

West Block No.2, R.K.Puram, New Delhi

Date of hearing: 03.08.2017

Date of decision:14.08.2017

[Arising out of the Order in Appeal No. CC (A) CUS/ICD/PPG/1055/2015 dated 12/10/2015 & CC (A) CUS/ICD/PPG/1007/2015 dated 16/09/2015 Passed by Commissioner of Customs (Appeals), New Delhi]

Naresh Kumar Proprietor and other ... Appellant

Vs.

C.C.-Patparqanj ... Respondent

Appearance:

Present Shri Reena Rawat, Advocate for the appellant

Present Shri Govind Dixit, DR for the respondent

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

FINAL ORDER No. 55781-55782/2017

Per:Justice Dr. Satish Chandra

1. Both the appeals have been filed against the Orders in Appeal No. 1055/2015 dated 12/10/2015 & 1007/2015 dated 16/09/2015. The brief facts of the case are that against the Shipping Bill No. 5071706 dated 22/04/2013 M/s A.S. Export (Appellant) made an attempt to export through CHA M/s Shivam Airways Pvt., contraband item Red Sanders Wood in the name of 'Other Made-ups Jute Flooring Rolls'. By the impugned order, the penalty of Rs. 20 Lakhs and 10 Lakhs were imposed on the appellants, being aggrieved the present appeals have been filed.
2. With this background, we heard Ms Reena Rawat, Ld Counsel and Shri Govind Dixit, Ld DR.
3. From the record, it appears that on the basis of the intelligence report the container was opened and it was found that 217 logs

of red sander were there along with 277 role of Jute Flooring. The department has contacted the office of the Forest Research Institute (FRI) Dehradun for testing the said woods. The wood sample were examined and vide letter dated 04/09/2013, FRI has confirmed that the wood is the Red Sanders Wood (Ptrocarpussantalinus).

4. The department has examined Shri Ainul Khan, G card holder of M.s Shivam Airways Pvt. Ltd. on 24/04/2013 and his statement was recorded under Section 108 of the Customs Act, 1962, where he has stated that the said consignment was handed over by one Mr. Naresh Kumar, proprietor of M/s Falcon Movers.
5. The statement of Naresh Kumar M/s Falcon Movers was also recorded under Section 108 of the Customs Act, 1962 on 24/04/2013 where he has stated that the M/s A.S. Exports deals in export of various goods and the proprietor of the said firm is his brother Mr. Deepak Kumar. Further, Naresh Kumar said that one Vietnamese Customer asked for a shipment of Jute Carpet to Vietnam. Goods were exported by M/s A.S. Exporters who had declared 278 pieces of 'Other Made-ups –Jute Flooring Rolls'.
6. Mr. Naresh Kumar produced his brother Shri Deepak Kumar, proprietor of M/s A.S. Exports on 17/05/2013 and the statement of Deepak Kumar was recorded under Section 108 of the Customs Act, 1962 where he has accepted that Red Sanders Wood had been included in the consignment but he was unable to give any proof of the Vietnamese person, however, he denied any shipment of Red Sanders Wood by him
7. The statement of Ashok Belli, Director CHA Company M/s Shivam Airways Pvt. Ltd. was recorded on 02.05.2013 under

Section 108 of the Customs Act, 1962, where he submitted that M/s Falcon Movers is responsible for the consignment.

8. Statement of Shyamanand Sharma owner of the vehicle used for the transport of wood was recorded on 03/05/2013. He has accepted the use of vehicle for transportation of goods in question. Statement of the driver was also recorded.
9. M/s Econship Marine Pvt. Ltd. vide their letter to the department informed that the container was taken from them by the Central Warehousing Corporation (CWC).
- 10 From the above, it appears that M/s A.S. Exports had made an attempt to export the Red Sander wood logs with the help of his brother Mr. Naresh Kumar, proprietor of M/s falcon Movers. Both the brothers were involved in illegal export of Red Sanders Wood which is prohibited item for export under Section 3 (2), and 3(3) of the Foreign Trade (D&R) Act. 1992 read with ITC (HS) Export Policy 2009-2014 for contravention for the provision of the Convention on International Trade in Endangered Species of Wild Flora (CITES) as contained on International Trade Policy. Thus, the consignment was rightly confiscated under Section 113(d) of the Customs Act, 1962 which was seized under Section 110 of the Customs Act, 1962 under Panchnama dated 23/24.04.2013.
- 11 By considering totality of the facts and submission of both the sides, we are of the view that both the brothers (Deepak Kumar) M/s A.S. Exports Enterprises (appellant No. 1) and Naresh Kumar, proprietor of M/s Falcon Movers (appellant No. 2) were actively and knowingly involved in the illegal export of the Red Sanders Wood. When it is so, then we are of the view that the penalties were rightly imposed on them by the department. So,

C/54526/2015-CU[DB]
& C/52218/2016-CU[DB]

we uphold the impugned order along with reasons mentioned therein.

12 In the result, both the appeals filed by the appellant are hereby dismissed.

[Order Pronounced in the open court on 14/08/2017]

(V. Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

Rekha