CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. II
(BY VIDEO CONFERENCING)

Custom Appeal No. 50098 of 2020-SM

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/Prev./NCH/676/2019-20 dated 18.10.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

Mayur Ranjan **Appellant**
S/o Shri Manoranjan Upadhyay
Bangali Para, Rajgir,
Nalanda, Bihar-803116

Versus

Joint Commissioner of Customs (Preventive) **Respondent**
New Delhi
New Customs House, Near IGI Airport,
New Delhi – 110037.

Appearance

Shri Aakarsh Srivastava, Advocate - for the appellant

Shri Sunil Kumar, AR - for the respondent

CORAM:HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: 28.8.2020
Date of Decision: 16.09.2020

Final Order No. 50839/2020

Anil Choudhary:

The appellant Shri Mayur Ranjan is working as an interpreter in Chinese language located at Delhi. He is in appeal against the impugned order in appeal confirming penalty of Rs. 5 lakhs under Section 114 of the Customs Act.

2. The brief facts are, department received a specific intelligence that one syndicate is involved in illegal

storage and export of red sanders, a prohibited item. The intelligence indicated that one Shri Anil Gadodia was procuring red sanders from South India and storing in various godowns at Delhi and thereafter reselling the same. He was also supplying red sanders to one Shri Lin, a person of Chinese origin. In a joint operation at Delhi and Gandhidham resulted recovery of 14.25 MTs of red sanders, found concealed behind crates of marble slabs at Mundra CFS under shipping bill, after the containers were called back and were opened in presence of independent witnesses under panchnama dated 28.9.2013. The shipping bills were filed by M/s Eurro Exports, Jaipur. The export of red sanders is prohibited from India, at the same time the goods have been mis-declared. The goods under the five shipping bills all dated 23-25 September, 2013 were detained on the reasonable belief that the goods were liable to confiscation. Thereafter search was also conducted in the residential cum business premises of Shri Anil Gadodia on 28.9.2013 wood weighing 75.808 Kg. of brown colour and 23.03 Kgs of red colour valued at Rs. 98,838/- was found and detained. Indian currency of Rs. 14.50 lakhs was detained from the premises. Additional cash amount of Rs. 10 lakhs received on the same day from the person named Shri Shiv Kumar, during the course of search was also seized.

3. Further during the course of investigations statement of various persons were recorded by DRI, the details of same are as under:

(i) Shri Rameshwar Sharma, Proprietor, Euro Exports-statements dated 28.9.2013 and 29.9.2013 recorded at Jaipur.

(ii) Shri Anil Gadodia, Proprietor of M/s Jiwan International, a dealer in sandalwood chips, powder and red sanders-statements dated 28.9.2013, 29.9.2013 and 15.7.2014.

(iii) Shri Mayur Ranjan @ Vijay, a Chinese interpreter and a tour guide working freelance, statements dated 28.9.2013 and 29.9.2013.

(iv) Shri Daljeet Singh working with a Cargo Moving Company-statements dated 28.9.2013, 29.9.2013 and 18.7.2014.

(v) Mr. Yodying @ Chan, a permanent Bangkok resident, statements dated 28.9.2013 and 29.9.2013.

(vi) Shri Shiv Kumar engaged in the business of wooden mala, statement dated 28.9.2013.

(vii) Shri Kamal Negi a freight forwarder – statements dated 29.9.2013, 19.3.2014 and 19.8.2014.

(viii) Shri Saurabh Chopra owner of freight forwarding company, M/s Krishna Logistics-statement dated 29.9.2013 and 31.7.2014.

(ix) Shri Vinod Saini, CHA-statement dated 14.11.2013.

4. Pursuant to investigation, show cause notice dated 28 August, 2014 was issued as it appeared to Revenue that Shri Anil Gadodia is the king pin of the syndicate involved in smuggling of red sanders, Shri Yodying @ Chan, Shri Saurav Chopra, Shri Daljeet Singh and Shri Kamal Negi and the present appellant Shri Mayur Ranjan procured red sanders and also stores the same in his godown at Delhi. Thereafter Shri Mayur Ranjan supplied red sanders to Shri Yodying for export by way of mis-declaration through other persons like Shri Daljeet Singh, Shri Kamal Negi to M/s Eurro Export, Jaipur. It was further revealed to Revenue that Shri Anil Gadodia had supplied 14.24 MTs of red sanders in September, 2013 to Shri Rameshwar Sharma of M/s Eurro Exports, Jaipur,

which were found concealed in the aforementioned containers at Mundra, CFS. Further, Shri Anil Gadodia had also dispatched red sanders to the godown of Shri Daljeet Singh at Chandar Vihar, New Delhi, which was also seized on 28.9.2013 was found packed for illegal export to Vietnam/Singapore. It further appeared that red sanders found in godwon of Shri Daljeet Singh had been supplied through this appellant. This appellant also having @ name Mayur Ranjan alias Vijay appeared to be engaged or associated with the smuggling syndicate in export of red sanders from the following facts:

