CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. C/476 & 478/2009

(Arising out of Order-in-Original No. 15/2009 – Adjn. Cus dated 29.04.2009 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Exim Services
M/s Expo Freight Pvt. Ltd., …..Appellant(s)

Vs.

Commissioner of Customs, Central Excise
& Service Tax, Hyderabad -II …..Respondent(s)

Appearance
Shri T. Jagapathi Rao, Advocate for the Appellant.
Shri Dass Thavanam, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 02/08/2018
Date of Decision: 02/08/2018

FINAL ORDER No. A/31122-31123/2018

[Order per: M.V. Ravindran]

These two appeals are directed against Order-in-Original No. 15/2009 – Adjn. Cus dated 29.04.2009.

2. Appeal No. C/476/2009 is filed by Exim Services against the imposition of penalty on them under provisions of Section 114 of the Customs Act, 1962. Appeal No. C/478/2009 filed by the Expo Freight Pvt. Ltd., against the imposition of penalty under Section 114 of the Customs Act, 1962. Since, both the appeals are directed against the same Order-in-Original and contesting the same issue, they are being disposed of by a common order.

3. Learned Counsel Shri T. Jagapathi Rao appeared for the appellant M/s Exim Services, appellant M/s Expo Freight Pvt. Ltd., is unrepresented.

4. Heard both sides and perused the records.

5. The issue that needs to be decided in these cases is whether the appellants herein are liable for the penalty imposed by the Adjudicating Authority or otherwise.

6. Briefly stated facts are M/s Suryakiran International Limited had filed a shipping bill No. 6042172 through appellant M/s Exim Services and initially it was a free shipping bill. Subsequently, on instructions of M/s Suryakiran International Limited, Exim Services filed a drawback shipping bill No. 6042551. It is the case of the Revenue that on investigation, it was found that the consignment entered for export i.e., Cotton Denim Garments was mis-declared on

quality and valuation and it was sought to be exported to avail ineligible higher drawback. Show cause notices were issued to the assessee and the appellants herein. Appellants herein contested the show cause notice for imposition of penalty on them. Adjudicating Authority after following due process of law, did not agree with the contentions raised and imposed penalty of Rs. 5,00,000/- on M/s Exim Services and Rs. 1,00,000/- on M/s Expo Freight Pvt. Ltd. To come to such a conclusion, the Adjudicating Authority has held that M/s Exim Services had filed drawback shipping bill without cancellation of free shipping bill; and availed ineligible benefit; he has not followed the role of CHA properly and failed to discharge their obligations under CHA regulations. As regards M/s Expo Freight Pvt. Ltd., it is his submission that the said appellant had provided the container for export of the goods which are use for attempted mis-declared export and the entire conspiracy involving the exporter was aided by these appellants hence provisions of Section 114 of Customs Act, 1962 are attracted.

7. Learned Counsel draws our attention to the findings recorded by the Adjudicating Authority and submits that there is no definitive role attributed to M/s Exim Services. They filed free shipping bill as per procedure and subsequently were directed to file drawback shipping bill by exporters, they did so, and cancelled the free shipping bill. He relied upon the decision of the Tribunal in the case of *Freightwings & Travels Ltd.,* [2017 (358) ELT 669] wherein,

penalty imposed under Section 114 were set aside for mis-declaration of value of confiscated goods by an exporter.

8. Learned Departmental Representative reiterates the findings of the lower authorities.

9. We have considered the submissions made by both sides and perused the records.

10. As regards the findings recorded by the Adjudicating Authority in respect of appellant M/s Exim Services Pvt. Ltd., we find that the Adjudicating Authority has not recorded the exact role played by the M/s Exim Services, except that failure to cancel the first drawback shipping bill and thereafter filing the second shipping bill with proper reasons and intimation to the proper officer, have aided the exporter to conceal the crime. In our considered view, the appellant M/s Exim Services would not be covered under Section 114 for simple reason they had filed shipping bill as per the documents received by them in the first instance or in the second instance of filing drawback shipping bills were on instructions. There is nothing on record to indicate the appellant M/s Exim Services had instructed/aided M/s Suryakiran International Limited for claiming ineligible drawback on the export of mis-declared and overvalued Denim Garments. In the absence of any such evidence, we have to hold that the appellant herein is not liable to be penalized under

Section 114 of the Customs Act, 1962. We find that the ratio of the decision of the Tribunal in the case of Freightwings & Travels Ltd., (supra) (wherein, one of us M. V. Ravindran was a member) covers the issue. The ratio is in paragraph No. 8 which is reproduced:

> ***"8.*** *Doubtlessly, the goods can be subject to confiscation if value is found to have been misdeclared. Penalty is imposed only if it is established that, in relation to the offending goods, some act is committed or is omitted to be done that leads to confiscation. Such act or omission has not been brought on record. Mere filing of bills or presentation of goods that were found to be liable to confiscation does not constitute act or omission referred to in Section 114 because these are procedural requirements. None of the statements establish that the appellants were aware or participated in the procurement, packing or transportation of the goods."*

11. In view of the foregoing, we hold that the penalty imposed on M/s Exim Services is unwarranted and liable to be set aside and we do so.

12. As regards penalty imposed on M/s Expo Freight Pvt. Ltd., we find that only allegations against them is they had provided container to M/s Suryakiran International Ltd., for the export of mis-declared undervalued Denim Garment for export. In our view, the findings of the Adjudicating Authority do not indicate any specific role by M/s Exim Services and penalty is imposed only on the finding of the Adjudicating Authority expo freight aided the exporter by providing the container, cannot be held has an activity for visiting penalty under Section 114 of the Customs Act, 1962.

13. The Appeals filed by both the appellants merits acceptance and we do so. The impugned order to the extent they imposed penalty on these two appellants are set aside.

(Operative part of this order was pronounced in open court on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….