CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 52154 of 2019-SM

(Arising out of order in appeal No. CC (A) /CUS/D-1/ACC-Export/NCH/211-214/2019-20 dated 27/29.05.2019 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.)

M/s Info Capital Logistic Co. **Appellant**
Q-10, Phase-2, Near Royal Oak
International School, New Palam Vihar
Gurugram-122017, Haryana.

VERSUS

Commissioner of Customs **Respondent**
Inland Container Depot
New Customs House, Near IGI Airport
New Delhi-110037.

WITH

Customs Appeal No. 52159 of 2019-SM

(Arising out of order in appeal No. CC (A)/CUS/D-1/ACC-Export/NCH/211-214/2019-20 dated 27/29.05.2019 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.)

M/s Blue Bell Logistics Pvt. Ltd., **Appellant**
Flat Nos. 241 & 242,
Som Dutt Chamber-2
Bhikaji Cama Place, New Delhi.

VERSUS

Commissioner of Customs **Respondent**
Inland Container Depot
New Customs House
Near IGI Airport, New Delhi-110037.

WITH

Customs Appeal No. 52161 of 2019-SM

(Arising out of order in appeal No. CC (A) CUS/D-I/ACC-EXPORT/NCH/211-214/ 2019-20 dated 27.05.2019/29.05.2019 passed by the Commissioner of Customs (Appeals), New Delhi).

M/s CSB Logistics **Appellant**
144F, II Floor, Mayur Vihar, Phase-I
Delhi-110091.

VERSUS

Commissioner of Customs **Respondent**
Inland Container Depot
New Customs House, Near IGI Airport
New Delhi-110037.

AND

Customs Appeal No. 52234 of 2019-SM

(Arising out of order in appeal No. CC (A) CUS/D-I/ACC-EXPORT/NCH/211-214/ 2019-20 dated 27.05.2019/29.05.2019 passed by the Commissioner of Customs (Appeals), New Delhi).

M/s Cargo Specialist Inc. **Appellant**
D-56, Retreat Apartment
Plot No. 20, I. P. Extension
Patparganj, Delhi-110092.

VERSUS

Commissioner of Customs **Respondent**
New Customs House
Near IGI Airport, New Delhi.

APPEARANCE:

Sh. Siddhartha Yadav & Sh. Somesh Arora, Advocates for the appellants
Sh. Y. Singh, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NOS. 51797 – 51800/2021

DATE OF HEARING: 07.04.2021
DATE OF DECISION: 08.09.2021

ANIL CHOUDHARY:

Brief facts of the case are that one M/s Fashion World – exporter, filed airway shipping bill No. 5004801 dated 15.09.2014 through their Customs Broker – M/s CSB Logistics. The goods were declared as Clutch Plates for vehicles, packed in four wooden crates having gross weight of 1271 kgs. (250 pcs. contained in each wooden crate). The declared value of the goods was Rs. 2,16,000/-.

2. On examination by the Customs, only 80 pcs. of clutch plates were found in the wooden crates and rest were wooden logs. On further examination by the Wildlife Officer, the wooden logs were found to be red sanders, the export of which is prohibited. Accordingly, the goods were seized.

3. On examination and enquiry by the Customs revealed that i) one Reyaz Ahmed alias Rajbir alias Dharmendra on behalf of M/s Fashion World (IEC holder) contacted Shri Praveen Pant of M/s Cargo Specialist Inc. (a freight forwarder) for export of the seized consignment; ii) Shri Praveen Pant without verifying the genuineness of the exporter or the documents and their credentials, handed over the consignment to another forwarder - M/s Info Capital Logistic Ltd., iii) who again forwarded the consignment to another forwarder namely - M/s Blue Bell Logistics, without verifying the genuineness of the exporter of the consignment and its documents; iv) Thereafter, M/s Blue Bell Logistics further handed over the documents etc. relating to the consignment for export, including filing of Bill of Entry, to the Customs Broker – M/s CSB Logistics.

4. Shri Charan Dass, Prop. of M/s CSB Logistics, (the Customs Broker) in his statement dated 18.09.2014 stated that he was looking after the aforesaid shipment given to him by M/s Blue Bell Logistics – freight Forwarder (their associate). He has also deputed three of his staff members who sit permanently in the premises of M/s Blue Bell Logistics, alongwith their staff members. They handled all customs formalities. On 16.09.2014 at about 8 p.m., he was informed by his

staff Shri Lekhraj, that small pieces of wooden logs of red sanders had been found in the shipment, on examination by the Customs.

