# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

**Customs Appeal No. 52427 of 2019 [SM]**

[Arising out of Order-in-Appeal No. CC(A)CUS/D-I/EXP-NCH/231-232/2019-20 dated 04.06.2019 passed by the Commissioner of Customs (Appeals), New Delhi]

**Sh. Vir Bahadur,** **...Appellant**
s/o Sh. Raghu Raj Singh,
r/o H-136, Saurabh Vihar,
Jait Pur, Badar Pur,
New Delhi-110044

*VERSUS*

**Commissioner of Customs (General),**
**New Delhi** **...Respondent**
NCH, IGI Airpot,
New Delhi

**APPEARANCE:**

Shri Awneet Singh, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorized Representative for the Respondent

**CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING/DECISION: **05.09.2022**

**FINAL ORDER No. 50861 / 2022**

**DR. RACHNA GUPTA**

Present appeal has been filed to assail the Order-in-Appeal No. 231-232/2019-20 dated 04.06.2019. The facts relevant for the impugned adjudication, in brief are as follows:

1.1 M/s. Phenomenal Logistics/the CHA filed a Shipping Bill No. 5960727 dated 10.11.2014 for goods being exported to Hong Kong declaring the consignment to have contain wooden pallets/clutch plate for car. However, the CHA vide its letter dated 12.11.2014 had requested for withdrawal of the shipment. Pursuant thereto that the consignment of the said shipment and the goods therein got examined by the Customs Officers on 13.11.2014. It was found that the declared 2 wooden pallets were actually the pieces of wooden logs cut in different shape and sizes and were appearing as the pieces of red sanders. Those wood pieces were found concealed beneath worn out clutch plates. On the said suspicion, the Wild life Inspector was called for examination of those wood pieces. He, after examining them, reported that those were the wooden logs of red sanders which is covered under Appendix-II to the CITES (Convention on International Trade in Endangered Species) for which a valid export permit was required. No permit was found with the CHA/exporter. Accordingly, the goods were detained by the Customs alleging those to have been mis-declared and prohibited as such were liable for confiscation under provisions of Section 113 of Customs Act, 1962. Accordingly, those were placed under seizure vide Panchnama dated 10.12.2014. The seized goods were covered under jute bags and were handed over to the custodian i.e CELEBI vide Supurdginama dated 10.12.2014 for safe custody.

2. During investigation, statements of all concern are as follows were recorded :

| S.No. | Name | Date of Statement |
|---|---|---|
| 1. | Shri Naveen Sharma, Proprietor of M/s. | 21.11.2014 |

| | | |
|---|---|---|
| | Phenomenal Logistics | |
| 2. | Shri Yogesh Suri, G-card Holder | 01.12.2014 |
| 3. | Shri Vir Bahadur, the Appellant | 05.12.2014 |
| 4. | Shri Anil Kumar Pandey, who requested appellant to facilitate the impugned export | 02.12.2014 |
| 5. | Sri Anand Kumar Jha, who represented to be Export Executive of the Exporter | 08.12.2014 |
| 6. | Shri Gagan Bindra, HOD Supply, M/s. Socomec India Pvt. Ltd., the exporter | 09.12.2014 |

Statements of Shri Anil Kumar Pandey and Ahmed Ali who initiated the submission of the impugned shipping bill, however, could not be recorded.

3. Based on the above said statements and the documents collected, department formed an opinion that all those as named above have failed to ensure the compliance of KYC norms and to produce the exporter Shri Ahmed Ali as such it appears that they have conspired to attempt the export of prohibited red sanders. Accordingly, vide the Show Cause Notice No. 5598 of 08.06.2015 all, as are named above except Shri Gagan Bindra, were proposed

to be imposed with the penalties under Section 114 of the Customs Act, 1962. The declared value of seized consignment was proposed to be rejected and the consignment was proposed to be confiscated under Section 113 of the Customs Act, 1962. This proposal was initially confirmed vide Order-in-Original No. 46/2016 dated 05.10.2016. The appeal thereof has been rejected vide order under challenge.

4. I have heard Shri Awneet Singh, learned Counsel for the appellant and Shri Mahesh Bhardwaj, learned Authorized Representative for the department.

5. Learned Counsel for the appellant has submitted that Appellant, Shri Vir Bahadur has been an office boy to the CHA other than M/s. Phenomenal Logistics as such his involvement has wrongly been confirmed. There was no duty upon the appellant to verify the KYC norms and the other documents and even to produce the exporter Shri Ahmed Ali before the authorities. It is impressed upon that except one line allegation against the appellant about providing documents to Shri Yogesh Suri, G-Card Holder of the CHA, there is no other allegation in the entire show cause notice against him. The Adjudicating Authorities therefore have committed an error while imposing penalty upon the appellant under Section 114 of Customs Act, 1962, that too for the same amount of Rs. 2 Lacs as was imposed upon all others who were directly involved in the impugned export. It is also mentioned that Shri Ahmed Ali, the master mind for the impugned export was never known to the appellant. Appellant had never met him nor

ever he met Shri Anand Shankar Jha. It is also submitted that the only involvement of appellant is that he was known to Shri Anil Kumar Pandey and Shri Yogesh Suri for couple of years and because of that relationship and with an intention to earn some commission out of an export for which his company was not called upon that he joined the transaction of the impugned export. It is impressed upon that there is no element to prove the bad intent of the appellant. The imposition of penalty upon him is therefore prayed to be set aside and appeal is prayed to be allowed.

