CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 52100 of 2019

(Arising out of order in original No. 03/2019 dated 25.04.2019 passed by the Commissioner of Customs, ICD TKD, New Delhi).

Alip Kumar Das **Appellant**
R/o RZ-H-26, 1st floor
Gali No. 7, Raghu Nagar
New Delhi-110045.

VERSUS

Commissioner of Customs **Respondent**
Inland Container Depot
Tughlakabad
New Delhi-110020.

APPEARANCE:

Shri M. N. Dubey & Sh. P. Pathak, Advocates for the appellant
Shri C. K. Jain, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER No.50765/2020

DATE OF HEARING: 14.02.2020
DATE OF DECISION: 14.09.2020

ANIL CHOUDHARY:

The appellant Shri Alip Kumar Das is in the appeal against the impugned order-in-original whereby he has been imposed penalty of Rs. 5 lakhs under Section 114(iii) and Rs. 10 lakhs under Section 114AA of the Customs Act.

2. Brief facts of the case are that the appellant have been working as an Accountant in the office of one Shri Sajjan Kumar since 2010. The main responsibility of the appellant were - follow up with bank for ensuring payment to local buyers and receiving Bank Realisation Certificate (BRC) in respect of realisation of goods exported. The appellant was employed at a monthly salary of Rs. 15,000/-.

3. On intelligence received by the Department, that some exporters based in Delhi are indulging in the export of carpets, readymade garments, fabrics etc. to Jeddah, Malaysia, South Africa, Afghanistan etc. at highly over invoiced values and thereby availing undue export incentives drawback/ DEPB/ focus products scheme, etc.

4. It appeared that Shri Sajjan Kumar was one of the key person(s) in such fraudulent transaction alongwith others namely M/s Indus Chemitex Limited and M/s S.R. Goyal & Sons (HUF). The modus operandi employed was to procure goods from various places within India and to export the same by inflating the value several times. Two sets of invoices bearing the same serial number and date were prepared. The invoices having inflated value were produced before Indian Customs Authorities and the other parallel invoice of actual value were sent to the consignee / buyers.

5. Searches were also conducted on 24.08.2011 at various places including the residence of Shri Sajjan Kumar and also at the residence of this appellant. Shri Sajjan Kumar in his statement recorded on

25.08.2011 admitted overvaluation of exports. Further, demand draft amounting to Rs. 1.43 crores were submitted by him in partial discharge of undue duty drawback /DEPB benefits availed.

6. Further, live consignments for export of M/s Indus Chemitex Limited vide Shipping Bill No. 5048048 dated 18.08.2011 were also detained and examined in presence of Shri Shamsher Singh, representative samples were drawn for investigation.

7. Statement of Shri Rajeev Goyal was recorded on 24.08.2011 who stated that he knew Shri Sajjan Kumar for the last three years. Since last five to six months he was having business dealing with Shri Sajjan Kumar and have been exporting ladies scarves, shawls and carpets etc. from his firm M/s S.R. Goyal & Sons (HUF) and M/s Indus Chemitex Limited. The business of export was financed by Shri Sajjan Kumar who was also looking after the export work. He was not aware of that who was the CHA engaged for export clearance. He also stated that he was not aware about the rates at which these goods were exported, nor aware about the export benefits earned by his firm/ company. In his further statement Shri Rajeev Goyal stated that though he was the owner of M/s Indus Chemitex Limited and M/s S. R. Goyal & Sons (HUF), he allowed Shri Sajjan Kumar to run his business from his companies/firm. Shri Sajjan Kumar is involved in the fraudulent export by over invoicing to the extent of 92% to 140%, that SIIB, Delhi has registered a case against the company run by Shri Sajjan Kumar like M/s Durga Apparels Pvt. Limited, M/s Designer Innovation, M/s Om Shreem Ananda Foods (P) Limited, he

allowed him (Shri Sajjan Kumar) to run his business activities from his firm/ company. On being asked about the bank statement for the period 06.07.2011 to 25.08.2011 of M/s Indus Chemitex Limited, Axis Bank Janakpuri, huge transactions to the tune of Rs. 29.18 crore have been made. He stated that he does not have any knowledge of this transaction, only Shri Sajjan Kumar was aware about the transactions and he can only explain. He had given blank cheques to Shri Sajjan Kumar. Further, they had authorised Shri Sajjan Kumar to sign all the documents required by the Customs Department.