5. Shri Aneesh Kumar, Director of M/s Blue Bell Logistics stated that they had two types of clients; (i) who contact them directly; and (ii) who come to them through sub agents. They complete the KYC formalities only in the case of direct clients and for the other cases, this work was done by the sub agent. They were mainly working with only two sub agents namely; (i) M/s Info Capital Logistics Co.; and (ii) Force Logistics Pvt. Limited. They have prepared shipping Bill No. 5004801, as the said consignment was received through M/s Info Capital Logistics Co. - freight forwarder. Therefore, all the necessary formalities were done by them. They had sent the concerned consignment directly to cargo terminal.

6. In his statement Shri Tushar Ghosh - the Business Developer of M/s Info Capital Logistics Co. (ICL for short) Stated that like sub-agents / agents, they used to get export/ import shipments from M/s Cargo Specialist Inc. and handed over the shipments to M/s Blue Bell Logistics for further processing. The exporter - M/s Fashion World, booked their shipment through M/s Cargo Specialist. All the documents like the invoices, packing list etc. were sent by M/s Cargo Specialist Inc., to them through their e-mail id. Thereafter, they forwarded the same to M/s Blue Bell Logistics Pvt. Limited by e-mail, for preparing checklist and draft Airway Bill, and once the draft airway bill and checklist were provided, he forwarded it to the customer – M/s Cargo Specialist for approval. After receiving confirmation to go

ahead, they again instructed M/s Blue Bell Logistics to file the shipping bill.

7. Thus, from the facts and as a result of investigation it appeared to Revenue that-

(a) The consignment belongs to a person namely Riyaz Ahmed of M/s Fashion World. A person namely Sh. Rajbir of M/s Fashion World contacted Shri Praveen Pant of M/s Cargo Specialist somewhere in August, 2014 for export of a consignment of clutch - plates to Dubai. In relation to this consignment, Sh. Pant also spoke to Sh. Riyaz Ahmed;

(b) That the mobile numbers of these persons are 7827734517 (Reyaz Ahmed) and 8468958068 (Rajbir). Both the mobile numbers were found switched off;

(c) That Shri Pant of Cargo Specialist Inc., has dealt with about 9 consignments of this party during the last two months.

(d) That these consignments were destined to Dubai, Germany and Malaysia;

(e) That the firm M/s Cargo Specialist Inc., of Sh. Pant is a non IATA, and he provides a single window facility from his firm for all services starting from freight forwarding to customs clearance of export consignments;

(f) That he used to outsource the business to other freight forwarders/CHAs, thereby taking profit margin;

(g) That Sh. Pant was a contact of Sh. Tushar Ghosh of ICL and had forwarded all the 9 consignments (including the current consignment), to M/s ICL for freight forwarding and customs clearance;

(h) That Sh. Tushar Ghosh came into contact with Sh. Pant through a common friend;

(i) That M/s ICL is also a non IATA and their main business is providing complete logistic solutions to their clients with main focus on sea freight and customs clearance thereof. However, they also deal in air freight which they do through outsourcing of the work on profit margin basis;

(j) That M/s ICL have outsourced all these 9 consignments to M/s Blue Bell Logistics Pvt. Limited, which again is a non IATA company. They have their associate vendor M/s CSB Logistics - the CHA firm. They used to do freight forwarding to CSB Logistics on margin basis, and used to get customs clearance through CSB Logistics.

(k) That none of the persons mentioned above have ever met with either Reyaz Ahmed or Rajbir or any other person of M/s Fashion World.

(l) That the first contact person in the chain is Shri Praveen Pant of M/s Cargo Specialist Inc., who has stated that he has spoken to these persons namely Reyaz Ahmed or Rajbir on phone only, and has never met them. On enquiry about the payments related to clearance of past shipments, it has been informed by Praveen Pant that he has received only part payment and that too on four occasions. That on three occasions he received the payment in his bank account No. 31528865863 (SBI Patparganj) directly and on one occasion he received the payment in cash through one person. On being asked about the details of this person, he stated that he could not recall his details. The bank statements have been provided by Pant which confirmed his statement as true.

(m) There is a common fact in the statement of all person involved, that all the consignments were sent by the client directly to airport, and services of transportation from Freight Forwarder/ CHA have not been availed of. However, M/s Blue Bell Logistics who used to provide warehouse and transportation services to their clients, have stated that on two of the occasions they happened to see the consignment, despite the fact that these consignments were sent directly to the airport. As per the statement, on one of the occasions the shipment was sent late and could not be exported and thus was kept in their warehouse overnight before sending for export the next day. On another occasion, the packing was found to be damaged by termite, and the same was sent back by them. It has been confirmed by M/s Blue Bell Logistics that the packing of the consignment on both the earlier occasions was identical to the packing in the current consignment, which they happened to see during the course of examination by customs.

