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

Customs Appeal No. 52539, 52771 & 53490 of 2015

[Arising out of order-in- original No. 4/2015 dated 16.04.2015 passed by Commissioner of Customs, ICD, TKD, New Delhi.]

M/s. Surender Kumar Singh. **Appellant**
Milli Khatri
Dinesh Khatri

Vs.

Commissioner of Customs **Respondent**
New Delhi (icd Tkd)

Appearance:

S/Shri Awaneet Singh, Amit Attri, Advocates for the Appellants
Shri P Juneja , DR for the Respondent

CORAM:

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

Date of Hearing : 9.06.2017
Date of Decision : 04.08.2017

FINAL ORDER NO. 55699 - 55701 /2017

Per: V. Padmanabhan:

These three appeals have been filed against a portion of order-in- original No. 4/2015 dated 16.04.2015 passed by Commissioner of Customs, ICD, TKD, New Delhi. The challenge is against the penalties imposed on the three individuals in terms of provisions of section 114 (i)/ 114AA of the Customs Act, 1962.

On the basis of information provided by Directorate of Revenue Intelligence that red sanders logs were being smuggled out of India from ICD Tughlakabad, New Delhi, container No. MSCU 2400698, C/53143, 53183-53185/2015-CU[DB] 2 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 penalties were imposed on many persons out of which appeals have been filed by the following:

	Appellant	Penalty
i.	Shri Surender Kumar Singh	: Rs.3,00,000/-
ii.	Shri Dinesh Khatri	: Rs.8,00,000/-
iii.	Smt Milli Khatri	: Rs.5,00,000/-

2. With the above background, we heard Shri Awaneet Singh and Shri Amit Attri, learned Advocates for the appellants and Shri P Juneja, learned DR for the Revenue.

Shri Surender Kumar Singh

3. Penalty of Rs. 3 lakh has been imposed on Shri Surender Kumar Singh. The adjudicating authority, in his order in para 53.10 of the impugned order has discussed that Shri Surender Kumar Singh was the G-card holder of the CHA firm M/s. Sada Nand Chaudhary who filed the shipping bill. He has observed that all the required documents for filing such shipping bills were found to be forged during investigations and that he failed to report to the department about the misuse of CHA, license which resulted in unlawful export of prohibited red sanders. For failure to exercise due diligence and to inform the department, about the unlawful export, adjudicating authority has imposed the penalty on Shri Surender Kumar Singh. Learned Cousel Shri Awaneet Singh submitted that Shri Surender Kumar Singh lost his G-card almost four months before filing of shipping bill and have nothing to do with the filing of such shipping bill and copy of FIR lodged in this regard was submitted by him. He further, argued that learned Commissioner, who is the licensing authority for CHA had ordered inquiry against the CHA firm as well as Shri Surender Kumar Singh. In this connection, show cause notice was issued for revocation of CHA license. The inquiring authority had exonerated Shri

Surender Kumar Singh and has held that the involvement of Shri Surender Kumar Singh in the export fraud is not proved. Hon'ble CESTAT also vide Final Order No. 53273/2015 dated 4.10.2015 has set aside the revocation of CHA license.

4. Learned DR reiterated the finding of the adjudicating authority. He argued that this is a serious case of fraud and hence, the penalty levied on G-card hold may be upheld.

Penalty has been imposed on Shri Surender Kumar Singh who was G card holder. From the FIR lodged by him, almost four months prior to incident of fraudulent export, it is apparent that he was not instrumental in filing the shipping bill covering the fraudulent export consignment. The inquiry carried out in terms of CHA Regulation also has exonerated Shri Surender Kumar Singh from any involvement in the export fraud. In view of the above, we find no justification for the penalty imposed on Shri Surender Kumar Singh, which is consequently set aside.

Dinesh Khatri

5. The adjudicating authority has imposed penalty of Rs.8 lakh on Shri Dinesh Khatri, who was the proprietor of M/s. Khatri Traders, Rohini. The allegation against him is that he facilitated the storage of contraband goods i.e. red sanders in his godown premises. Infact 157 logs of Red sanders weighing about 7MT was also seized from the

premises of M/s. Khatri Traders during search by the Customs authorities. The adjudicating authority has held that he has failed to produce any legal document in support of his claim that the godown premises were given on rent to Shri Ajay Singh. Accordingly, the penalty stand imposed for connivance on the part of Shri Dinesh Khatri for illegal export of red sanders.

6. Shri Awneet Singh, learned Advocate argued on his behalf that the entire fraudulent export has been attributable to Shri Raj Kumar Gupta who was the brain behind unlawful export. Involvement of Shri Dinesh Khatri in the fraud has not been established by even a single statement against the appellant. He further argued that the order in original has been passed in violation of principles of natural justice inasmuch as the plea of cross examination of the co-noticee Shri Ajay Singh was not accepted by the adjudicating authority.

7. Learned DR supported the finding of the adjudicating authority.

The investigating authority, on conclusion of investigation has reconstructed the sequence of event relating to fraudulent export on the basis of statements of various persons. It has been recorded that the contraband goods i.e. red sander was stored in the godown of Shri Dinesh Khatri and the contraband weighing about 7 MT also was found and seized from said godown premises. Shri Dinesh Khatri could not submit any evidence to support his claim that the godown was given on rent to Shri Ajay Singh. He also could not produce any legal document for the presence of red sanders in his godown. From the sequence of events, it is clearly evident that Shri Deepak Khatri has played a significant part in fraudulent export of contraband goods by facilitating storing of the same in his godown. Consequently connivance in the illegal export stand established and hence, we find no reason to interfere with the findings and imposition of penalty on Shri Dinesh Khatri.

Smt Mili Khatri

8**.** Smt. Mili Khatri wife of Shri Dinesh Khatri has been imposed a penalty of Rs.5 lakh for abetting the fraudulent export of red sander. Mrs. Khatri was the owner of godown at Shahbad Daulatpur. As per record, she has rented this godown premises to her husband Shri Dinesh Khatri. The adjudicating authority has found that the claim of Smt Mili Khatri that she was unaware of the illegal activity being carried out by her husband from her godown premises was not tenable. She has further held that the appellant has connived with her husband to permit the illegitimate export of contraband goods.

Learned Counsel argued that the investigation has failed to bring any evidence on record to the effect that Mrs. Khatri was actively involved in the export of prohibited red sanders. The adjudicating authority has proceeded on the line that Ms. Mili Khatri could not have been unaware of unlawful activities being carried out by her husband from her godown premises. It is on record that the godown was given on rent to M/s. Khatri Traders which was rented by her husband Shri Dinesh Khatri. From the records, we find no evidence incriminating the role of Ms. Mili Khatri in the fraudulent export of red sanders. Consequently, there is no justification to impose penalty on her and same is set aside.

9. In view of the above discussions, the appeals are partially allowed. Penalty imposed on Shri Surender Kumar Singh and Ms Mili Khatri are set aside and penalties imposed on Shri Dinesh Khatri is upheld.

(Pronounced in the open Court on 04.08.2017)

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

ss