IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Custom Appeal No. C/59838/2013-Cu[SM]
[Arising out of Order-In-Original No. 13/2013 dated 05.08.2013 passed by Commissioner of Central Excise, Jodhpur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s. Rajesh Goyal ...Appellant

Vs.

C.C.-Jodhpur …Respondent

Appearance:
Ms. Astha Gupta, (CA) for the Appellant
Mr. M.R. Sharam, AR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing.01.11.2016
Date of Decision 28.02.2017

Final Order No. 52003 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 06.08.2013 passed by the Commissioner of Central Excise, Jaipur, wherein penalties of Rs. 4 lakh and Rs. 1 lakh were imposed under Section 114 of the Customs Act, 1962 on the appellant.

2. Brief facts of the case are that M/s Alwar Refractories Ltd. exported refractory bricks from their factory as manufacturer-exporter under excise

supervision. During the course of movement of goods from the factory to the port of export, the seals of the container were broken and the refractory bricks were substituted by Red Sanders and fake seals were placed by one Mr. Satish and his collaborators. The DRI officers investigated the matter and in the adjudication proceedings, Red Sanders and refractory bricks were confiscated. Besides, penalties were imposed on various persons including the appellant herein. The reason assigned for imposition of penalty on the appellant are that it had assisted Alwar Refractories in obtaining permission for stuffing of export goods at the factory and that antecedents/KYC formalities of Shri Satish was not verified.

3. The Ld. Consultant appearing for the appellant submitted that the appellant has not been involved in the substitution of goods and was also not the beneficiary of the fraud committed by others. She further submitted that the appellant had only received the normal remuneration for assisting the exporter in relation to the services provided in the normal course. She also submitted that the provision of Section 114 *ibid* has no application to the fact of the present case

inasmuch as no contraband goods were stuffed in the container at the factory and that the offending act of substitution of goods has taken place after stuffing of goods at the factory and sealing of the container by excise authorities. She further submitted that no statutory provisions exist, providing for observance of the formalities of following KYC norms by the freight forwarder during the relevant period. She relied on the decision of Tribunal in the case of *Shri Rakesh Bakshi Vs. Commissioner of Customs, New Delhi* (2015-TIOL-749-CESTAT-DEL), and P.D. Manjrekar Vs. Commissioner of Customs, Mumbai, reported in 2007(213) E.L.T. 405 (Tri.- Mumbai) to justify her stand that imposition of penalty is not proper and justified.

4. On the other hand, the ld. AR appearing for respondent reiterated the findings recorded in the impugned order.
5. Heard both sides and perused the records.
6. It is a fact on record that the appellant had assisted M/s Alwar Refractories in obtaining permission for stuffing of exported goods at the factory, arranged empty container for export of refractory bricks and provided relevant documents to the driver and CHA

after sealing of containers by the excise authorities. After sealing of the container, the seals were broken and the refractory bricks were substituted by Red Sanders. I find that the department has not brought on record any specific evidence against the appellant to show the role played by him in substituting the goods en-route to the port of export. Since upon completion of the formalities of factory stuffing, the container was sealed in presence of Central Excise Officers, the appellant in the capacity of freight forwarder has complied with its obligation. Thus, I am of the view that substitution of goods en-route to the port cannot held the appellant responsible for imposition of penalty.

7. Therefore, I do not find any merits in the impugned order and after setting aside the same, I allow the appeal in favour of the appellant.

(Pronounced in the open court on _28.02.2017_)

(S. K. Mohanty)
Member (Judicial)

Sakshi