CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 648 OF 2011

[Arising out of the Order-in-Original No. 42/2011 dated 23/11/2011 passed by Commissioner of Customs, ICD, Tughlakabad, New Delhi.]

Shri Manish Singhal, Proprietor **......Appellant**
M/s Singhal Traders,
231, Sarai Pipal Thala,
Adarsh Nagar, Azad Pur,
Delhi.

Versus

Commissioner of Customs **....Respondent**
ICD, Tughlakabad,
New Delhi.

APPEARANCE:

Shri Pradeep Jain, Advocate for the appellant.
Shri Nagendra Yadav, Authorized Representative for the Department

WITH
CUSTOMS APPEAL NO. 69 OF 2012

[Arising out of the Order-in-Original No. 42/2011 dated 23/11/2011 passed by Commissioner of Customs, ICD, Tughlakabad, New Delhi.]

Shri Dinesh Bharadwaj **......Appellant**
B -124, Karampura,
New Delhi.

Versus

Commissioner of Customs **....Respondent**
ICD, Tughlakabad,
New Delhi.

AND
CUSTOMS APPEAL NO. 70 OF 2012

[Arising out of the Order-in-Original No. 42/2011 dated 23/11/2011 passed by Commissioner of Customs, ICD, Tughlakabad, New Delhi.]

Shri Ravinder Pal Jindal **......Appellant**
177, Sector 19,
Faridabad – 121 002. Haryana

Versus

Commissioner of Customs **....Respondent**
ICD, Tughlakabad
New Delhi.

APPEARANCE:

Shri R K Hasija, Advocate for the appellant.
Shri Nagendra Yadav, Authorized Representative for the Department

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

FINAL ORDER NO. 55669-55671/2024

DATE OF HEARING : 14.03.2024
DATE OF DECISION: 30.04.2024

P.V. SUBBA RAO

These three appeals have been filed to assail the order-in-original[1] dated 23.11.2011 passed by the Commissioner of Customs, ICD, Tughlakabad whereby he:

1.1. Confiscated under section 113 (d), (h) and (i) the goods attempted to be exported under Shipping Bill No. 1163482 dated 19.04.2010 valued at Rs. 4,47,750/- and allowed them to be redeemed on payment of redemption fine of Rs. 1,00,000/-.

1.2. Found that the goods which had already been exported under 25 past shipping bills were also liable to confiscation and, therefore, confiscated sale proceeds of Rs. 3,430/- available in the bank account of M/s. Singhal Traders and ordered investigation into the remaining sale proceeds of Rs. 1,13,43,550/-.

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1. Impugned order

1.3. Imposed penalty of Rs. 25,00,000/- on Shri Manish Singhal each under section 114 and section 114AA.

1.4. Imposed penalty of Rs. 5,00,000/- on M/s. Amit Enterprises under section 114.

1.5. Imposed penalty of Rs. 5,00,000/- on M/s. Paras Enterprises under section 114.

1.6. Imposed penalty of Rs. 5,00,000/- on M/s. Vansh Enterprises under section 114.

1.7. Imposed penalty of Rs. 10,00,000/- on Shri Ravinder Pal Jindal, the CHA under section 114.

1.8. Imposed penalty of Rs. 5,00,000/- on Shri Dinesh Bharadwaj, the G-Card holder of the CHA under section 114.

2. **Customs Appeal No. 648 of 2011** is filed by Shri Manish Singhal[2] to assail the impugned order.

3. **Customs Appeal No. 69 of 2012** is filed by Shri Dinesh Bharadwaj[3] to assail the penalty imposed on him by the impugned order.

4. **Customs Appeal No. 70 of 2012** is filed by Shri Ravinder Pal Jindal[4] to assail the penalty imposed on him by impugned order.

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2. Singhal
3. Bharadwaj

5. We have heard learned counsels for the three appellants and learned authorised representative for the Revenue and perused the records.

6. M/s. Singhal Traders (proprietor Singhal) had filed Shipping Bill No. 1163482 dated 19.04.2010 to export 50 MT of 'Mud additive chemicals for oil wells" classified under **Customs Tariff Item[5] 3824 90 26** and its declared value was Rs. 4,47,750/-. Receiving specific intelligence that urea (whose export is restricted) was being exported by mis-declaring it as mud additive chemicals for oil well, the export of the consignment was stopped, samples were drawn and sent for test to the Central Revenue Control Laboratory[6] which confirmed in its test report that the good attempted to be exported was urea. The consignment was therefore, seized, statements were recorded and the matter was investigated which showed that in addition to the consignment which was seized while being attempted to be exported, 25 previous consignments were also exported by the same exporter describing the goods in the same manner.

7. Thereafter, show cause notice[7] dated 12.8.2011 was issued to these three appellants and others which culminated in the impugned order. This SCN was issued relying on 12 documents (RUDs). Of these, **RUD-1** is the Shipping Bill dated

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4. Jindal
5. CTI
6. CRCL
7. SCN

19.4.2010, **RUD-10** are copies of 25 previous Shipping Bills, **RUD-3** is the Panchnama, **RUD-11,** are copies of various summons issued, **RUD-12** is a copy of another OIO dated 16.11.2010. All these are matters of record and are not disputed.

8. **RUD- 2** is the test report of CRCL and **RUDs 4 to 9** are statements various persons recorded by the officers. Based on the test report dated 11.5.2010 of the CRCLs the SCN alleges that what was attempted to be exported by Shipping Bill dated 19.4.2010 was urea. The other statements **(RUD 4 to 9)** have been relied upon to further buttress this case and to extend the allegations of unlawful export to 25 previous consignments.

9. Shri Singhal sought to cross-examine the chemical examiner of CRCL and also the other persons who made the statements. In the impugned order, the Commissioner denied the cross examination.

10. We find that statements made before the Customs officers are relevant to prove the case subject to some conditions specified in section 138B of the Customs Act, 1962 which reads as follows:

> **138B. Relevancy of statements under certain circumstances**.—
>
> (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for

> the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—
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> (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
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> (b) **when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice**.
>
> (2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.

11. It is a well-settled legal position that unless the statements have been put through the process prescribed under section 138B, they are not relevant at all to prove the case. By not following the procedure prescribed in section 138B, the Commissioner has rendered all the six statements **(RUD- 4 to RUD-9)** irrelevant to prove the case.

12. The only other important document is the test report of the CRCL. Shri Singhal's assertion was that what was attempted to be exported was Mud Additive Chemical and according to the CRCL, it was urea. Therefore, if Shri Singhal wanted to cross examine the chemical examiner who had tested the sample and said that it was urea, it is but just and proper. However, the Commissioner denied cross examination.

13. Once all the statements and the test report of CRCL are ignored, nothing survives in this case and the impugned order cannot be sustained.

14. To sum up:

   (a) By not following the procedure prescribed under section 138B, the Commissioner rendered all the six statements relied upon in the SCN irrelevant to the case;

   (b) By denying cross examination the Commissioner has also rendered the test report of CRCL irrelevant to prove the case of the department.

   (c) De hors the statements and the test report of the CRCL, nothing survives in the impugned order.

15. In view of the above, all three appeals are allowed and the impugned order is set aside insofar as it pertains to Shri Singhal, Shri Bharadwaj and Shri Jindal.

(Order pronounced in open court on 30/04/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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