014-CU[DB]** dated **30/04/2014**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/11/2011	**PORAS GEMS & HANDICRAFTS,** 580, GODHON KA CHOWK, HALDION KA RASTA, JOHRI BAZAR, JAIPUR.
		Name and Address of Respondent
2	C/11/2011	**C.C.E. JAIPUR I** N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

S. C. Kamra & Co.
B-2/210 (Basement),
Safdarjung Enclave,
New Delhi-29

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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13 C.D.R. **14** Office Copy **15** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

COURT NO.II

Customs Appeal No.C/11/2011-CU[DB]

[Arising out of Order-in-Appeal No.30(DKV) Cus/JPR-I/2010 dated 30.09.2010 passed by the Commissioner (Appeals) of Central Excise, Jaipur-I].

M/s. Poras Gems & Handicrafts ...Appellant

Vs.

Commissioner of Customs, Jaipur-I ... Respondent

Present for the Appellant : Shri.S.C. Kamra, Advocate
Shri G.K. Mahajan, Advocate
Present for the Respondent : Shri R. Puri, DR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

Date of Hearing: 04.04.2014
Pronounced on: 30/4/2014.

FINAL ORDER NO. 51828/2014 **DATED: 30.04.2014**

PER: D.N.PANDA

Issue came for determination is as to whether the red sanders handicrafts exported were prohibited goods falling under tariff item **4403 9918** and confiscable as held by Revenue while appellant claims the goods to fall under the tariff heading **97019091** and restricted goods but freely exportable.

2. When the appellant exported 7721 wooden handicraft items made of red sanders covered by the shipping bill No. 479 dated 25.08.2009 and invoice No.01/2009-2010 dated 21.08.2009, those goods were alleged to be concealed under

2221 pieces of wooden handicrafts items made from sandal woods. Accordingly such goods were seized and samples were drawn. Such samples were sent to Central National Herbarium, Botanical Survey of India, Howrah. The examination report came from that institution vide letter reference No.BSI/CNH/AD/Tech./2009 dated 07.10.2009 revealed that the samples were "heartwood of Pterocarpus santalinus L. (Red Sanders)". Customs opined that those goods being made of red sanders were prohibited goods under Export Policy, 2004-09. Sl. No.154 of Chapter 44 of Policy declared red sanders wood in any form, whether raw, processed or unprocessed except value added products of red sanders wood such as extracts, dyes, music instruments, made from red sanders wood procured from legal sources were prohibited goods. The excepted goods were declared restrictive while the other goods are declared as prohibited one.

3. In view of the aforesaid opinion of the customs, adjudication was made confiscating the 7721 red sanders wood items absolutely under section 110 of Customs Act, 1962 (hereinafter referred to as "Act"). That followed imposition of penalty of Rs.50,000/- under section 114 and 25,000/- under section 114 AA of the said Act.

4. The appellant being aggrieved by the order of adjudication above, went in appeal. Ld. Commissioner (Appeals) confirmed the confiscation but reduced the penalty to Rs.25,000/- and Rs.15,000/- as against the imposition of Rs.50,000/- and Rs.25,000/- respectively in adjudication.

5. Being unsuccessful before leaned Commissioner (Appeal) the appellant again came to Tribunal through this appeal. Ld. Counsel for the appellant submitted that the red sanders wood items meant for export were handicrafts and such handicrafts are not prohibited goods. Therefore, confiscation was unwarranted. The goods meant for export being falling under Sl.No.154 of the Export Policy 2004-2009 and attracting Sl.No.155, there shall not be any confiscation nor also any penalty imposable. If at all there is confiscation, that shall be subjected to imposition of redemption fine, following judgement of Hon'ble High Court of Delhi in the case of Commr. of Cus. & C. Excise, Delhi-IV vs. Achiever International reported in 2012 (286) ELT 180 (Del.)

6. It was further argued by ld. Counsel that DGFT has issued a Notification No.54 (RE 2013/2009/2014 on 3rd December 2013 amending the Export Policy for export of value added products of red sanders wood. Accordingly, the entry relating to the goods in question meant for export appeared under Sl.No.155 of the notification declaring handicrafts made from red sanders woods procured from legal sources as exportable goods. Thus appellant had not exported prohibited goods but only restricted goods were meant for export not liable to confiscation nor any consequence of penalty under law.