8. Shri Sajjan Kumar had stated in his statement that Shri Rajeev Goyal of his friend was having ownership and control of M/s Indus Chemitex Limited and M/s S. R. Goyal & Sons (HUF). It was agreed between him and Shri Goyal that he would export the goods in the name of the two companies and accordingly exported twelve containers during the last six months. The drawback of M/s S. R. Goyal & Sons (HUF) was around Rs. 1 crore. Further, stated that he looked after whole work of two companies. He has been exporting after overvaluing the goods so that he could claim maximum DEPB or drawback. All the business was managed and controlled by him and Shri Rajeev Goyal has nothing to do with this work.

9. The name of this appellant and one Shri Shamsher Singh, both employees of Shri Sajjan Kumar came up in the course of investigation. The statement of this appellant was recorded on 24.08.2011 wherein he inter alia stated that he worked as an Accountant for the various companies /firm owned / controlled by Shri

Sajjan Kumar. All these companies or firms were based in Delhi. He looked after the work such as preparation of invoices, packing list and bank related work and other work as directed by Shri Sajjan Kumar. That he used to put unit rates in the invoices prepared for export consignment. That he was working with Shri Sajjan Kumar since January, 2010. In his further statement dated 25.08.2011, wherein officers also opened his e-mail account and in his presence for investigation purpose duly signed by him. He further stated that Shri Sajjan Kumar is claiming fraudulent export benefit by over invoicing and claimed undue export benefits. Revenue again on 26.08.2011, down loaded e-mail correspondence of this appellant and other employee Shri Shamsher Singh and printed the same duly signed by the concerned persons. In his further statement recorded on 29.09.2013 Shri Alip Kumar Das stated that he was an employee of M/s Durga Apparels Pvt. Limited and looking after the work of preparing export invoices, packing lists, banking as directed by Shri Sajjan Kumar, after preparation of invoice cum packing list of export consignments he used to give these documents to Shri Shamsher Singh for clearance of the export consignment. The value declared on the export invoices were as per direction of Shri Sajjan Kumar. The certified of origin for export was being obtained from Delhi Chamber of Commerce, and for this purpose they were submitting invoices to the DCC. That the export invoices submitted for the export clearance were signed by Shri Shamsher Singh. The invoices were submitted to DCC for certificate of origin singed by Shri Najib Memon also employee of Shri Sajjan Kumar.

10. Accordingly, on completion of investigation, show cause notice dated 23.08.2012 was issued proposing to reject the declared value and to re-determine the goods exported at the lower value in respect of 23 shipping bills exported from ICD, Tuglakabad, Delhi under DEPB claim with further proposal to revise the amount of DEPB and to scale down from Rs. 80,40,442/- to Rs. 5,76,760/-. It further proposed the goods for confiscation.

11. Similarly, for another set of 23 shipping bills declared value to be rejected and to re-determine at the lower value and accordingly with further proposal to revise the DEPB from Rs. 1,18,39,934/- to Rs. 10,50,154/- with proposal for confiscation. Similarly, further proposal with respect to some more shipping bills both of M/s Indus Chemitex Limited and M/s S. R. Goyal & Sons (HUF) and also penalties proposed on Shri Rajeev Goyal, Shri Siyaram Goyal and Shri Sajjan Kumar.

12. This appellant was also made a co-noticee alongwith other employee Shri Shamsher Singh, calling upon to show cause why penalty under Section 114(iii) and Section 114AA be not imposed for the alleged act of omission and commission with allegation of abetting the fraudulent export of goods.

