IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Customs Appeal No.C/52630-52632/2015 [SM]

[Arising out of Order-in-Appeal No.CC(A)CUS/EXP/156-162/2015 dated 10.03 2015 passed by the Commissioner of Customs, New Delhi]

M/s.TNT India P. Ltd.
Vikram Verma
Anoop Kumar **...Appellant**

Vs.

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

Present for the Appellant : Mr.Ayush A. Mehrotra, Advocate
Mr. Sumit Pushkar, Advocate
Mr. Thushar Telwar, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing: 30/06/2017
Pronounced on: 30/10/2017

FINAL ORDER NO. 57446-57448/2017

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 10.03.2015 passed by the Commissioner of Customs (Appeals), New Delhi, upholding the penalties imposed in the adjudication order against the appellants.

2. Brief facts of the case are that the consignment covered under 9 Nos. of Air Way Bills (AWB) were detained by Customs Officers vide Detention Memo dated 12.02.2012 and 19.02.2012 on a suspicion that the goods covered there-under

are prohibited goods in terms of Wilde Life Protection Act, Exim Policy and CITES. The Customs Department referred the matter to the Wild Life Inspectors for confirmation regarding the contents of the export cargo. Accordingly, they submitted the report on detention receipts of respective AWB, confirming that the goods being exported were Red Sanders (Pterocorpus Santalinus) wood, which is prohibited for export in terms of Wild Life Protection Act and CITES. On the basis of such report received from the Wild Life Department, the Customs Department proceeded against various agencies / persons, including the appellants herein, seeking confiscation of the red sanders /red sandal woods and for imposition of penalties. The show cause proceedings were initiated against the appellants, inter alia on the ground that the courier company has not collected the identity proof of the consigners at the time of booking of the impugned consignments. The adjudication order dated 27.11.2013 has imposed penalties on the appellants under Section 114 (i) of the Customs Act, 1962. Such adjudged penalties were upheld by the Commissioner (Appeals) vide the impugned order dated 10.03.2015.

3. The ld. Advocate appearing for the appellant submitted that in respect of the export consignments, though the Department has prepared 9 Nos. of Detention Memos, the Wild Life Inspectors have only endorsed regarding the contents of the impugned goods as red sanders in only 3 Memos. Thus, he submitted that Panchnama drawn in respect of 9 Nos. of Detention Memos, mentioning that the seized goods are red

sanders is incorrect. He also submitted that the Customs Department did not examine any Wild Life Inspector, even though, a specific request was made for cross-examination by the appellants. He further submitted that the Department has failed to adduce any evidence that the appellants have any prior knowledge of the contents of the courier packages collected from the consigners that on the basis of declaration made on the package by consigners, the courier shipping bills were filed, showing the goods as projector brackets. Thus, he submitted that the appellant had no reason or occasion to inspect the contents and bonafidely relied on the declaration made by the consigner. It is the submission of the ld. Advocate that in absence of any substantiation by the Department that the appellant had the prior knowledge regarding the contents of the courier parcel, penalties cannot be imposed under Section 114 (i) ibid. To support such stand, the ld. Advocate has relied on the following judicial pronouncements:-

a) Shri Ram vs. State of Uttar Prades [(1975) 3 SCC 495]
b) M/s.Hindustan Steel Ltd. vs. The State of Orissa [(1978 (2) E.L.T. J159 (SC)]
c) Akbar Badruddin Jawani vs. Collector of Customs [(1990 (47) E.L.T. 161 (SC)]
d) Commissioner of Customs Mumbai vs. M Vasi [2003 (151) ELT 312 (Tri- Mumbai)]
e) Commissioner of Customs (EP) vs. P.D. Manjrekar [2009 (244) ELT 51 (Bom.)]
f) Syndicate Shipping Services vs. Comm. Of Customs [2003 (154) ELT 756 (Tri.- Chennai)]

g) M/s. TNT India Pvt. Ltd. and Ors. Vs. Comm. Of Customs (I & G) [Final Order dated 13 July, 2016].

4. On the other hand, the ld. D.R. appearing for the respondent reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. In this case, the Customs Department drew (9) Detention Memos, corresponding to (9) consignments covered under (3) courier shipping bills for ascertaining the contents in the courier parcel. Out of the 9 Nos. of Detention Memos, only 3 Memos bears the endorsements by the Wild Life Inspectors to the effect that "examined wooden logs and found to be of Red Sanders. Export of Red Sanders is prohibited. Customs may take n/a as per law". On perusal of the endorsed Detention Memos, I find that only 3 Nos. of Memos contained the endorsement by the Wild Life Inspectors. However, the Panchnama was drawn by the Department and proceedings were initiated, contending that the seized goods in respect of all the 9 Nos. of Memos were Red Sanders. Since, no certificates were furnished by the Wild Life Inspectors in respect of 6 Nos. of Memos, it cannot be said that all the goods covered under the shipping bills are Red Sanders, liable for confiscation. Further, the Detention Memos do not identify any method and procedure adopted by the Wild Life Department for arriving at the conclusion that the description of goods declared by the exporter is false or incorrect. The fact is not

under dispute that the Department did not examine any Wild Life Inspectors, even if, request was made by the appellant for cross-examination of those persons. Further, it is noted that the competent authority to examine the type of wood would be the Experts in the Forest Department. It is not clear as to why no reference or opinion was taken from them. Thus, I am of the view that the endorsement made in the Detention Memo by the Wild Life Inspectors cannot be considered in isolation, without any further substantiation, that the goods as per the courier shipping bills were in fact Red Sanders.

7. Regulation 4 (2) of Courier Regulation, 2010 provides that the export goods shall bear a declaration from the sender or consigner regarding the contents of each of the packages and the total value thereof. Further, Regulation 6(2) (b) ibid mandates that no person shall, except with the permission of proper Officer, open any package of export goods, brought into the customs area, to be loaded on the Flight. On perusal of the above Regulations, it would transpire that courier agency has very limited role in checking of the consignments contained in the courier packages. Thus, it cannot be said that the appellant had the reason or occasion to inspect the contents of the package and accordingly, relied on the declaration made by the consigner for the purpose of preparation of the shipping bills. The department has not proved the fact with any substantial evidence that there was prior knowledge on the part of the appellants in respect of the allegations made against them. Therefore, as per settled

principle of law, as relied on by the ld. Advocate for the appellants, provisions of Section 114 (i) ibid cannot be invoked, justifying imposition of penalties.

8. In view of above, I do not find any merits in the impugned order, so far as, it imposed penalties on the appellants. Accordingly, after setting aside the same, the appeals are allowed in favour of the appellants.

[Pronounced in the Open Court on 30/10/2017]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita