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

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Appearance
Shri S. C. Choudhary, Advocate for the Appellant (s).
Shri Guna Ranjan, Superintendent (AR) for the Respondent (s).

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Date of Hearing: 05/09/2018
Date of Decision: 09/10/2018

FINAL ORDER No. A/31294-31298/2018

[Order per: M.V. Ravindran]

All these following appeals are directed against the same Order-in-Original and hence they are being disposed of by a common order.

Sl. No.	Appeal No.	Appellant (s)	Respondent (s)	Impugned Order	Penalty contested
1.	C/30256/2017	ICS Cargo	CCE, C& ST, Visakhapatnam - I	OIO No. VIZ-CUSTM-000-COM-05-16-17 dated 15.11.2016	Rs. 1,00,000-/
2.	C/30437/2017	Kosuri Somasekhar	-do-		Rs. 10,00,000/-
3.	C/30438/2017	K. Pydi Raju	-do-		Rs. 15,00,000/-
4.	C/30439/2017	Dattar Shipping and Logistics Pvt. Ltd.,	-do-		Rs. 50,000/-
5.	C/30440/2017	Pandiri Praveen Kumar	-do-		Rs. 25,00,000/-

2. The relevant facts that arise for consideration are, after filtering out of unnecessary details are acting of intelligence was received that a gang of smugglers had illegally exported two containers stuffed with red sander wood logs from Visakhapatnam Port and one more container is to be exported, intercepted the container attempted to be exported from M/s Visakha Container Terminal Private Limited, Visakhapatnam on 16.06.2014. On inspection of said container, it was noticed that the container was in fact stuffed with red sander logs. Pursuing the case further, an investigation was launched and the authorities recorded statements of various persons and issued show cause notices after collecting the evidences on such residential premises of various persons. A show cause notice dated 11.12.2014 was issued to various individuals as also to the above referred appellants. The above referred appellants were directed to show causes as to why penalties should be imposed on them under the provisions of Section 114 of the Customs Act, 1962. Various individuals were also issued show cause notices and the show cause notice also sought absolute confiscation and the red sanders wood logs seized during the proceedings. The appellants herein above contested

the show cause notice, and submitted individually that penalty cannot be imposed on them. The Adjudicating Authority after following due process of law, imposed penalties on various individuals by the impugned order. The appellants herein above have only filed the appeals against such imposition of penalties.

3. Shri S. C. Choudhary appeared for appellants Shri P. Praveen Kumar, K. Pydi Raju, K. Somasekhar Reddy & Dattar Shipping and Logistics Pvt. Ltd. He would submit that as regards the penalty imposed on M/s Dattar Shipping and Logistics Pvt. Ltd., that the penalty is wrongly imposed as the company is engaged in booking of containers for export of goods for parties and penalties imposed on the ground that the appellant had booked the container without having any written orders from the clients and since banned goods were found in the container, penalties needs to be imposed on them is the correct finding. After taking the Bench through the provisions of Section 114, Learned Counsel submits that in these appellants case, there is no activity which has rendered the goods liable for confiscation even if it is export of red sanders and submits that the stuffing of the container was never done by the appellants and there is no evidence to conclude that appellant herein was engaged in the role of stuffing of the container. He would submit that the provisions of Section 114 are not attracted in this case. Even, if the employee of the appellants who's the director may have held responsible for such illicit export of red sanders logs. As regards the penalties imposed on K. Somasekhar, K. Pydi Raju & Praveen Kumar, it is his submission that the penalties imposed on them had been based upon the statements given by them

and had contested the show cause notice. On the ground that the statements were invalid nature and they were never present at the time of panchanama in residential premises. It is his submission that the panchanama recorded in all these appeals had never taken place and it is a fabricated panchanama. It is his submission that they had sought for cross examination of panchanama but it was not granted. It is his further submission in the absence of the correct panchanama, there is no independent corroboration of the statements. It is his submission that the appellants herein had specifically contested the statements in reply to the show cause notice. As regards the allegations on the appellants, it is his submission that the Adjudicating Authority has recorded that all these three appellants were part of the group stationed and functioning out of Mumbai. In view of the same, the penalties imposed on M/s ICS Cargo, Learned Counsel on record has stated that he was unable to appear before the Bench on the ground that he is tried up a matter before the Tribunal in Mumbai, it is noticed that this matter was argued by appellant and it was submitted that penalty imposed on appellants under provisions of Section 114 is not correct as appellant had acted on as customs broker for the goods export under various shipping bills and are charged with the allegation that they had filed the said shipping bill without verifying the IEC number is uncalled they were instructed by Shri Praveen Kumar as nominated person for them.

4. Learned Departmental Representative after repeating the facts as indicated herein above, took us through the entire Order-in-Original in respect of roles attributed to various appellants. It is his

submission that Shri Praveen Kumar, Managing Director of M/s Dattar Shipping and Logistics Pvt. Limited, was responsible for illegal export of red sander wood logs. It is his submission as the director of M/s Dattar Shipping and Logistics Pvt. Ltd., has placed orders on the liners and used them in the illegal export of red sander wood logs and there is documentary evidence have confirmed by Shri P. Praveen Kumar has placed the orders for empty containers for export of goods in the name of non-existing firms and got the red sander wood logs stuffed into the containers and manipulated the said shipping bills. It is his submission, Shri Praveen Kumar has admitted his role in smuggling of red sander wood logs, it is his submission that role of Shri Pydi Raju and K. Somasekhar is very clearly brought on record that Shri K. Somasekhar played a key role in fabrication of various export documents to be presented to customs for the purpose of red sander wood logs which has banned for export. It is also his submission Shri K. Somasekhar and Shri Pydi Raju in fact admitted that they did this activity for monetary consideration for fabricating the export documents from Shri Praveen Kumar and during the search operations of the residence of Shri Pydi Raju, the officers recovered unaccounted cash amounting to Rs. 24 lakhs which remained unexplained in the proceedings earlier consignments of illegal export of red sander wood logs.