6. While rebutting the submissions learned DR has laid emphasis upon the findings of the Commissioner (Appeals) in para 6.2 of the order under challenge. It is submitted that it was appellant only who forwarded the all requisite documents required for the impugned export to the G-Card holder of the CHA who processed the impugned shipping bill. Learned DR further impressed upon that the presence of the appellant on 13.11.2014 when the goods were examined by the Customs Officers speaks about the involvement of the appellant in the impugned export of prohibited red sanders. Hence, there is not infirmity when the penalty upon the appellant has also been imposed along with all others who were apparently and admittedly involved in the impugned export. It is also submitted that no other co-noticee has challenged the impugned order. Appeal is accordingly prayed to be dimissed.

7. After hearing the rival contentions and perusing the record, I observe and hold as follows:

7.1 The findings which have been made the basis of imposition of penalty upon the appellant in the order under challenge are apparent in Para 6.2 thereof. It reads as follows:

> *"6.2 Further, I find that Sh. Naveen Sharma prop. of CHA firm M/s Phenomenal Logistics submitted in his statement that Sh. Yogesh Suri had informed him about the exporter. He also accepts that Sh. Yogesh Suri had informed that the said consignment was forwarded by one known to him i.e Sh. Vir Bahadur which was forwarded to him by Sh. Anand Shankar Jha. Further, he stated that he had directed Sh. Yogesh Suri to comply with the provisions of KYC and ensure the genuineness of the customer. It appeared that Sh. Naveen Sharma being the prop. of CHA firm, had the sole responsibility to ensure that genuine work is done in his firm following the due process of verifying the genuineness of the exporter. Further he never asked Sh Yogesh Suri about the actual exporter of the consignment. It appeared that Shri Yogesh Suri, Shri Vir Bahadur, Shri Anil Pandey and Shri Anand Shankar Jha along with Shri Ahmad Ali, were working together in this illegal export. They were hand in gloves with one another. Each of them was working in an intricate chain to smuggle contraband. Further none of them ever tried to know the whereabouts of Shri Ahmad Ali who was the main person behind this illegal export of prohibited goods. Everyone in this chain i.e. Shri Yogesh Suri, Shri Vir Bahadur, Shri Anil Pandey and Shri Anand Shankar Jha was aware of the procedure of export as they were either working with or worked with a CHA firm. Therefore, it is hard to accept that they accepted to do this Job viz, export goods in good faith or as it was recommended by their friends. They acted in cahoot according to a game plan. Thus they had mala fide intentions and hence, they attempted to facilitate the illegal export through their act of omission and commission. Shri Yogesh Suri's failure to follow the*

> *proper procedure for exporting the consignment and failure to comply with KYC norms as per CHA regulation aided/ abetted in the illegal export of prohibited goods."*

8. I further observe following as the apparent admissions of the appellant himself:

(i) He knew Shri Anil Kumar Pandey, the freight forwarder in ICT TKD for the last 2 to 3 years.

(ii) He only told Shri Anil Kumar Pandey about having the shipment of auto parts for export destined to Hongkong.

(iii) Appellant requested Shri Anil Kumar Pandey for the clearance of **his** shipment.

(iv) Appellant only provided all KYC details, invoice, packing list and SD form in original of the exporter i.e. M/s. Socomec India Pvt. Ltd.

(v) Appellant referred those documents to Shri Yogesh Suri, the G-card holder of the CHA firm, Phenomenal Logistics, who details with Air Cargo.

In addition to all above admissions Shri Vir Bahadur had clearly admitted that on 12.11.2014 itself Shri Yogesh Suri told him about the detecting red sanders in the consignment which otherwise was declared as the consignment of auto parts in the export papers handed over by the appellant to said Shri Yogesh Suri. I also observe crucial facts which are very much apparent and cannot be denied. Firstly, that the appellant was very much present on 13.11.2014 when the consignment was got checked by the Customs Officers. Secondly, that the day before 13.11.2014 Shri Yogesh Suri had forwarded a request for withdrawal of the consignment dated 12.11.2014. The aforesaid findings of adjudicating authorities below, when checked under the lens of these observed admissions of the appellant and these undisputed facts, there appears no infirmity in the findings as have been arrived at by Commissioner (Appeals) in Para 6.2 of the order under challenge.

9. Since, there is no denial that the goods which were concealed in the impugned export consignment were the prohibited goods and under the garb of mis-declaration were tried to being smuggled. It is Section 123 of the Customs Act, 1962 which comes into picture. The said section makes it clear that where any goods which are seized under the reasonable belief of being smuggled, the burden of proof shifts upon the exporter to prove that the goods were not the smuggled goods. Hence, in this case it was the burden of the appellant to produce the positive evidence proving his innocence beyond reasonable doubts. But I observe that the appellant has even failed to prove the genesis of the documents in his hand. Shri Ahmed Ali, the exporter and Shri Anil Kumar Pandey, working for the said exporter though were mentioned to be the persons from whom the documents were acquired but the appellant made no efforts to produce any of them before the competent authorities. It has been brought to the notice that Shri Ahmed Ali is wanted in several other cases for similar kind of illegal acts. Accordingly, I hold that the appellant has failed to discharge the said burden.

10. Further, I observe that penalty upon him has been imposed under Section 114 of the Customs Act, 1962. The said Section

opens up with word "any person", the intention of legislature becomes absolutely clear that the imposition of penalty for any such act or omission which would render any good liable for confiscation is not confined merely to the concerned exporter or anyone working under him or to the CHA including anyone working under him. Intention of legislature is that it can be any other person howsoever distantly relevant to the exporter or the CHA firm if is found involved in any such act which may render the goods to be exported/imported liable for confiscation, shall be liable to penalty under Section 114of the Customs Act.

11. Keeping in view the said clear intent of the legislature and the above discussed involvement of the present appellant, I do not find any infirmity in the order under challenge where merely a penalty has been imposed upon the present appellant. Order accordingly stands upheld. Appeal stands rejected.

[Dictated and pronounced in the open Court]

**(DR. RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

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