(n) The details of vehicle number, driver's name and driver's mobile number, who carried the goods to airport in the instant case has been found identical at all ends i.e. from Sh. Pant, Sh. Tushar, Sh. Aneesh, Sh. Charan Dass and Sh. Shivan Sarna.

(o) Shri Shivan Sarna employee (H card) of CHA has also confirmed that he had dealt with all the 9 consignments of the party and he arranged to unload the shipments at cargo terminal from the vehicles which carried the shipments. Shri Sarna also confirmed that packing of all the earlier consignments were identical to the packing of the instant consignment.

(p) The impugned goods i.e. Red Sanders/ Wooden Logs were knowingly and intentionally mis-declared and attempted to be exported under the guise of clutch plates for vehicles.

7. On the basis of current account No. 913020052045498, as declared by the party in their IEC code, a letter to branch manager, Axis Bank, Plot No. 104, Pocket 27, Sector-24, Rohini, New Delhi was issued with a request to furnish the latest status of the exporter's account and account statement, whether the account is active or dormant, in operative or closed. It was also requested to provide all the addresses alongwith KYC details as submitted by the exporter at the time of opening of account in their bank. The Axis Bank vide their letter 19.03.2015 furnished the copy of documents as submitted by the proprietor of M/s Fashion world viz. Shri Dharmendra Kumar, and further intimated that the account is active at present, having zero balance.

8. During investigation of the case, it is observed that the photo of Shri Dharmendra Kumar as shown in KYC form is the same as also submitted in two other cases being investigated by this office viz (i) M/s S. L. Industries, 515-16, Rithala Industrial Area, New Delhi (S/Bill No. 5175544 dated 24.09.2014) and (ii) M/s Socomec India Pvt. ltd., 756, Pace City-II, Sector 37, Gurgaon (Haryana) (Shipping Bill No. 596072 dated 10.11.2014). However, the photo of Mr. Dharmendra

Kumar as given by him at the time of opening of their bank account in Axis Bank branch of Sector-24, Rohini, New Delhi was found different from, with the photo as found on KYC form as furnished by him to Custom House Agent/ Forwarder. In these two cases also, the party attempted to export 'red senders', the prohibited items as per CITES, but mis-declared them as (i) clutch plates, and (ii) clutch parts for car (automobile) in their shipping bill, as filed by them for export of the same. From the foregoing, it appears that the mastermind (person) in all these case including the present one is the same. Despite efforts made by this office, the mastermind in this activity of attempted export of prohibited goods, could not be traced.

9. Further it appeared to Revenue that there have been breach of the Foreign Trade Policy 2009-2014. Further, the export of wood and wood products in the form of logs, timber, stamps, roots, bark, powder, flakes, dust and charcoal other than sawn timber, etc. is prohibited. Further, export of red sanders/ red sandal wood from India has been suspended. Further, the appellant have violated the provisions of the Customs Act under Sections 50(2), 110 and 113(d), shipping bill of Export (Form) Regulations, 1991, Regulation 13 of the CHALR, 2004 (obligation of customs house agent), thus, liable to penalty. Further, the red sanders alongwith goods used to conceal, are also liable for confiscation.

10. These appeals arise from the common investigation, vide show cause notice No. 37/JC/SIIB/ACE/2015 dated 30.03.2015, wherein the appellants were required to show cause alongwith the aforementioned M/s Fashion World, proposing to confiscate the seized

goods. Further, proposal to impose penalty on the appellants including M/s Fashion World under Section 114 of the Customs Act. The show cause notice was contested by the appellants save and except M/s Fashion World. The red sanders about 1004 kg. valued at Rs. 10,04,000/- was absolutely confiscated under Section 113(d), (h) and (i) of the Customs Act. The clutch plates were also absolutely confiscated under Section 119 of the Act. Further penalties were imposed as follows:-

Sl. No.	Name of firm	Amount of penalty (Rs.)	Under Section
1	M/s Fashion World	10,00,000/-	114, 132 135A
2	M/s CSB Logistics	8,00,000/-	114
3	M/s Cargo Specialist Inc.	8,00,000/-	114
4	M/s Info Capital Logistic Co.	3,00,000/-	114
5	M/s Blue Bell Logistics Pvt. Limited	8,00,000/-	114

11. Being aggrieved by the order-in-original passed by the Additional Commissioner, the appellants herein preferred appeals before the learned Commissioner (Appeals), who vide the impugned order have recorded the finding as follows:-

(a) **<u>M/s CSB Logistics</u>** - This appellant was responsible as the Customs Broker under Regulation 11 of CBLR, 2013 to verify antecedent and correctness of import export code, identity of the client and existence of their client at the declared address by using reliable independent authentic documents, data or information. It is a matter of record that the appellant never met the exporters/ owner of M/s Fashion World of the alleged consignment. Thus, this appellant failed to verify the antecedent of the exporter and or fulfilling the KYC norm under Regulation 11 of the CBLR, 2013.