5. Heard both sides and perused the records.

6. The appeal of M/s ICS Cargo is against imposition of penalty of Rs. 1,00,000/- on them. I find that the Adjudicating

Authority has imposed a penalty under Provisions of Section 114(i) of the Customs Act on them for omissions and commissions which have rendering the subject goods liable for confiscation. In the entire findings on the role played by M/s ICS Cargo, I find that the Adjudicating Authority has recorded, M/s ICS Cargo being CHA/Customs Broker as employer of Shri Praveen Kumar and said Shri Praveen Kumar master minded illegal export of red sander wood logs, are liable for penalty. In my view, the findings recorded by the Adjudicating Authority are unacceptable as there was no omission on the part of the appellant M/s ICS Cargo, as per statements recorded of Shri Praveen Kumar, wherein he stated that M/s ICS Cargo is not aware of the situation of his embarking into illegal export of red sander wood logs. The statement recorded by Shri Praveen Kumar does not implicate the M/s ICS Cargo to hold them for imposition of penalty under the provisions of Section 114(i) of the Customs Act, 1962. Accordingly, I find that the penalty imposed on M/s ICS Cargo is incorrect and their appeal needs to be allowed and I do so.

7. As regards the penalty imposed on Shri Praveen Kumar & M/s Dattar Shipping & Logistics, I find that the Adjudicating Authority has clearly brought in paragraph No. 30 and paragraph No. 37, the roles played by Dattar Shipping and individual Shri Praveen Kumar. It is seen from the said findings that Shri Praveen Kumar was advising many people how to do the illegal export of red sander wood logs. Shri K. Somasekhar and Shri Pydi Raju have clearly stated that they were engaged in the export of red sanders under the advice of Shri Praveen Kumar. The findings recorded by the Adjudicating Authority

in paragraph No. 30.2 of his Order-in-Original and also paragraph No. 30.3 clearly indicate the complicity of Shri Praveen Kumar in master minding the illegal export of red sander wood logs. Since, he is the director of M/s Dattar Shipping and Logistics, were used for export of red sander wood, I find that the penalty imposed by the Adjudicating Authority on both these appellants under the Section 114(i) is correct and does not require any interference. Appeals of Shri Praveen Kumar and Dattar Shipping and Logistics Limited stands rejected.

8. As regards the role played by Shri Pydi Raju, I find that the Adjudicating Authority in paragraph No. 31 has brought out very clearly that he played vital role as a facilitator for smooth clearance of the red sanders wood consignments for export and he was involved in preparation of forged export documents and made necessary transport arrangements for illegal export of red sanders to a private godown for loading into containers. It is on record that Shri K. Pydi Raju had received monetary consideration from Shri Praveen Kumar for illegal exports of red sanders and it is also not disputed during the search operations in his residence, unaccounted cash of Rs. 24 lakhs were found which can be considered as sale proceeds of illegal export of red sandal woods. In view of this, I find no impropriety in the order passed by the Adjudicating Authority while imposing penalty on Shri Pydi Raju. The appeal filed by the Shri Pydi Raju stands rejected.

9. As regards the role played by the Shri K. Soma Sekhar, I find that the Adjudicating Authority has clearly brought out on record that various rubber stamps of the customs officers were recovered

from his residence and he had agreed and admitted to the said fact. In the statements given by him to the authorities, he has clearly accepted and could not give any valid reasons for presence of rubber stamps specially those of the gazetted Central Excise officers at his residence and findings of the authorities that these cannot be any honourable purpose behind existence of any such rubber stamps in his residence be justified is the correct conclusions and findings in this case and does not require any further elaboration. It is also noted that the Adjudicating Authority has clearly recorded that these evidences which was found in his residence clearly indicates that there was a malafide intention of the appellants to keep rubber stamps of the gazetted officers in his residence which also leads to the statements recorded by the appellant herein who had stated these rubber stamps were prepared by him which on advice of Shri Praveen Kumar. Any responsible citizen, would have questioned the requirement of such rubber stamps of gazetted officers which, was not done by appellant herein. This would definitely indicate that the appellant had failed to prove that he was in possession of these rubber stamps not for legal purpose. In the presence of such an evidence, it goes to show that he had involvement and was in knowledge of illegal smuggling and export of red sander wood logs. The statements of the Superintendent, whose stamps and signature found on the documents confirmed are not their signature also goes against appellant. The evidence as put forth by the appellants and other appellants are now demolished by the various statements of these persons. In view of this, I find that the Adjudicating Authority was correct in imposing penalty on this appellant under Provisions of Section 114(i) of the Customs Act, 1962.

10. In sum, appeal of M/s ICS Caro is allowed and appeals of Shri Praveen Kumar, M/s Dattar Shipping and Logistics Pvt. Ltd., Shri K. Pydi Raju & Shri K. Somasekhar stands rejected.

(Order pronounced on 09/10/2018 in open court)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….