7. Per contra Revenue submits that when the red Sanders wood items were concealed under the sandal wood items that clearly show the intention of the appellant. It is also clear that the appellant has special knowledge of export of prohibited

Anand

goods. Had the appellant not having such exclusive knowledge, it would not have concealed the goods. Therefore, adjudication should neither be disturbed nor appellate order interfered.

7. Heard both sides and perused the record.

8. There is no difference to the factual aspect that the appellant was attempting to export 7721 red sander wood items concealed under the Sandal wood handicrafts. Such concealment proves apprehension and fear of the appellant as to the prohibition of export thereof. When the goods concealed were found to be red sander goods and proved from the botanical report to be so, the appellant came with the plea that the goods fall under tariff heading 9701 9091, while Revenue claimed the goods to fall under Customs Tariff heading (CTH) 4403 9918. The Entry 9701 9091 specifies the goods as "domestic article of wood (hand decorated)". Such items are freely exportable. But the item of the goods presented before us in the course of hearing do not appear to be hand decorated domestic article but specific goods of the description of handcrafts made of red sanders wood. Therefore, the goods attempted to be exported shall be out of the ambit of entry 9701 9091.

9. In view of the plea of the Revenue that the goods admitted to be exported falls under CTH 4403 9918 it would be proper to reproduce the item No. 154 of the Export Policy 2004-09 which deals with prohibited goods and the goods excluded as mentioned under sl. No. 155 of the policy. The exclusion appearing under

Sl. No. 155 are restricted goods while other goods mentioned in Part (a) of sl. No. 154 are prohibited goods.

S.No.	Tariff Item	Unit	Item Description	Export Policy	Nature of Restriction
154	44039918	M3	(a) Red Sanders wood in any form, whether raw, processed or unprocessed **except at (b) below**	Prohibited	Not permitted to be exported
	44079990				
155	32030000 38051010 92021000 92029000 92030010 92030090 92041000 92042000 92060000 92081000 92082000 92099200 92099300 92099900	Kg	(b) Value added products of Red Sanders wood such as Extracts, Dyes, Musical from Red Sanders wood procured from legal sources	Restricted	Exports permitted under licence subject to following documentation Application for export licences……..

10. There was a plea raised by the appellant that the CTH 4407 9990 having undergone amendment the handcrafts are declared as restrictive goods. It may be stated that 2004-09 Export Policy when came to an end, the 2009-14 Export Policy emerged. Govt. Considered by DGFT Notification No. 54 (CE-2013)/ 2009-2014 dated 03.12.2013 to cover value added products of red sanders including handcrafts made from red sander goods procured form legal source in column 4 against sl. No. 189 of Chapter 44 of schedule 2 of the ITC (HC) Classification of Export and import to be exportable items. The intention of the Legislature to cover handcraft was in the Export Policy of 2009-14 but not in 2004-09 Export Policy. In the present case export made by shipping bill No. 479 dated 25-08-2009 was covered by 2004-09 Policy. Therefore, appellant's plea

that the benefit of above notification dated 03.12.2013 is available to it is of no avail. Added to that, the grant of Notification is only permissible only from the date of notification but not retrospectively as has been held by Apex Court in the case of Sunwin Technosolutions Pvt. Ltd. vs. Commr. of Central Excise, Ranchi reported in 2011 (21) STR 97 (SC)

11. Appellants plea that the goods seized and confiscated is redeemable under section 125 of the Customs Act 1962. There is no scope to grant option at this stage for redemption when the authority below had not granted such option taking a view in the light of aforesaid discussion. The citation relied by the appellant in the case of Commr. of Customs and Central Excise, Delhi-IV vs. Achiever International reported in 2012 (286) E.L.T. 180 (Del.) is of no avail when concealment of the goods attempted to be exported was found under the cover of sandal wood items and Revenue was defrauded. Therefore, any benefit granted to the appellant under Exim policy of 2009-14 shall be mockery. Accordingly the appeal is dismissed upholding the order of the ld. Commissioner (Appeals).

[Pronounced in the open Court on 30/4/2014]

29.4.2014
(MANMOHAN SINGH)
TECHNICAL MEMBER

29-4-2014
(D.N.PANDA)
JUDICIAL MEMBER

Anita

pronounced
30/4/2014
30/4/2014