Further, this appellant had earlier also handled similar consignment of the same exporter, as much as eight times, but had failed to verify or comply with the KYC norms. Thus, the Adjudicating Authority is justified in his observation – had the customs broker – M/s CSB Logistic, verified the address and antecedents of the exporter, then the alleged export of prohibited goods could have been avoided. Thus, this appellant have acted in conscious disregard of his obligations, resulting in the attempted export of prohibited goods.

12. As a custom Broker deals with the documents and details of export/ import consignment for clearance, and is the representative of their client – importer or exporter, before the customs. Accordingly (CSB Logistics), are liable for penal action under Section 114 of the Act.

13. **Other appellants** - So far the other appellants are concerned, the learned Commissioner (Appeals) has observed that M/s Cargo Specialist is a freight forwarder who have without verification forwarded the documents of the consignment to the other appellant M/s Info Capital Logistic Co. who have also further forwarded to another freight forwarder - M/s Blue Bell Logistics Pvt. Limited without verifying the genuineness of the exporter, its documents and their credentials. M/s Blue Bell Logistics further handed over the

consignments to the CHA firm - M/s CSB Logistics. All these three acted like a post office – freight forwarder.

14. It is a matter of record that Shri Praveen Pant of M/s Cargo Specialist had dealt with similar eight other consignments of the same exporter - M/s Fashion World during the period August, 2014 to September, 2014, but he had never met the said Reyaz Ahmed alias Dharmendra. Thus, M/s Cargo Specialist has failed to do the basic verification of their client to facilitate the export of the prohibited goods. Thus, all these three appellants have participated and/or colluded in the export of prohibited goods on profit margin basis. All these three have acted in conscious disregard of their obligation as required from a businessman of ordinary prudence.

15. Accordingly, learned Commissioner (Appeals) had dismissed the appeals of these appellants also and upheld the order in original. Also, observed that the quantum of penalty imposed is just and proper as Section 114 of the Act provides mandatory penalty equal to value of goods and maximum upto three times the value of the offending goods. He also placed reliance on the ruling reported as **2018 (362) ELT 320** and **2014 (302) ELT 161**.

16. Being aggrieved, these appellants are before this Tribunal on the following grounds:-

(A) **<u>For Cargo Specialist Inc.</u>** - Learned Counsel Shri Somesh Arora appeared for the appellant and Shri Siddhartha Yadav appeared for other three appellants, have reiterated the grounds before the learned Commissioner (Appeals), which are as under:-

Delay: Final hearing was held on 16.08.2018 and impugned order was passed on 29.05.2019 i.e. after more than 9 months – violative of CBEC instructions and settled case law. Cryptic order without dealing with submissions. Knowledge of offending goods is inbuilt requirement in provision for imposition of penalty under Section 112, 114 & 114AA. Also places reliance on Manoj Kumar Nagar and others vs. CC, New Delhi (SM-Delhi) – Final order Nos. 52763-52765 dated 09.08.2018;

Also on **2016 (332) ELT 278** (Del.) **Commissioner of Customs (Import & General), New Delhi vs. Buhariwal Logistics**, where it was held that CHA cannot be held liable to penalty for failure to supervise his employees in absence of evidence to show that he was aware of their acts. It was more so as no statement was recorded on behalf of CHA and he was not confronted with statement of his employee, G-card holder, involved in illegal import. If CHA had acted in breach of Regulation 19(8) of Customs House Agents Licensing Regulations, 2004, separate action could be initiated against them under those regulations. However, that by itself could not justify penalty under Sections 112 and 114AA of Customs Act, 1962 in absence of knowledge of illegal acts of agent/ employee being attributed to them. No exculpatory statement of any one and no conscious knowledge. Even CHA is not supposed to verify every aspect of business of a client like an inspector and this appellant was mere business provider to him and had provided all KYC documents as required by CHA. Learned Counsel has placed reliance in the case of **Poonia and Bros. Vs. CC (P) Jaipur – 2019 ELT 1074 (T. LB).**

