IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Customs Appeal No. C/50003, 50123-50126, 50132, 50152, 50153 & 50190/2015-CU [DB]

[Arising out of Common Order-in-Original No. 05/2014-Commr-Customs dated 26.09.2014 passed by the Commissioner of Customs Jodhpur, (Hqrs- Jaipur).]

M/s. Fast Cargo Movers
The Rajasthan Small Industries Corporation Ltd.
M/s. Max Shipping and Forwarding Pvt. Ltd.
M/s. Pinkcity Logistics Ltd.
Ajay Vyas
M/s. A.S.R. India Pvt. Ltd.
Amit Jain
Ruchir Parekh
M/s. Thar Dry Port ...Appellant(s)

Vs.

Commissioner of Customs, Jodhpur ... Respondent

Present for the Appellant : Mr. Jatin Mahajan, Mr. Arun Goyal, Ms. Reena Khair & Mr. Bipin Garg (Advocates)
Present for the Respondent: Mr. R. K. Majhi, A.R.

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

Date of Hearing : 10.01.2018
Pronounced on :21.03.2018

FINAL ORDER NO. 51049-51057/2018

PER: S.K. MOHANTY

All these appeals are arising out of the common impugned order, involving the issue of imposition of penalties for illegal export of Red Sanders, instead of the declared goods as Polished

Marble Slabs. Therefore, we are taking up these appeals together for hearing and a common order is being passed.

2. Brief facts of the case are that the DRI officers gathered intelligence that the exporter M/s. Ritu Corporation, Proprietor Shri Ashish Kumar Singh exported two containers from ICD, Thar Dry Port, Jodhpur under two shipping bills, both dated 03.09.2012, by declaring the goods as Polished Marble Slabs and the said consignments had sailed to the destined Port from Mundra Port. On identification of the said containers, the same were called back to the Mundra Port. On examination, it was found to be sealed with customs seal and shipping line seal. It was further found that the right side doors in both the containers were tampered with and they were re-fixed with chemicals from inside. The officers found that the containers were stuffed with huge quantity of Red Sander Logs, which is a prohibited item under the EXIM Policy for export outside the country. After investigation and recording of statements of different persons, a show cause notice dated 27.09.2013 was issued to various persons, including the appellants herein. By the impugned order, the Adjudicating Authority confiscated the logs of Red Sanders of the seized consignment along with past four exports of M/s. Ritu Corporation and also imposed penalties on the proprietor of the exporter, amongst others. In the instant appeals, the adjudicating authority imposed the penalties on the appellants under Section 114 of the Customs Act, 1962. In addition to the said penalties, further penalty under Section 114AA of the Act was

also imposed on the appellant Shri Ajay Vyas. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

3. Heard both sides and examined the case records.

4. The role played by each of the appellants in alleged illegal exportation of red-sanders, as observed in the impugned order, are briefly summarized below:-

(a) *M/s The Thar Dry Port, Shri Ruchir Paikh, Managing Director of M/s. The Thar Dry Port and Shri Amit Jain, Marketing Manager of M/s. The Thar Dry Port:-*

The custodian is required to provide facilities of infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling, stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo etc. The containers for the export consignments of M/s. Ritu Corporation, Jodhpur were allowed to be transported by the custodian, M/s.The Thar Dry Port on private trailers arranged by such exporter. Thus, the said noticees have grossly neglected the laid down procedures and deliberately facilitated the smugglers to take the containers in their transport vehicles and handed over the customs control of the goods to the smugglers, to enable them to replace those goods with the prohibited goods.

(b) M/s. Rajsico:-

The adjudicating authority observed that they have erred in discharging their statutory duties and obligation to ensure the safe and secure transportation of cargo from Jodhpur to Mundra.

(c) *M/s. Max Shipping & Forwarding Pvt. Ltd.:-*

It has been alleged that they have failed to discharge their statutory functions for safety and security of the cargo. The adjudicating authority observed that it was the primary responsibility of the noticee to transport the goods safely to the destined gateway port.

