

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 50198 OF 2021

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/EXPORT/ICD/TKD/912/2020-21 dated 23/09/2020 passed by Commissioner of Customs (Export), Inland Container Depot, Tughlakabad, New Delhi.]

M/s Jayant Vikram @ Vikram Bihari, **...Appellant**
D-8, Pocket – 3, DD Flats, Bindapur,
New Delhi.

Versus

Commissioner of Customs (Export), **...Respondent**
Inland Container Depot, Tughlakabad,
New Delhi.

**WITH
CUSTOMS APPEAL NO. 50199 OF 2021**

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/EXPORT/ICD/TKD/918/2020-21 dated 24/09/2020 passed by Commissioner of Customs (Export), Inland Container Depot, Tughlakabad, New Delhi.]

M/s Jayant Vikram @ Vikram Bihari, **...Appellant**
D-8, Pocket – 3, DD Flats, Bindapur,
New Delhi.

Versus

Commissioner of Customs (Export), **...Respondent**
Inland Container Depot, Tughlakabad,
New Delhi.

APPEARANCE:

None for the appellant.

Shri Nagendra Yadav, Authorized Representative for the
Department

**AND
CUSTOMS APPEAL NO. 50306 OF 2021**

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/EXPORT/ICD/TKD/915/2020-21 dated 24/09/2020 passed by Commissioner of Customs (Export), Inland Container Depot, Tughlakabad, New Delhi.]

M/s Jayant Vikram @ Vikram Bihari, **...Appellant**
D-8, Pocket – 3, DD Flats, Bindapur,
New Delhi.

Versus

Commissioner of Customs (Export), **...Respondent**
Inland Container Depot, Tughlakabad,
New Delhi.

APPEARANCE:

None for the appellant.
Shri Rakesh Kumar, Authorized Representative for the Department

CORAM:

HON’BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON’BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO’s. 55656-55658/2024

DATE OF HEARING : 12.03.2024
DATE OF DECISION: 29.04.2024

P.V. SUBBA RAO

These three appeals have been filed by Shri Jayant Vikram alias Vikram Bihari¹ assailing the imposition of penalties on him under section 114 (iii) and 114A of the Customs Act, 1962 by the adjudicating authority, which decision was upheld by the Commissioner (Appeals) through the impugned orders.

2. The details of these three appeals are as follows :-

Appeal No.	Impugned order No.	Order-in-original No.	Penalty (Rs.)
C/50306 OF 2021	CC (A) CUS/D-II/EXPORT/ICD/TKD/915/2020-21	39/2018 dated 26.06.2018	5,00,000/-
C/50198 OF 2021	CC (A) CUS/D-II/EXPORT/ICD/TKD/912/2020-21	35/2018 dated 21.06.2018	15,00,000/-
C/50199 OF 2021	CC (A) CUS/D-II/EXPORT/ICD/TKD/918/2020-21	45/2018 dated 10.07.2018	5,00,000/-

3. The facts of the case are that the Directorate of Revenue Intelligence² received intelligence that certain exporters were mis-declaring the description quantity and value of export

1. the appellant
2. DRI

consignments in order to avail ineligible drawback. Acting on this intelligence, the goods sought to be exported under shipping bills filed in the name of one M/s Delight Fashions were examined. It was found during examination that not only was the nature of goods different from the declaration, but the values were highly inflated.

4. **Appeal No. C/50306 of 2021** : Nine shipping bills dated 01.03.2016 were filed for export of "Boys Trousers made of manmade fibres" of declared FOB values of Rs. 6,03,72,606/- claiming drawback of Rs. 52,61,659/-. On examination the goods were found to be "T-Shirts and Boys Trousers" and the number of pieces was also far less than what was declared. On the basis of market enquiry, the value of the export goods was re-determined as Rs. 6,54,859/-. Further, investigation showed that the goods were exported in the name of M/s Delight Fashions which was supposed to be a proprietorship firm of Shri Sunil Kumar who, however, had no idea about the exports. It was further found that the IEC was obtained based on wrong declarations. The Shipping Bills were filed by the CHA on request of one Ashok Sharma. Without verifying if the actual exporter was exporting the goods, the appellant filed shipping bills to export goods at the behest of Shri Ashok Sharma. He then gave the documents to the G Card holder Shri Manoj Kumar Arora to process the documents. It was found on examination that the goods were mis-declared in terms of the description, quantity, value and drawback claimed with intention of fraudulently obtaining almost 10 times the

drawback which would have otherwise been admissible. The Additional Commissioner passed the order-in-original rejecting the declared value, re-determining it, reducing the drawback, confiscating the export goods, but allowing their redemption payment of fine. He also imposed penalties on various persons including Rs. 5,00,000/- on the appellant under section 114 (iii) and 114AA of the Customs Act.

5. In **Appeal No. C/50198 of 2021**, the facts are identical and penalty of Rs. 15,00,000/- has been imposed by the Joint Commissioner on the appellant by his order dated 21.06.2018, which order was upheld by the Commissioner (Appeals).

