

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

**Customs Appeal No. 50803, 51147 - 51148 of 2014**

[Arising out of Order in Original No. 09/ 2013 dated 21.11.2013  
passed by Commissioner of Customs and Central Excise & Service  
Tax, Indore (MP)]

**Mohd Naushad  
A K Shukla  
Virendra Joshi**

**Appellant**

Vs.

**Commissioner of Central Excise  
Indore**

**Respondent**

Appearance:

**Dr. G K Sarkar & Shri Piyush Kumar, Advocates for the  
Appellants  
Shri R K Manjhi, AR for the Respondent**

**CORAM:**

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

Date of Hearing/ Decision: 22.12.2017

**FINAL ORDER NO. 58699 -58701/2017**

**Per: Justice (Dr.) Satish Chandra:**

The present appeals are filed against Order-in-Original No. 9/  
2013 dated 21.11.2013.

2. Brief facts of the case are that in the month of April one M/s.  
S N K Trading & Exports has exported steel plates to South Africa.  
The goods were over-valued to get higher DEPB benefit. The

container was examined on 5.4.2011 and investigation was conducted. After issuing the show cause notice, the goods were confiscated and penalties were imposed. All three appellants are officers who were posted in ICD, Indore at the relevant time. Shri A K Shukla, was Deputy Commissioner, Mohd. Naushad was Superintendent; and Shri Virender Joshi was Inspector at Indore Commissionerate. Under section 114 of Customs Act, penalty of Rs One lakh each was levied on them by the impugned order. Being aggrieved, the appellants have filed the present appeals.

3. With this background, we heard Dr G K Sarkar and Shri Piyush Kumar, and Shri R K Majhi learned counsels for the parties. During the course of arguments, learned counsel appearing for the appellants submits that the Shri Virender Joshi, who was inspector at the relevant time and posted at ICD, Indore attended to the consignments. Department promoted him as Superintendent.

4. During that period, Shri A K Shukla, who was Assistant Commissioner of Customs, Central Excise and Service Tax was posted at ICD, Indore was issued charge sheet and penalized by the Commissioner, but the said order was stayed by Hon'ble Madhya Pradesh High Court. Regarding Shri Mohd Naushad, superintendent, we are informed that matter is still pending in disciplinary proceedings.

5. Learned Counsel submits that it was the allegation that the three officers were there when goods were being exported and their acts of omission / commission facilitated fraudulent export. It is their submission that there is no financial gain from their acts of omission. They requested that penalty of Rs. One lakh each may be cancelled.

6. After hearing both the parties, it appears that 50550 Pneumatic tools were exported. The violation was done on that side to avail the DEPB at the rate of 8% of the value by declaring the higher value only the exporter will get the benefit not the officers. The Commissioner in his order vide para 108 has observed that –

*“...there is no proof on record of their having the knowledge of mischief being committed or their having made any financial gain from their acts of omissions....”*

7. In the departmental proceedings, nothing fruitful has come out regarding so called fraud. Shri Virendra Joshi, who was inspector has already been promoted. Shri A K Shukla, Assistant Commissioner has attained superannuation and his charge is stayed by Hon'ble Madhya Pradesh High Court. Similarly, Shri Mohd Naushad, Superintendent, the disciplinary authority is still pending though substantial period has passed.

8. In the light of our discussions, we are of the view that no active involvement of the officers has emerged from the available records

except carelessness on their part. The value declared by the exporter has not given any benefit to the officer. When it is so, then we do not find any justification in the impugned order. Same is hereby set aside to the extent of penalty of Rs One lakh each on the appellants. Remaining order is sustained. In the result, appeal filed by the appellants are partially allowed.

(Dictated and pronounced in the open Court)

**( V. Padmanabhan )**  
**Member (Technical)**

ss

**(Justice (Dr.) Satish Chandra)**  
**President**