(d) *CHA, M/s. Pink City Logistic, its representative Shri Ajay Vyas:-*

The adjudicating authority observed that they have not properly verified the antecedents and other documents in context with the shipping bills filed in respect of the export consignments. Thus, the noticees have neglected in observing the regulations/ procedures laid down in the CHA Regulations.

(e) *M/s. ASR India Pvt. Ltd.:-*

The function of the shipping line was limited to provisions of the containers to prospective exporter/ forwarder, after addressing the KYC norms of the exporter. The adjudicating authority observed that the appellant had failed to discharge their professional duties and grossly neglected the proper procedural requirements.

(f) *M/s. Fast Cargo Movers:-*

The function of the shipping line was limited to provision of the containers to prospective exporter/forwarder, after addressing the KYC norms of the exporter. It was not the job of shipping line to issue a No Objection Certificate to the custodian for movement of the containers on private trailers. Since the noticee had given NOC, without verifying the approval of customs and facilitated the transportation of cargo by road for substitution with contraband red-sanders, the conduct of noticee is not bonafide.

6. Section 114 of the Customs Act, 1962 mandates imposition of penalty, in cases, when any person, who in relation to any goods, does or omits to do any act, which renders the goods liable for confiscation. From the above observations of the adjudicating authority, we find that the charges leveled against the appellants are basically confined to the fact that as the custodian, clearing & forwarding agents, shipping line agents and customs house agents in context with the export of alleged goods, the appellants have grossly neglected their duties and responsibilities cast on them under the Regulations, namely, Handling of Cargo in Customs Area Regulations, 2009 and Customs House Agents Licensing Regulations, 2004. The said regulations provide the procedure for suspension or revocation of license and for imposition of penalty for contravention of the laid down provisions contained therein. In exercise of the powers conferred by the Customs Act, 1962, the CBEC has formulated the said Regulations. When the statute specifically provides for a code of conduct and penalty for infringement thereof, it is not proper and appropriate to bring such violation within the realm or scope of another statutory provision i.e. Section 114 of the Act for punishing the person, by way of imposing penalty, with the allegation of intention to smuggle or attempt to smuggle the goods or abetting such act of smuggling. In other words, anybody can be penalized under Section 114 of the Act, but the

authorities are under the statutory obligation to prove that because of the wrong doing, omission or commission on part of such person, the goods became liable for confiscation.

7. In the present appeals, it is seen that the allegations against the appellants are mainly concerned with failure to discharge their duties and responsibilities mandated under various Regulations for dealing with goods in legalized manner. Apparently, there is no material evidence available in records to prove that the appellants were either involved in smuggling of the goods, or encouraged and supported the wrong doer in doing the wrongful act in attempting to export the goods. These penal provisions call for prior knowledge of wrong doing or existence of deliberate intend (malafide). Section 114 A of the Act also provides for imposition of penalty for furnishing incorrect or false declarations. Here also such declaration should be intentional with prior knowledge. Thus, as per the settled principles, penal provisions cannot be invoked for imposition of penalties under Section 114 and 114AA of the Act.

8. Reliance on various case laws as submitted by the appellants are appropriate to support the above findings. Some of these decisions are as under:-

a. Sanco Trans Ltd. - 2017-TIOL-757-HC Mad. Cus.

b. Sarosh Nagarwala & Others. - 2017-TIOL 233 CESTAT-Mum.

c. Skyline Shipping & Logistics. - 2010 (262) E.L.T. 985 (Tri. Chen.)

d. Maheshwari Rocks (I) Pvt. Ltd. - 2010(262) E.L.T. 574 (Tri. Chen.)

e. Sekar & Sekar Process.- 2010 (262) E.L.T. 385 (Tri. Chen.)

f. Kiran S. Dixit. - 2014 (301) E.L.T. 337 (Tri. Bang.)

9. Therefore, we do not find any substance in the impugned order, in support of imposition of penalties on the appellants. Accordingly, after setting aside the same, we allow the appeals in favour of the appellants.

[Pronounced in the open Court on 21.03.2018]

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Anita