IN THE CUSTOMS, EXISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 11.05.2018
Date of Decision: 21.05.2018

Appeal No. C/50700/2018-SM

[Arising out of Order-in-Original No. IND-EXCUS-000-APP-466-17-18 dated 29.12.2017 passed by the Additional Commissioner, Customs, Excise and Service Tax, Indore]

M/s Shri Ankit Mehta …Appellant

Vs.

C.C.E., Indore …Respondent

Appearance:
Represented by Ms. Rupam Rai, Advocate for the appellant.
Represented by Shri P. Juneja, D.R. for the respondent.

Coram: Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 52001/2018

Per Ms. Rachna Gupta:

The present appeal has been filed by Shri Ankit Mehta, proprietor, M/s Yomini Overseas, the Customs House Agent based in Indore. Disputing the imposition of penalty of Rs. 10,00,000/- as has been confirmed by Commissioner (Appeals) vide his order dated 29.12.2017, the facts relevant for the purpose of disposing the present appeal are:-

1. The department got information about a syndicate to have been engaged in gross overvaluation of exports to avail higher / undue and ineligible drawback benefits. In furtherance thereof, an action was enunciated by the officers of DRI Mumbai Zonal Building. Some documents were retrieved in respect of consignments exported to Saudi Arabia, Sweden, etc., from ICD Dhannad. Based on the documents, one container bearing number INKU5619469, pending export at Nheva Sheva Gateway Port was identified and was put on hold for examination. The goods in this container were meant for export to M/s Declare International General Trading, Dubai, UAE under 05 (five) Shipping Bills in the name of M/s VJM Infra Projects Pvt. Ltd.

2. The goods stuffed in the said container were destuffed and examined by the DRI officers in the presence of Shri Ankit Mehta, the appellant (CHA No. IND/01/2010) who handled the customs clearance of this consignment at ICD Dhannad under the panchnama on 05.08.2013. The said

container was found to be stacked with goods with HDDE bags. Statement of the appellant was recorded under Section 108 of Customs Act of 02.09.2013 who admitted about handling the export clearance assigned to him by Kirath Shrimankar of Mumbai as the one among 23 exporters as mentioned by him, for whom the appellant was the authorized agent, for an amount of Rs. 4,000/- per container. In addition, he admitted to have received Rs. 750/- per Shipping Bill + 2% of duty drawback involved from Shri Kirath Shrimankar. The said amount was also admitted to be handed over by him to the inspector posted at the ICD for facilitating hustle-free clearance of export cargo. From the subsequent investigations, it was found that the total amount of Rs. 31.56 crores and Rs. 17.34 crores were disbursed from ICD Dhannad and ICD Kheda, respectively, to the firms controlled by Shri Kirath Shrimankar.

3. After affording due opportunities of being heard, the Additional Commissioner, vide his order dated 28.02.2017, ordered to confiscate the goods with total declared FOB value of Rs. 5,98,24,458/-, confirms declaration of quality and value. However, the same was held allowed to be

redeemed on payment of redemption fine of Rs. 10 lakhs, provided the option was to be exercised within one month of the said order. The drawback claim of Rs. 45,19,525/- in respect of five impugned Shipping Bills, all dated 27.05.2013, were ordered to be restricted to eligible amount of Rs. 11,92,388/-, a penalty of Rs. 10 lakhs was imposed in view of Section 114, Sub-section 3 of the Customs Act on all the noticees and additional penalty of Rs. 10 lakhs under Section 114 (A)(a) was imposed on two of the notices, that is M/s VJM Infra Projects Pvt. Ltd. and Kirath Shrimankar.

4. The Commissioner (Appeals) in his order under challenge has held that the appellant, being CHA, had complete knowledge of overvaluation of export goods and was also aware of fraudulent nature of export. As such, he was held to have knowingly the involved with Shri Kirath Shrimankar for more than two years, thereby was held as equally responsible for fraudulent export of low quality goods with the sole aim of claiming undue benefit of drawback from Customs Department.