(i) Shri Mayur Ranjan @ Vijay working as Chinese interpreter came in contact with Mr. Lin of China and on his direction contacted Shri Yodying, a Thai National. Shri Yodying who informed him that they were in the business of export of red sanders wood to South East Asian countries, mainly to Hong Kong and engaged him for Rs. 35,000/- per month to contact the exporters and explain them their plan. He met Mr. Yodying @ Chan and Mr. Anil Gadodia on various occasions to discuss, plan and execute the illegal export of red sanders for monetary benefits.

(ii) He was introduced with other members of smuggling syndicate i.e. Shri Anil Gadodia and Shri Saurabh Chopra by Shri Yodying, to negotiate with Shri Saurabh Chopra for rates for arranging fraudulent export of red sanders and Shri Anil Gadodia for supply of illegal red sanders for fraudulent exports;

(iii) On being informed by Shri Saurabh Chopra @ Saurav around Nov-Dec. 2012 (inadvertently typed as Nov. Dec. 2013 in the statement), he has arranged the godown in Todapur, Inderpuri, New Delhi and on being asked to supply red sanders wood for export, Shri Mayur Ranjan contacted Mr. Anil Gadodia for supplying the consignment of 6 MT at Shri Saurabh Chopra's godown. The said quantity of 6 MTs of red sanders was subsequently exported to Hong Kong using some export firm;

(iv) He arranged one more consignment of 12 MT of red sanders from Shri Anil Gadodia which was also exported by Mr. Saurav Chopra using some export firm;

(v) He arranged one more consignment of 8.02 MT of red sanders from Shri Anil Gadodia which was to be exported through some export firm;

(vi) He arranged one more consignment of 18 MT of red sanders from Shri Anil Gadodia at the godown located at Bavana, taken on rent by Mr. Saurav Chopra for export. The said quantity of red sanders was fraudulently exported using IEC of M/s Tulika Appliances to M/s RICHUP Corporation, Hong Kong, which was subsequently seized by Hong Kong Customs;

(vii) At the behest of Mr. Lin and Shri Yo dying he contacted Shri Rameshwar Sharma of M/s Eurro Exports of Jaipur for fraudulent export of red sanders; he negotiated the deal and arranged supply of 10 MTs of red sanders in July, 2013, 13 MTs of red sanders in August, 2013 and 14.25 MTs of red sanders in September, 2013. He not only arranged the supply of red sanders but also negotiated the deal near Chandwaji on Jaipur - Delhi National Highway for which he accompanied Shri Anil Gadodia and Shri Yodying to Jaipur. Thus, he had arranged supply of 37.25 MTs of red sanders to Shri Rameshwar Sharma from Shri Anil Gadodia at the behest of Mr. Lin and Shri Yodying, out of which 23 MTs was fraudulently exported and 14.25 MTs of red sanders was seized at Mundra on 28.9.2013, for which a separate Show Cause Notice has been issued to him and others;

(viii) He was in regular contact with Shri Anil Gadodia, Shri Yodying and Shri Rameshwar as evident from the call detail records. His involvement in illegal smuggling of red sanders is further corroborated by recovery of export documents of M/s Eurro Exports of past consignments during the search conducted at his residence on 28.9.2013, as detailed in panchnama dated 28.9.2013;

(ix) Shri Mayur Ranjan @ Vijay knew that red sanders is a prohibited item for export under the Foreign Trade Policy of India and he has knowingly committed the offence for monetary consideration:

Thus, he was an active member of the syndicate, who knowingly associated himself in smuggling for monetary gains. The above is substantiated from Mayur Ranjan @ Vijay's own admission in statements tendered on 28.9.2013 and 29.9.2013 under Section 108 of the Customs Act, 1962; statements of Shri Anil Gadodia's tendered on 28.9.2013 and 29.9.2013; statements of Mrs. Yodying tendered on 28.9.2013 and 29.9.2013; statements of Shri Rameshwar Sharma dated 28.9.2013 and 29.9.2013; statement of Shri Saurabh Chopra dated 29.9.2013 and 31.7.2014; statement of Shri Daljeet dated 28.9.2013 and 29.9.2013; Shri Kamal Negi's statement dated 29.9.2013, 19.3.2014 and 19.8.2014 and call details of Shri Anil Gadodia with Shri Vijay and Yodying.

5. Learned Counsel for the appellant points out from the common Order-in-Original No. DLI/CUSTM/PREV/AR/JC/40/2017 dated 31.1.2017 against eight persons including this appellant, Shri Anil Gadodia had filed Appeal No. 52231 of 2019 against order of confiscation and penalty. This Tribunal vide Final Order No. 50471/2020 dated 28 February, 2020 allowing the appeal held as under:

> "9. In the present case except statements there is no evidence to show that the goods allegedly kept with intention to attempt the export thereof. No peace of document which show that the red senders stored were meant for export it is undisputed fact that the appellant is a licensed trader of red senders who purchase the red senders in Government auction and trade within the country, therefore, by any stretch of imagination it cannot be construed that the goods laying with the appellant were attempted to the export.
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> 10. In our view, in order to establish that there is attempt to export it is necessary that either the goods have entered into port area or if it is outside port area there should be some documents such as invoice/shipping bill/LR for transportation of goods to the port etc. In the present case goods were lying much away from the port area i.e. the goods were lying at Delhi whereas it was alleged that the goods supposed to be exported from Mundra port. In absence of any such evidence and with facts that the appellant is engaged in the trading of red senders domestically, there is no support of any evidence, in the allegation of the Revenue that the goods red senders attempted to export as prohibited goods. The appellant also submitted that even in case of goods found loaded in the container at port, the appellant was exonerated from any alleged wrong doing. It was also submitted

> that the same statements were relied upon in the case of seizure of four containers and in the present case. Though the said case has a persuasive value but in the present case we have given independent finding as above that the statements firstly retracted and secondly without cross examination cannot be used as evidence. We are therefore of the view that the entire case made out only on the basis of statements which we held that the same do not have evidentiary value. The Revenue could not establish a case of attempt to export the prohibited goods. Therefore entire action is illegal and without authority of law.
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> 11. As per our above discussion, the confiscation of red senders, cash seized during the investigation are not sustainable, hence, the confiscation is set aside. Consequently the penalty imposed on the appellant is also set aside. The appeal is allowed. "

6. Learned Counsel further submits that from the aforesaid order, it can be seen that the case has been made on the basis of statements, most of which have been retracted including of the appellant Mayur Ranjan herein, who made the statements on 28.9.2013 and 29.9.2013 and then retracted on 11.10.2013. The appellant again retracted his statement on 23.10.2013 and told the correct version before Ld CMM, Patiala House Court, Delhi that he was compelled to sign on blank pages due to threats and torture of DRI officials. Statements have been retracted by Shri Rameshwar Sharma (Proprietor of M/s Euro Exports), Shri Anil Gadodia, Daljeet Singh, Yodying @ Chan, Kamal Negi, Saurabh Chopra and the appellant.

7. Learned Counsel further urges that there is no allegation in the entire show cause notice of any remuneration received by this appellant indicating towards collusion or abetment in the allegation of smuggling. This appellant was simply acting as an interpreter and was being paid accordingly for such services. Neither there is any recovery of any disproportionate assets indicating receipt of remuneration or commission in support of the allegation of Revenue. Thus, the allegation of Revenue of abetment is based on assumption and presumption. Thus, the penalty imposed on this appellant is fit to be set aside. Learned Counsel relies on the following rulings:

(i) Naresh Kumar Mittal Vs. CC – 2003 (161) ELT 851 (Tri.-Kolkata);

(ii) CCE Vs. Birla Textiles Mills – 2010 (257) ELT 146 (Tri.-Del.);

(iii) CCE Vs. Birla Textile Mills – 2015 (325) ELT 651 (Del.)

8. Learned Authorised Representative for Revenue had raised a preliminary objection as regards jurisdiction of Single member Bench to hear this appeal as the value of goods confiscated vide common order in original is more than Rs. 50 lakhs whereas as per the power conferred on the Single member under Section 129C (4) to dispose of any case where the value of goods confiscated without

option having been given to the owner of the goods to pay a fine in lieu of confiscation or where the fine or penalty involved does not exceed Rs. 50 lakhs. He further relies on the ruling of Hon'ble Allhabad High Court in the case of **CCE & ST, Lucknow Vs. AIMR Jewels Pvt. Ltd. - 2017 (6) GSTL 155 (All)**. Opposing the preliminary objection, learned Counsel for the appellant states that in the present appeal penalty of Rs. 5 lakhs is under challenge. This appellant has no manner of concern with the goods confiscated. He further relies on the ruling of this Tribunal in the case of **Naresh Kumar Mittal Vs. CC – 2003 (161) ELT 851 (Tri.-Kolkata),** wherein the goods confiscated was more than the amount of Rs. 10 lakhs, but as Naresh Kumar Mittal was only challenging the penalty imposed upon him. It was held that the jurisdiction lies with the Single member. Reliance was also placed on the ruling in the case of **CCE Vs. Birla Textiles Mills - 2010 (257) ELT 146 (Tri.-Del.),** wherein Birla Textile Mills was allowed refund vide two separate orders, of 10 lakhs and Rs. 1 lakh which was disposed of by a common order in appeal, against which Revenue filed one appeal before the Tribunal. This Tribunal treated the same as two appeals, of one Rs. 10 lakhs and another of Rs. 1 lakh and not as one appeal of

Rs. 11 lakhs. Accordingly held that jurisdiction lies with Single Member bench. On further appeal the said order was confirmed by the Delhi High Court reported as 2015 (325) 651 (Del.)

