IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:12.02.2018

Customs Appeal No.65/2012

[Arising out of Order-in-Original No.45/2011 dated 30.11.2011 passed by the Commissioner of Customs, New Delhi]

M/s.Rakesh Dhingra, Manager Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Ms. Reena Rawat, Advocate for the appellant.
Shri A.K. Singh, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.50639/2018

Per B. Ravichandran:

The appellant was a manager of CHA firm, M/s.S.J. International. The officers of Customs investigated a case of improper export of Muriate of Potash/Potassium Chloride, which is a restricted item mis-declared as Oil Well Chemicals. On conclusion of inquiries, proceedings were initiated against the exporter and among others, the present appellant also. The Original Authority imposed a penalty of Rs.5 lakhs under Section 114 of the Customs Act, 1962 on the appellant. He also ordered ICD, TKD to examine and investigate the role of CHA, M/s.S.J. International in the present case.

2. Ld. Counsel for the appellant submitted that the appellant is only a paid employee of CHA. He was acting as a Manager and was processing the documents for the CHA firm. However, being a paid employee, he was not involved in mis-

declaration that would have been attempted by the exporter, with or without involvement of the CHA. She drew our attention to the findings recorded by the Original Authority regarding non-initiation of the investigation against the CHA by the officers.

3. Ld. AR submitted that the appellant is the main responsible employee of the CHA and he can be charged for penal consequences for attempting export of restricted items.

4. We have hard both the sides and perused the care record.

5. The only point for decision is liability of the appellant for penalty under Section 114 of the Customs Act, 1962. The same are reproduced as below:-

"Provisions of Section 114 of the Customs Act, 1962

> 114. Penalty for attempt to export goods improperly, etc.— Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—
> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1[2[not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;
> (ii) in the case of dutiable goods, other than prohibited goods, to a penalty 3[not exceeding the duty sought to be evaded or five thousand rupees], whichever is the greater; 4[(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.]

6. In the present case, the exporters have been penalized and the goods were ordered to be confiscated. No action is recorded against CHA for any violation of the provisions of CHALR or Customs Act, 1962. As correctly recorded by the Original Authority, it is surprising that no investigation has been done at all about the role and the responsibility including violation, if any, of CHALR/provisions of Customs Act on the part of the CHA, who dealt with many such consignments. However, surprisingly, only the appellant, which is an employee of the CHA has been proceeded and penalized by Rs.5 lakh of penalty. We have also examined the findings recorded at para-22 of the impugned order. The Original Authority found that from the facts of the case, it is clear that the appellant did not discharge his role as an employee of CHA as provided in the law. Further, it is recorded that the obligations and regulations of CHALR, 2004 has not been fulfilled due to failure to examination of due diligence to ascertain the correctness of the information supplied by the exporter. We are unable to ascertain what provisions of the CHALR could have been applied for an employee of CHA as the CHA itself was not proceeded with any offence. The provisions of Section 114, as reproduced above, make it clear that a person, who is involved in doing or omitted to do certain act which will make the goods liable for confiscation is liable or penalty and also a person, who abets in such doing or omission is also liable for penalty. In the present case, apparently, the appellant can be brought under the category of abettor only. For such allegation, positive evidence of act with knowledge has to be ascertained in the present case. No such evidence is brought out in the present case. In fact, whatever allegation could be inferred is against violation of CHALR, 2004 and lack of due diligence by the CHA. Such alleged lack of due diligence has been

fastened on the appellant as a CHA. We note that such allegation is not legally sustainable. His role as an abettor of improper act or omission has not been evidenced.

7. In view of the above, we set aside the impugned order with reference to penalty on the appellant. The appeal is allowed.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.