5. I have heard the parties to appeal at length where it is mentioned for the appellant, Shri Ankit Mehta that he is

merely a Customs House Agent who is bound to discharge such obligations as are mentioned in the Act, which he has properly performed without committing the alleged fraud. It is impressed upon that the statement of the exporter has nothing against CHA nor contained in the statements of other 26 witnesses examined by the department, there lies any iota of allegations against CHA. Thus, CHA has no role in the noticed conspiracy. It, otherwise, does not come under Section 114 of the Customs Act. Above all, the exporter himself has admitted about committing blunder. The CHA cannot be held responsible for the said blunder. While rebutting these arguments, the department has impressed upon Shri Ankit Mehta's own statement where he has admitted for receiving the duty drawback at the rate of Rs. 750. Exporter's admission for receiving extra-ordinary benefit of duty has also been impressed upon with the prayer for rejecting the appeal.

6. After hearing both the parties at length and perusing the entire record of the appeal, the observations and findings of mine are as follows:-

(i) It is appellant's own case that he handled the export clearances of 23 exporters including Shri Kirath

Shrimankar of Mumbai with whom the appellant is alleged to have conspired for the alleged evasion. This clarifies that the appellant is an experienced CHA, and is, therefore, well aware of all the provisions relating to him including the CHA's obligations as enshrined under Rule 11 of Customs Brokers Licensing Regulations, 2013. In accordance thereof, CHA is duty-bound to advise the client to comply with the provisons of the Act and the regulations diligently ensuring the imparting of correct/relevant information to the client for clearance of cargo or baggage. If there is any non compliance by the client, it is the duty of CHA, the appellant herein, that he must bring it to the attention of the Deputy or Assistant Commissioner. It is his fiscal accountability that he must promptly pay the Government all moneys received from the client for duties and taxes. Also, any money received from the client or from the Government should be promptly and fully accounted to the client. In an export, as the one in present case, the CHA is duty bound to deliver documents to exporter after completing necessary export formalities with the Customs. The Customs Brokers, as per Section 2(C) of the Customs Brokers Licensing Regulation, 2013, are the persons licensed under these regulations to act as an agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of the goods at in Customs Station.

(ii) The fact of the present case is that the container belonging to Shri Kirath Shrimankar which was meant to export to M/s Declare International General Trading, Dubai, UAE, under five Shipping Bills was destuffed and examined by the Customs Officers in the presence of the appellant, the CHA of said Shri Kirath Shrimankar. The appellant only handled the custom clearance of the consignment at ICD Dhannad under the Panchanama on 05.08.2013. Thus, it is clear that the duty of appellant was not yet completed by the time the consignment was put on hold and was inspected as there is nothing on record to show that goods after being stuffed, the container was completely sealed in presence of the CHA, rather the consignment on hold was checked in the presence of the appellant himself. The High Court of Kolkata in the case High Court of Delhi in Asian Cargo Services vs. Commissioner of Customs, 2014 (302) ELT 161 (Delhi), has held that the role of CHA does not come to an end till the goods are stuffed and the containers got sealed. His responsibility comes to an end only when the sealed containers are moved out of his supervision. In the given circumstances, I opine that the Commissioner (Appeals) has rightly held about the appellant's plea to be nothing but an eye-wash. The appellant's plea that he was never concerned with the goods illegally exported, being merely an agent of the exporter is nothing but an eye-wash Keeping in view the obligations of the CHA as enshrined in Rule 11 of the Regulations 13 of the Regulations' 2013, it is crystal clear that no inferior quality goods can be exported and imported, that too, for a period of more than two years continuously without the knowledge of the CHA.

(iii) The defence of the appellant also stands vitiated from his own admission that he used to receive a percentage of the duty drawbacks and other benefits apart from the normal charges. Not only this, it is also apparent on record that the appellant was well aware of unnecessary exercise of transporting the goods from Urn to ICD Dhannad/Kheda for export and bringing them back to Nheva Sheva instead of clearing them from Nheva Sheva Gateway Port straight away. As a result of these observations, it is held that the Commissioner (Appeals) has rightly held the appellant to be equally responsible for the fraudulent export of low quality goods with the sole aim of claiming the undue benefits duty drawback from Customs Department. Accordingly, I find no infirmity in the order under challenge. The same is hereby upheld and the appeal is hereby rejected.

[Pronounced in open court on 21.05.2018]

(Rachna Gupta)
Member (Judicial)

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