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

Appeal No. C/53143, 53183-53185/2015-CU[DB]
[Arising out of Order-in-Appeal No. 06/2015/A.D./COMMR/ EXPORT/ ICD, TKD dated 30.04.2015, passed by the Commissioner of Customs, New Delhi]

Radhey Shyam
Container Corporation of India
Dayanand, Senior Helper
Vivek K. Goyal, Junior Executive **....Appellant**

Vs.

C.C., New Delhi **....Respondent**

Appearance:
Sh. Deepak Pathak, Advocate for the Appellant
Sh.K. Poddar, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 23.01.2017
Date of Pronouncement:07.03.2017

FINAL ORDER NO. 52153-52156 /2017-CU[DB]

Per V. Padmanabhan

The present set of appeals is directed against the Order-in-Original dated 30.04.2015 passed by the Commissioner Export ICD, Tughlakabad, New Delhi. On the basis of information provided by the DRI that red sanders logs were being smuggled out of India from ICD Tughlakabad, New Delhi, container No. MSCU 2400698, which was cleared from ICD Tughlakabad vide shipping Bill No. 1075342 dated 28.07.2012 was detained at JNPT, Nhava Sheva, Mumbai. On examination of the said container, it was found stuffed with logs of red sanders weighing 13190 kgs. The consignment was seized and investigation was carried out by Customs authorities at Nhava Sheva as well as ICD Tughlakabad. On conclusion of the investigation, Show Cause Notice dated 07.02.2013 was issued to all connected parties and the same stand decided through the impugned order dated 30.4.2015. The seized red sanders logs were absolutely confiscated in the Impugned order under Section 113(D)(f)and and (i) of Customs Act, 1962. The penalty were imposed on many persons out of which appeals have been filed by the following:

i. Shri Radhey Shyam, Senior Manager, CONCOR-penalty of Rs 10,000/-.
ii. Shri Dayanand, Senior Helper, CONCOR- penalty of Rs 5,000/-.
iii. Shri Vivek Kumar Goyal, Junior Executive, CONCOR- penalty of Rs 5,000/-.

Appeal has also been filed by M/s CONCOR.

2. With the above background, we heard Shri Deepak Pathak, ld. Counsel representing of the above appellants as well as Shri Shri K. Poddar, ld. DR appearing for the Revenue.

3. The ld. Counsel submitted that CONCOR is working in the capacity of custodian of goods and has taken all possible care and exercised adequate control and prudence to its obligations as a

custodian. He further submitted that the container in question was allowed to be railed out only after verification of the relevant documents, which were duly seen and signed of Customs officials at the gate, and there after the said container was allowed to enter into ICD, TKD. The said container was railed out only on the basis of let export order issued on CRN slip duly stamped and signed by Superintendant of Customs. He further submitted that during investigation, it was found that the related documents were found to be not genuine and fabricated. It was further submitted that the various functionaries of CONCOR were not aware of the fact that the documents were fabricated and have allowed the railing out of the container on the basis of the Let Export Order found in the documents. He also submitted that there is nothing on record to indicate that the various functionaries of CONCOR were aware or in any way involved in the alleged smuggling of red sanders logs. Accordingly, he prayed that the penalty imposed may be set aside.

4. Ld. DR supported the impugned order. He submitted that as per an arrangement between Customs and Concor, the list of Let Export Orders issued by Customs are e-mailed by AC (Export Shed) to the concerned official of CONCOR. If the concerned official of CONCOR had verified the e-mail , which was sent by Customs, they would have become aware that the Let Export Order shown in the documents pertaining to the disputed consignment has not been issued by Customs. For such negligence on the part of the CONCOR officials, he submitted that the penalty will be liable to be imposed.

5. We have heard both sides and perused the records. This is a case where in an export container has been used to smuggle out red sanders logs. The container with contraband was railed out of ICD, TKD. However, on the basis of specific information from DRI, the said container was intercepted and searched at Nhava Sheva in Mumbai. On examination of the same the contraband was found and seized.

6. In the impugned order, the entire consignment of contraband stands confiscated absolutely and penalties have also been imposed on several persons including three employees of CONCOR. The ld. Commissioner in the impugned order has held that there is an arrangement worked out on a regular basis between the Customs authorities as well as CONCOR by which an e-mail is periodically sent giving the complete list of shipping bills where Let Export Orders have been granted by customs. CONCOR is required to rail out only those containers, which are covered by the Let Export Orders given by Customs. What has emerged in investigation in the present case is that the container with the contraband was railed out by CONCOR on the basis of fabricated documents, wherein the Let Export Orders from Customs was shown, where as in actual fact such a Let Export Order has never been issued by Customs. Penalties have been imposed on various functionaries of CONCOR for negligently railing out the container.

7. It has been submitted on behalf of CONCOR as well as various functionaries that they cannot be held responsible for the fraud played by some unscrupulous elements in their attempt to smuggle out contraband. They have pleaded that the documents on the basis of which the container was railed out have been proved to be fabricated. It has further been submitted that total number of containers being booked on daily basis is quite substantial and verifying the Let Export Orders on the basis of e-mail from Customs was impractical. Accordingly, it has been prayed that the penalties may be set aside.

8. We have carefully examined the plead made by CONCOR and its employees. We note that during the course of investigation undertaken by the Customs authorities, nothing has been revealed on record to indicate any part played by the employees of CONCOR in the alleged smuggling of contraband. The ld. Commissioner in the impugned order has held that the railing out of container should not have been allowed since the e-mail sent by customs CONCOR did not mention the let export order covering the present container. However, we find a lot force in the submission of CONCOR that the no. of containers booked on daily basis is quite large and it is practically difficult to co-relate the list of let export orders sent by e-mail by customs with the containers booked and subsequent railing out of containers manually. In any case, it has been established that the documents indicating the let export order based on which the container was railed out were fraudulent and

fabricated. Consequently, the custodian i.e. CONCOR as well as its employees cannot be faulted for allowing such let export of the container.

8. In view of the above discussions, the penalties imposed on CONCOR as well as its employees are set aside. However, we hasten to add that we are not interfering with the rest of the impugned order.

[Pronounced in the open court on 07.03.2017]

(Justice (Dr.) Satish Chandra)	**(V. Padmanabhan)**
President	**Member(Technical)**

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