6. In **Appeal No. C/50199 of 2021**, the facts are also identical and the Additional Commissioner imposed a fine of Rs. 5,00,000/- upon the appellant, which order was upheld by the Commissioner (Appeals).

7. Despite the matter being listed on several dates, the appellant was not represented. On 15.09.2023, learned counsel for the appellant withdrew her vakalatnama. Since, the appellant was not present in person or through any counsel, a fresh notice was directed to be issued to the appellant listing the matter on 05.01.2024. The appellant had not appeared on 05.01.2024 also and, therefore, the matter was listed on 13.03.2024. Office has reported that this notice was delivered to the appellant on 13.01.2024. However, none appeared on behalf of the appellant.

We have heard learned authorized representative for the Revenue and perused the records.

8. The short question to be answered is whether in the facts and circumstances of the case, the penalty imposed upon the appellant under section 114 (iii) and 114AA of the Customs Act can be upheld.

9. Section 114 (iii) of the Customs Act reads as follows :-

“Section 114 (iii) : in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.”

10. In other words, any person who in relation to any goods does or omits to do any act which render such goods for confiscation are liable to penalty under this clause not exceeding the value of the goods as declared by the exporter as the value as determined under this Act, whichever is greater.

11. Section 114AA of the Customs Act reads as follows :-

“SECTION 114AA. Penalty for use of false and incorrect material. - 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.”

12. In this case, there is no dispute about the mis-declaration of the goods which was discovered on examination. There is also

no dispute about the mis-declaration of the value. There is also no dispute about that excess drawback, which was several times the eligible drawback claimed through this process.

13. The appellant was the Manager of the CHA who filed the shipping bills. If the Shipping Bills had been filed in good faith after taking the normal precautions expected of a CHA and without any knowledge about the fraud or mis-declaration, the CHA or its employees would not have been liable to penalty. However, in this case as is evident from the records, the IEC used by the CHA to file the shipping bills belonged to a person who was not even aware of the exports. Shri Ashok Sharma was the real exporter who had provided the documents to the appellant to file the shipping bills. The IEC which the appellant indicated in the shipping bills did not belong to Ashok Sharma. The appellant had, in his statement, categorically indicated that he was not even aware if the exporter operated from the premises indicated. It also emerged from the investigation that the exporter in whose name the shipping bills were filed was not even aware of the filing of the shipping bills. In nutshell, the appellant had filed benami shipping bills so as to facilitate fraudulent claim of drawback by Shri Ashok Sharma.

14. The appeal of the appellant is on the following grounds :-

- (a) The order is bad in law and was passed without application of mind ;

- (b) The appellant not aware that Shri Sunil Kumar was a dummy and Shri Ashok Sharma was the master mind ;
- (c) The appellant had disputed the findings of the adjudicating authority before the Commissioner (Appeals) ;
- (d) The appellant's statement was procured by DRI under pressure ;
- (e) The appellant had admitted that he had not verified the IEC of M/s Delight Fashions, but solely on the statement penalty should not be imposed ;
- (f) The appellant was not a Custom House Agent but only its Manager ;
- (g) The appellant was not required to physically verify the business premises of the exporter ;
- (h) The penalty under section 114 (iii) and 114 AA of the Customs Act of Rs. 5,00,000/- is highly assessable ;
- (i) The penalty has not been apportioned between the two sections by the adjudicating authority.

15. We have considered these submissions and perused the records.

16. We do not find any ground or any basis to accept the submission that the impugned order was passed without application of mind or the pertinent facts. The appellant's submission that he was not aware that the IEC holder was only dummy and Shri Ashok Sharma was the master mind cannot be accepted considering that all documents were received by the

appellant Shri Ashok Sharma himself. The appellant's submission that it was not required to verify the existence of the IEC holder of physically verifying the premises also cannot be accepted in the factual matrix of the case. Had the case been one where the IEC holder had supplied all the documents to the appellant and the appellant filed the shipping bills in good faith, the situation would have been different. However, in this case without the knowledge of the IEC holder, the appellant filed benami shipping bills. The appellant was required verify if the exporter in whose name he was filing the shipping bills was indeed the exporter, and was issued IEC, etc.

17. The appellant's submission that he did not abet the commission of any offence under section 114 (iii) of the Customs Act also cannot be accepted for the reason that the appellant had filed benami shipping bills with mis-declared quantities and values at the behest of Shri Ashok Sharma. It is the discovery of this mis-declaration which rendered the goods liable for confiscation. Therefore, the appellant was liable to penalty under section 114 (iii) of the Customs Act. The appellant's contention against the imposition of penalty under section 114AA of the Customs Act also cannot be accepted for the reason that this section provides for penalty for willfully mis-declaring facts in any declaration before the customs authorities which the appellant did. Considering the value of the goods involved, we do not also find that the penalties imposed were excessive. We, therefore, find no reason to interfere with the order.

16. In view of the above, the impugned orders are upheld and all the appeals are dismissed.

(Order pronounced in open court on 29/04/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK