IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. C/76022/2015

(Arising out of Order-in-Appeal No.83-84/Pat/Cus/Appeal/2015 dated 12.08.2015 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Patna)

Commissioner of Customs, Patna

Applicant (s)/Appellant (s)

Vs.

M/s. Evershine Customs (C&F) Pvt. Ltd.

Respondent (s)

Appearance:

Shri S.N.Mitra, AC(AR) for the Appellant (s)
Shri Arijit Chakraborty, Advocate for the Respondent (s)

CORAM:
Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision: 09.05.2018

ORDER NO.FO/76546/2018

Per Shri P.K.Choudhary

1. Briefly stated the facts of the case are that the Directorate of Revenue Intelligence, Muzaffarpur, intercepted a truck bearing Registration No.NL02L/2947 loaded with Container No.CNSU 2066053 at Bhargama More at Raniganj, District-Araria on 07.04.2014. The Driver of the truck informed that the said container had been loaded in Birganj, Nepal and was being transported to Kolkata Port under Customs Transit Document (CTD) to be exported to Korea and also informed that the container contains Nepalese Woolen Carpet, clay and handcraft goods. The container was opened after breaking the seal in the presence of two independent witnesses and found to contain wood logs believed to be Red sanders wrapped in plastic sacks and hence the same were brought alongwith its occupants to Customs Office,

Forbesganj. 408 numbers of wood logs believed to be the Red sanders wood were recovered from the container. The goods and the truck were seized under Section 110 of the Customs Act 1962. Samples were drawn and sent to the Scientist, Wood Anatomy Discipline, Botany Division, Forest Research Institute, Post-New Forest, District-Dehradun for necessary testing. The concerned authority vide their letter dated 29.09.2014 confirmed the sample to be Pterocarpus Santalinus (Red Sanders), thus the subject goods have been confirmed to be Red Sander wood, export of which is prohibited. Show Cause Notice dated 01.10.2014 was issued and the Adjudicating Authority passed the following order:

"ORDER

In view of the discussion above and in exercise of powers conferred upon me under Section 122 of the Customs Act, 1962, I pass orders as per details given below:

(i) I order for absolute confiscation of the seized goods, i.e. 408 logs (weight 13220 Kgs) of Red Sanders wood of value Rs. 5,94,90,000/- under Section 113(d) of the Customs Act, 1962.

(ii) I order for absolute confiscation of the seized vehicle bearing Registration No.NL-02L/2947 valued at Rs.16,00,000/- used as a means of transport in carrying the said seized Red Sanders wood under Section 115(2) of the Customs Act, 1962 as the address of the owner of the vehicle has been found fake and no one came forward to claim its ownership.

(iii) I impose penalty on the Noticees under Section 114(i) of the Customs Act, 1962.

a. Noticee No.1 – 50,000/- (Rupees Fifty Thousand only)
b. Noticee No.2 – 50,000/- (Rupees Fifty Thousand only)
c. Noticee No.3 – 2,00,00,000/- (Rupees Two Crore only)
d. Noticee No.4 – 2,00,00,000/- (Rupees Two Crore only)
e. Noticee No.5 – 30,00,000/- (Rupees Thirty Lakh only)
f. Noticee No.6 - 2,00,00,000/- (Rupees Two Crore only)"

On appeal the Commissioner (Appeals) allowed the appeal filed by M/s. Evershine Customs (C&F) Pvt. Ltd. by setting aside the penalty. Revenue is in appeal before the Tribunal.

2. Ld. DR reiterates the grounds of appeal.

3. Ld. Advocate appearing on behalf of the respondent assessee vehemently argued that the Adjudicating Authority has travelled beyond the

scope of the show cause notice by imposing penalty for abatement whereas in the show cause notice the allegation is of connivance.

4. Heard both sides and perused the appeal records.

5. I find that in the instant case the CHA M/s. Evershine Customs (C&F) Pvt. Ltd. has failed to ascertain the identity of the exporter as per provisions of Regulation 11 (n) of Customs Brokers Licensing Regulations, 2013 in as much as proprietor of the exporter M/s. Arihant Logistics is not traceable. Further, the CHA acted on behalf of M/s. Arihant Logistics in customs clearance without having any authorization from his client. Further, they received payment in cash. I find that the CHA having no contract/agreement with the client and without verifying the antecedents and identity of his client provided the services for export of prohibited goods namely Red Sanders. Accordingly, the penalty imposed by the Adjudicating Authority on the CHA (respondent assessee) is upheld. However, the quantum of the penalty seems to be excessive and the same is required to be reduced. Accordingly, the penalty of Rs. 30,00,000/- as imposed by the Adjudicating Authority is reduced to Rs.15,00,000/-.

6. In view of the above discussion, the impugned order is set aside and the appeal filed by the Revenue is allowed subject to the reduction in the quantum of penalty as discussed above.

(Operative portion of the order have already been pronounced in the open court)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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