(B) Learned Counsel Shri Sidharth Yadav appears for the other three appellants. He urges that the appellant had obtained the Adhar Card copy, Copy of Bank Account, Copy of PAN Card and IEC Code issued under the EXIM Rules and Regulations. He further states that these appellants have only done work on normal remuneration basis as a freight forwarder. There is no evidence on record that these appellants were having knowledge of prohibited nature of goods for export. Further, there is no evidence brought on record that these appellants were also participating in the profit made from the attempted export of prohibited goods, other than their normal remuneration as a freight forwarder or as a Customs broker. He further relies on the statement recorded from Mr. Tushar Ghosh employee of M/s Info Capital Logistic Co., wherein it is categorically stated that the appellant have only received normal remuneration and nothing more than that. Further, reliance on the statement of Shri Charan Dass, Prop. of Custom Broker firm - M/s CSB Logistics, who stated that the appellant CHA firm has complied their obligation under Rule 11 of Customs House Agents Licensing Regulations, 2004 and there is no change in the Customs Broker Regulation, 2014 as the provision are para materia. It is further stated that as per the admitted facts the CB - M/s CSB Logistic was not having any knowledge of the malpractice if any, by the exporter. Further, there is no case of

Revenue that any employee of the Custom Broker firm were hand in glove with the exporter.

Learned Counsel Shri Siddhartha Yadav further urges that shipments sent earlier were auto parts (Clutch Plates, to Dubai, Germany and Malaysia, IEC and address proof were given after verification and KYC complied as required by CHA –M/s CSB Logistics. He was getting documents through an intermediary Mr. Rajbir, who rang him up about consignment on 13.09.2014 and sent papers in advance on e-mail with hard copies to be given through transporter. That freight forwarding for impugned consignment was as per their practice, outsourced to M/s Info Capital Logistics, who in turn used services of M/s Blue Bell Logistics and that CHA engaged was M/s CSB Logistics.

17. Learned Authorised Representative for the Revenue relies on the ruling of the Hon'ble Supreme Court in the case of **Commissioner of Customs vs. K.M. Ganatra & Co.-2016 (332) ELT 15 (SC)**.

18. Opposing the appeals, learned Authorised Representative appearing for the Revenue relies on the impugned order. He further states that it is evident that Shri Praveen Pant of M/s Cargo Specialist have done the work for M/s Fashion World with open eyes for remuneration, and thus he is a conspirator. Similarly, the other appellants are also rightly imposed penalty as there is admittedly negligence on their part, amounting to collusion in the attempted export of red sanders, a prohibited goods.

19. Having considered the rival contentions, I find that the appellant M/s CSB Logistic (Custom Broker) was duty bound as a Custom Broker under the Regulation of 2014 to verify antecedents and genuineness of the importer exporter code, IEC number, identity of their client and functioning of their client at the declared address by using reliable, independent and authentic documents/ data/ information. As per the facts on record, the Custom Broker did not meet the exporter or the owner of the said Fashion World or the master mind Reyaz Ahmed alias Rajbir alias Dharmendra, the person who originated the goods for exporter, which were prohibited. Thus, their negligence have facilitated the mischievous exporter in attempting to export prohibited goods. Further, they have similarly facilitated the export of about eight consignments in the recent past and there is reasonable belief that such consignments also had prohibited goods.

20. So far the other three appellants are concerned, who are freight forwarder, evidently they have acted as the facilitator of export of prohibited goods. They have acted as an agent of the Custom Broker –M/s CSB Logistics, directly or indirectly. Thus, these three appellants were also duty bound to observe the KYC norms and to assist the Custom Broker in complying with his obligation under Customs Broker Licensing Regulation, 2013.

21. However, as per the evidence on record, these appellants have not made any profit and/or participated in any profit in the export of prohibited goods. Rather these persons have acted on normal

remuneration basis as a freight forwarder. Accordingly, I allow these appeals in part, reducing the quantum of penalty as under:-

Sl. No.	Name of firm /(Co.)/ Appellant	Amount of penalty imposed under Section 114 as per impugned order (Rs.)	Modified reduced penalty u/s 114 (Rs.)	Under Section
1	M/s CSB Logistics	8,00,000/-	1,00,000/- (one lakh only)	114
2	M/s Cargo Specialist Inc.,	8,00,000/-	80,000/- (eighty thousand only)	114
3	M/s Info Capital Logistic Co.	3,00,000/-	30,000/- (thirty thousand only)	114
4	M/s Blue Bell Logistics (P) Ltd.,	8,00,000/-	50,000/- (Fifty thousand only)	114

22. For statistical purposes, the appeals are partly allowed.

(Pronounced on 08.09.2021).

(Anil Choudhary)
Member (Judicial)

Pant