9. As in the present appeal only penalty of Rs. 5 lakhs is involved and there is no confiscation in the hands of this appellant, I hold that the jurisdiction lies with the Single member Bench and accordingly the appeal is taken up for final disposal.

10. Heard the learned Authorised Representative and also perused the written submissions filed by him subsequent to the date of hearing. As regards the ground taken by the appellant that the show cause notice only proposes confiscation of the seized goods and there is no proposal to impose penalty and hence the order imposing penalty is bad. Learned Authorised Representative points out from para 34.3 of the show cause notice, it is mentioned that this appellant knowingly engaged in negotiation and illegal supply of red sanders for fraudulent exports and actively associated himself in smuggling of red sanders to Shri Lin of China with the help of other members of the syndicate. Thus for the said act of omissions and commissions, is liable to penalty

under Section 114 of the Customs Act, 1962. However, in para 35 of the show cause notice wherein the party put to notice are required to finally show cause as to why goods, currency etc. not be confiscated under Section 113 read with Section 121 of the Custom Act for violation of Section 11 of the Customs Act read with Appendix-II of CITES. Thus for the error of not mentioning the proposal to impose penalty again in para 35, does not render imposition of penalty bad, as the show cause notice is required to be read as a whole. Single para cannot be read in isolation for drawing a conclusion. Thus the allegation made in para 34.3 to impose penalty is sufficient. He further rely on the ruling of Hon'ble Supreme Court in the case of **J.K. Steel Ltd. Vs. Union of India - 1978 (2) ELT J 355 (SC)** and also Delhi High Court in **Commissioner of Service Tax Vs. ITC Ltd. – 2014 (36) STR 481 (Del.)** which have been approved by Hon'ble Supreme Court reported as 2015 (38) STR J 362 (SC). We further state from the facts and findings on record, evidently this appellant was an active member of the smuggling syndicate of red sanders. He further states that in the course of search of residential premises of this appellant, some documents in connection with export were found. This appellant also accepted in the course of statement recorded under Section 108 of his involvement in the smuggling. However, subsequently retracted his statement. Under such circumstances retracted statement is good evidence in view of the corroborative statement of the other persons. Further call detail records indicate that this appellant was in direct contact with the other members of the syndicate. Further reliance was placed in the case of **Romesh Chandra Mehta – 1999 (110) ELT 324 (SC)** and **Kalvert Food India Ltd. – 2011 (270) ELT 643 (SC).**

11. Appellant have filed rejoinder to the written submissions filed by Revenue reiterating his submissions and grounds of appeal. Further stating that the appellant had getting salary as the remuneration for the services as interpreter. So far call detail records are concerned, appellant was also required to travel from place to place for his job as an interpreter. He further points out that the appellant has retracted his statement before the learned CMM, Patiala House, Delhi at the first opportunity, within two weeks of the recording of the statement. Thus, the retraction is proper and effective. Further the ruling relied upon by the Revenue are not applicable in the facts and circumstances of the present case. Further,

stated that in view of the finding of the Division Bench of this Tribunal, with respect to the same show cause notice that there is no case of smuggling made out as neither the goods or red sanders were seized from the Customs area, nor such goods were brought near the Customs area for the purpose of export, and further recorded that the trading in red sanders within the territory is not prohibited.

12. Having considered the rival contentions, relying on the finding of the Division Bench of this Tribunal with respect to the common show cause notice and common order-in-original, that there is no evidence to show that the goods were allegedly kept with intention to export or were attempted to be exported, no case of confiscation is made out. It was also observed by the Division Bench that so far the seizure of red sanders at Mundra CFS is concerned, there is a separate show cause notice, not concerned with the seizure at Delhi. Division Bench also held that the entire case of Revenue is made out mainly based on the retracted statements, which have held no evidentiary value. It was also held that Revenue could not establish the case of attempt to export of prohibited goods and accordingly, held that the confiscation of red

sanders and cash is not sustainable and consequential penalty imposed was also set aside.

13. Accordingly, I hold that no case is made out against this appellant also as the confiscation itself have been set aside. I also hold that no case of abetment is made out against this appellant in the facts and circumstances. Accordingly, the appeal is allowed and the penalty imposed under Section 114 is set aside.

(Pronounced in Court on 16.09.2020)

(Anil Choudhary)
Member (Judicial)

RM