CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing/decision: 09.08.2018

Custom Appeal Nos. 50327, 50410 & 51549 of 2018
(Arising out of Order-in-Appeal No. CC(A) CUS/D-I/Export/NCH/474, 478 & 473 dated 23.10.2017, 26.10.2017 and 23.10.2017 passed by the Commissioner of Customs (Appeals), New Delhi).

Manoj Kumar Nagar Appellant
Rajesh Kumar Mishra
Ali Sher Khan

Vs.

CC, New Delhi Respondent

Appearance:

Sh. Somesh Arora, Sh. Md. Fraz & Sh. Vaibhav Singh, Advocates for the appellant
Sh. H. C. Saini, AR for the Respondent

Coram:

Hon'ble Sh. Ashok Jindal, Member (Judicial)

Final Order Nos. 52763 – 52765/2018

Per: **Ashok Jindal**:

The appellants are in appeal against the impugned order wherein various penalties has been imposed on the appellants.

2. Brief facts of the case are that a shipping bill No. 1830007 dated 27.03.2014 was filed by Sh. Manoj Kumar Nagar (appellant) on behalf of the exporter namely M/s Swastika Automatics, Faridabad. The goods

were covered under the said Shipping Bill was produced for examination for the export and declare as brake pad for vehicle. Later on, a letter dated 28.03.2014 was received by the Custom Department through M/s Swastika Automatics requesting for withdrawal of the shipment as consignee did not make payment of such export. Thereafter, the consignment was examined by the officers on 29.03.2014 in the presence of the representative of the appellant and the forwarder. It is pertinent to mention here that the appellant Sh. Manoj Kumar Nagar, Sh. Rajesh Kumar Mishra, co-appellant also made a request vide letter dated 28.03.2014 for 100% examination of the consignment. On the basis of that, the consignment was examined by the officers on 29.03.2014 in the presence of representative of CHA and forwarder. During the course of examination of the consignment, it was found that the goods were worn out brake pad on the top of the carton. On further examination by the Wild Life Inspector on 31.03.2014 it was found as logs and the species of tree is listed in CITES and in general is prohibited for export. On the basis of the investigation, the show cause notice was issued to the exporter/ co-noticee of the appellants. Thereafter, the adjudication took place and penalty under Section 114 of the Customs Act, 1962 has been imposed on all the appellants, who are before me.

3. Shri Somesh Arora, ld. Advocate appeared on behalf of Sh. Manoj Kumar Nagar and submits that the appellant was having no knowledge of

the suspicious goods carrying in the consignment of M/s Swastika Automatics. In fact, the appellant alongwith co-appellants Sh. Rajesh Kumar Mishra themselves approached to the Custom authorities on being suspicion of the goods consigned in the consignment and requested that the goods are to be examined 100%. Due to that, the goods were examined and it was found that the consignment was carrying red senders, therefore, the appellant acted with due diligence, therefore, no penalty can be imposed on the appellant as appellant was having no knowledge of the goods packed in the consignment. Therefore, the penalty is not imposable.

4. Ld. Counsel appearing for the appellant Sh. Rajesh Kumar Mishra also accepted the arguments advanced by Sh. Somesh Arora and submits that the appellant is an employee of Sh. Manoj Kumar Nagar and he himself found that the goods were exported through the consignment and intimated to the Department, therefore, no penalty can be imposed.

5. Ld. Counsel appeared on behalf of Sh. Ali Sher Khan submits that the appellant is coordinator between the shipping lines and the exporter and has booked the space and introduced the person for export but having no knowledge of the contents of the container in which goods were to be exported. Therefore, the appellant was having no knowledge of the consignment, therefore, no penalty is imposable.

6. On the other hand, ld. AR appearing for the Revenue opposed the contention of the ld. Counsels and submits that in this case the appellant, Sh. Manoj Kumar Nagar was required to verify antecedent of the exporter which he failed to do so, therefore, the penalty is rightly imposed on the appellants.

7. Heard the parties and considered the submissions.

8. On careful consideration of the submissions made by all the parties, I find that in this case the core issue is to be decided as to whether the appellants were having knowledge of the contents of consignment which was to be exported by the exporter or not, the act of the appellants and records placed before me show that the appellants were having no knowledge of the contents of the consignment to be exported. It is the appellants who themselves have detected the consignment and intimated to the Custom Department that the consignment is carrying some suspicious goods, therefore, it was 100% examined. In that circumstances, I hold that penalty under Section 114 of the Act is not imposable.

9. Further, it was inquired from the ld. AR to know whether any proceedings initiated against the appellant under CBLR, 2013 or not? It was replied that no proceedings were initiated against the custom broker. In that circumstances, as Revenue itself is of the view that the appellants

are not to be punished under CBLR. Therefore, no penalty can be imposed on the appellant under Section 114 of the Customs Act, 1962.

10. In these terms, relying on the decision of the Tribunal in the case of Shri Sandeep Vats vs. CCE, New Delhi (F.O No. 51599/2018 dt.24.02.2018) the co-noticee in the impugned proceedings, the penalties imposed on the appellants are set aside.

11. With these terms, the appeals are allowed with consequential relief.

(Dictated and pronounced in the open Court).

(Ashok Jindal)
Member (Judicial)

Pant