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

COURT –II

Date of hearing/ Decision: 27.08.2018

Appeal No. C/51419/2018-SMC
[Arising out of Order-in-Appeal No. OIA-IND-EXCUS-000-APP-448-17-18 dated 29/12/2017 passed by Commissioner of CUSTOMS-INDORE (Appeal)

SANJAY KUNDRA Appellant

Vs.

C.C.E. & S.T.-INDORE Respondent

Appearance:
Sh. Jitendra Singh , Advocate for the appellant
Sh. P.R. Gupta, DR for the Respondent

Coram:
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No._52876/2018___

Per: V. Padmanabhan

1. The present appeal is against the Order-in-Appeal No. 448/2017-18 dated 29/12/2017.

2. Vide the impugned order, the penalty imposed on the appellant i.e. Shri Sanjay Kundra has been reduced from Rs. 10 Lakh, imposed by the original adjudicating authority, to Rs. 5 Lakh. The appellant was allegedly involved in the export of sub-standard garments, with inflated FOB values, with the intention of claiming undue drawback. As per the facts of the case on record, the Customs Department investigated the consignment contained in Container No. INKU 5617469, comprising 5 shipping Bills. The container was entered for export from ICD Dhannad for ultimate export through the Gateway Port, Nhava Sheva. The examination of the contents of the container revealed that it contains various sub-standard garments. The investigation conducted into the affairs concluded that the goods originated

from M/s VJM Infra Projects Pvt. Ltd., Indore were stuffed in the container and export documentation was done using the IEC code belonging to one Shri Ajay Mishra. One Shri Kirit Shrimankar was said to be involved in orchestrating the fraudulent export transactions. The Appellant, Shri Sanjay Kundra, acted as the freight forwarder and as per the statement recorded from him, was involved in typing out the export invoices on the basis of details given to him in the form of handwritten note from Shri Kirit Shrimankar. The export consignment was confiscated by the lower Authorities and penalties were imposed on all connected persons including Shri Sanjay Kundra. The present appeal has been filed challenging the penalty imposed on Sanjay Kundra.

3. With the above background, heard Shri Jitender Singh, Ld. Counsel for the appellant and Shri P.R. Gupta, Ld. DR for the Revenue. The Ld. Advocate submitted that the penalty imposed on the appellant is exorbitant, even after the reduction ordered by the Ld. Commissioner (Appeals). He submitted that the appellant has not even acted as the CHA in respect of the 5 shipping bills involved in the present offence. His only role has been to act as freight forwarder and also in preparing the invoices on the basis of the values and other details furnished to him. For such a role, the penalty imposed is unreasonable and he prayed that the same may be set aside. He also relied on various case laws and submitted that the appellant had no knowledge about the over-valuation and should not be penalized unreasonably.

4. The Ld. DR justified the penalty imposed on the appellant. He laid emphasis on Para 7.1 and 7.2 of the impugned order in which the Commissioner (Appeals) has held that the role played by the appellant clearly indicates that he was involved in the fraudulent transactions. He

particularly emphasized the fact that the appellant was aware of the fact that the goods were transported from Uran (which is near to the Nhava Sheva Port) to ICD Dhannadh (MP) and then transported all the way back to Nhava Sheva , which no prudent exporter will do.

5. Heard both sides and perused the record.

6. The investigations undertaken by the Customs Department has revealed the alleged fraud undertaken to claim undue drawback claims by inflating the FOB values of the export goods. Examination of the goods contained in the container revealed that the values declared in the export consignment were exorbitant and unreasonable. But for the purpose of the present appeal, it is necessary primarily to focus on the role played by the appellant, Shri Sanjay Kundra. As per the role played by him, outlined in the show cause notice dated 3/12/2013, Shri Kundra acted as the freight forwarder, based in Indore. He has prepared the relevant export invoices on the computer, on the basis of the details given to him by Shri Kirit Shrimankar, the alleged master mind in the export fraud. From the record there is nothing to suggest that the appellant was aware of the over-valuation of the goods, with the intention of claiming fraudulent drawback. Lower Authority has recorded that he was very much aware of the unnecessary exercise of transportation of goods from Uran to ICD Dhannadh and back to the Nhava Sheva. The knowledge of this suspicious act along with act of preparing export invoices has been used to justify the penalty imposed on him.

7. After considering the entire facts and circumstances of the case, it is noted that the main conspirators, in the case i.e. Shri Kirit Sharimankar and Shri Ajay Mishra were directly involved in this fraudulent export. The only benefit received by the appellant is in the form of certain payments of

Rs. 3000 per container for the role played by him. Under the circumstances the penalty imposed on the appellant on the higher side and is reduced from Rs. 5 Lakh to Rs. 1 Lakh, in the interest of justice.

8. In the result, impugned order is modified as above.

(Order dictated & pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

Rekha