13. The show cause notice was adjudicated vide the impugned order-in-original whereby as regards this appellant, has been held as follows:-

> "(v) Shri Alip Kumar Das was looking after the work such as preparation of invoices, packing lists for the export and bank related work and other

> work as directed by Shri Sajjan Kumar. He was well aware about the unit rate of these goods as he was putting these rates on the invoices as per the direction of Shri Sajjan Kumar. He was also regularly interacting with Aan Impex General Trading LLC, Dubai on e-mail. He was fully aware that Shri Sajjan Kumar was involved in fraudulent over-valued export of fabrics and garment to claim undue benefits of duty drawback/ DEPB. Therefore, Shri Alip Kumar Das connived with Shri Sajjan Kumar in fraudulent export done by M/s Indus Chemitex Limited & M/s S. R. Goyal & Sons (HUF) and has himself prepared fraudulent documents for effecting export of such goods. In view of this Shri Alip Kumar Das has rendered himself liable to penalty under Section 114(iii) and 114AA of the Customs Act, 1962."

and accordingly penalties of Rs. 5 lakhs under Section 114(iii) and Rs. 10 lakhs under Section 114AA as indicated above have been imposed on this appellant.

14. Being aggrieved, this appellant is in appeal before this Tribunal amongst other the following grounds-

That penalty has been imposed in mechanical manner as the appellant have discharged duty as an employee of Shri Sajjan Kumar and admittedly have worked as per direction, and received his monthly salary of Rs. 15,000/-. Admittedly, appellant has not received any other additional incentives or remuneration and thus the charge of aiding and abetting is not established. It is a matter of record that the appellant did not participate in the process of export of the goods nor presented or signed any document. There is no corroborative evidence that the appellant knowingly and consciously violated the provisions of the Customs Act.

15. Evidently, the appellant have got no role in the purchase of goods by Shri Sajjan Kumar, neither he is involved in any

negotiations with any of the parties in India or outside India. The appellant was simply involved in keeping their accounts, doing the bank work and preparing invoices and packing list as per the direction of Shri Sajjan Kumar, which is an admitted fact. Admittedly, the appellant is not participating in the clearance of the fraudulent export by the said Shri Sajjan Kumar. Though the e-mail account of the appellant is used, all the correspondence have been done at the instance of Shri Sajjan Kumar. That there is no allegation in the show cause notice of any personal gain made by the appellant, same and axcept receiving his salary as an Accountant.

16. Section 114(iii) provides for penalty on any person who, in relation to any goods, does or omits to do any act, which act or omission would render such goods liable to confiscation under section 113 or abets the doing or omission of such an act, shall be liable to penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is greater. Admittedly, in the facts of the present case, there is no attempt on the part of the appellant to export goods improperly. Thus, the penalty under Section 114(iii) is not attracted.

17. Section 114AA provides for penalty 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.

18. Admittedly, appellant had not presented any documents before the Customs for the purpose of export. Hence, the penalty mentioned in the aforementioned section is not attracted and thus the penalty is liable to deleted. Accordingly, learned Counsel for the appellant prays for allowing the appeal with consequential benefits.

19. Learned Authorised Representative for the Revenue Shri C. K. Jain relies on the impugned order. He further stated that admittedly the appellant as an employee of Shri Sajjan Kumar have been preparing documents at the instance and direction of Shri Sajjan Kumar, for the purpose of business including export. Accordingly, he prays for dismissing the appeal.

20. Having considered the rival contentions and the facts on record, we find that the appellant as an employee carried out the instructions and directions of his employer. Further, the appellant had not filed any documents before the Customs Department. Thus, the allegation of attempt to export goods improperly is not established. Accordingly, we set aside the penalty imposed under Section 114(iii) of the Act.

21. As regards penalty under Section 114AA of the Act, we find that the allegation of aiding and abetting is not proved. However, we find that the appellant have knowingly made documents like invoices and packing list for export and had further knowledge that two sets of parallel invoices are prepared one for the purpose of buyer in the foreign country for receiving the export proceeds, and the other

invoice having inflated value for receiving the duty drawback benefits. Accordingly, we find that the appellant is liable for penalty under section 114AA. Further, as the appellant have acted only in his capacity as an employee and has not made any extra gain over salary of Rs. 15,000/- p.m. We reduce the penalty to Rs. 1,12,500/- (being the amount already paid by way of pre-deposit). Thus, the appeal is allowed in part, as indicated above.

(Pronounced on 14.09.2020)

(Anil Choudhary)
Member (Judicial)

(C. J. Mathew)
Member (Technical)

Pant