CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 52310 OF 2019

[Arising out of Order-in-Appeal No. CC(A) CUS/D-I/Export/NCH/241-242/2019-20 dated 07.06.2019 passed by the Commissioner of Customs (Appeals), New Delhi]

Appellant

VIKSUN CARRIERS PRIVATE LTD
A-18 & 11, D.D.A. Commercial Complex,
Ring Road, Naraina Vihar,
New Delhi - 110028

Vs.

COMMISSIONER, CUSTOMS-NEW DELHI **Respondent**
Air Cargo Exports,
New Customs House,
Near IGI Airport,
New Delhi.

Appearance:
Present for the Appellant : Mr. T.Chakrapani, Consultant
Present for the Respondent: Mr. Kuldeep Rawat, Authorised Representative

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing/Decision : **13/08/2024**

<u>FINAL ORDER NO.58009/2024</u>

<u>RAJU</u>

This appeal has been filed by M/s. Viksun Carriers Private Ltd., a CHA firm.

2. Ld. Counsel for the appellant pointed out that they were hired by M/s. Eagle Express Logistics (I) Ltd. Freight Forwarders for the purpose of export of consignment of canola seeds. It was later detected that the said consignment contained red sandalwoods concealed therein. A Show Cause Notice was issued to the exporter as well as to the appellant

invoking section 114 (i), (iii), 114A & 117 of the Customs Act. The allegation against the appellant was that they had failed to obtain and verify the KYC of the exporter for which they were filing the subject shipping bill. It was alleged that they have failed to fulfill the obligation as envisaged under Regulation 11 of the CHALR 2004 by not advising their client to comply with the various Provision of Customs Act 1962 read with Regulation 2 of Shipping Bill of Export (Form) Regulations 1991. The Original Adjudicating Authorities imposed penalty under section 114 (i) and 114 (iii). The same penalty was upheld by the first appellate authority and hence this appeal.

3. Ld. Counsel argued that all the allegations against that relates to violation of CHALR, 2004 and no proceedings under CHALR has been initiated against them. He argued that on the strength of the alleged violation of CHALR proceedings only under CHALR could have been invoked and not under section 113/114 of the Customs Act. He further pointed out that they had absolutely no knowledge of the content of the consignment except for the declaration made by the exporter. He further argued that there is no one has alleged in the statements that the appellant had any knowledge about the consignment of red sanders. The appellants have also not given any admission in this regard.

4. Ld. A.R. relied on the impugned order.

5. I have considered the rival submissions. I find that in the instant case the allegations against the appellant are based on their failure to follow the KYC Norms and various Provisions of CHALR, 2004. Consequently, penalty has been imposed under section 114 (i) 114 (iii)

of the Customs Act. No penalty has been imposed under section 114 A and 117 which were invoked in the Show Cause Notice. Section 114 reads as follows: -

> ***Section 114. - Penalty for attempt to export goods improperly, etc.***
>
> *- Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-*
>
> *(i)in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act] [Substituted by Act 32 of 2003, Section 117, for " not exceeding the value of the goods or five thousand rupees" (w.e.f. 14.5.2003). Earlier, these words were substituted by Act 14 of 2001, Section 108 (w.e.f. 11.5.2001).], whichever is the greater;*
>
> *(ii)in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded or five thousand rupees] [Substituted by Act 14 of 2001, Section 107, for certain words (w.e.f. 11.5.2001).], whichever is the greater;*
>
> *(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.] [Substituted by Act 32 of 2003, Section 117, for Clause (iii) (w.e.f. 14.5.2003).]*

6. The Order-in-Original in para ix records as follows: -

> *"(ix) The CHA firm M/s Viksun Carrier (P) Ltd who filed the shipping bill for export of the consignment before Customs was also responsible for abetment in the attempted export of the prohibited*

goods ie. red sanders as they failed to obtain and verify the KYC of the exporter for which he was filing the subject shipping bill. He failed to fulfill the obligation as envisaged under regulation 11 of the CHALR 2004 by not advising his client to comply with the various provisions of the Customs Act, 1962 read with Regulation 2 of the shipping bill of export (Form) Regulations 1991. Therefore it appears that the CHA abetted the export of prohibited item, this, appears to be liable to penal action under section 114 & 114AA of the Custom Act, 1962"

7. The impugned order in para 6.4 reads as follows:-

"6.4 The CHA firm M/s Viksun Carrier (P) Ltd failed to obtain and verify the KYC of the exporter for which they were filing the subject Shipping Bill. M/s Viksun Carrier (P) Ltd failed to fulfill the obligation envisaged under regulation 11 of the CHALR 2004 by not advising his client to comply with the various provisions of the Customs Act, 1962. The CHA firm M/s Viksun Carrier (P) Ltd who filed the shipping bill for export of the consignment before Customs was responsible to obtain and verify the KYC of the exporter. Failure to do so is nothing but abetment in the attempted export of the prohibited goods i.e. red sanders. Therefore the CHA abetted the export of prohibited items and thus liable to penal action under Section 114 & 114(iii) of the Custom Act, 1962."

8. From the above observations in the Order in Original as well as in the impugned order, it is seen that they only relate to violation of various provisions of CHALR 2004. On the basis of the said violation, it has been alleged that the appellant had abetted the export of red sanders.

9. The definition of abetment as per Cambridge Dictionary is as follows:-

"To help or encourage someone to do something that is illegal or wrong."

10. It is apparent that abetment can occur only if the person has knowledge about the wrong or illegal act. In the instant case, there is no admission of any knowledge by the appellant. None of the other co-noticees or witness has also indicated that the appellant had any knowledge about the red sanders. There is no evidence of the knowledge of appellants. In this background, the allegation of abetment solely based on violation of CHALR without any knowledge on the part of the appellant cannot be sustained.

11. Consequently, the penalty under section 114 (i) and 114 (iii) cannot be sustained. The impugned order is, therefore, set aside and the appeal is allowed.

[Dictated and Pronounced in the open Court]

(RAJU)
MEMBER (TECHNICAL)

Anita