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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.131 of 2011

(Arising out of Order-in-Original No.10-CUS/CC/DRI/10 dated 30.12.2010 passed by Commissioner of Customs, Patna.)

Shri Sanjay Kumar
(S/o Sri Gopal Mahato, Dadar Mandi (Opp. Devi Esthan), Gulzarbag, Patna, Bihar.)
...Appellant

VERSUS

Commissioner of Customs (Preventive), Patna
.....Respondent
(Customs Head Quarters, Patna, Bihar.)

APPEARANCE

Shri H.K.Pandey & Ms.Atika Sumran Ahmed, both Advocates for the Appellant (s)
Shri S.Chakraborty, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75365/2023

DATE OF HEARING : 19 April 2023
DATE OF DECISION : 19 April 2023

Per : P.K. CHOUDHARY :

This Appeal has been filed by the Appellant assailing the Order-in-Original dated 30.12.2010 passed by the Commissioner of Customs (Preventive), Patna. A penalty of Rs.5.00 Lakhs has been imposed by the Ld.Commissioner upon the Appellant.

2. Briefly stated the facts of the case are that proceedings were initiated vide Show Cause Notice issued under DRI F.No.718(II)44-PRU/2009 dated 30.11.2009 by the Deputy Director, Directorate of Revenue Intelligence, Regional Unit, Belle Road, Patna upon the Appellant herein and 10 others for alleged violation of various provisions of Customs Act, 1962 (hereinafter referred to as CA'62)

inasmuch as they were found involved in illegal procurement, sale-purchase, fabrication of documents and illegal transportation of Phensedyl Cough Linctus of Indian origin in attempt to export the same illegally from India to Bangladesh through Indo-Bangladesh border by a truck bearing fabricated number plate.

3. The Ld.Advocate appearing on behalf of the Appellant argued that on the basis of specific information that a consignment of Phensedyl Cough Linctus was being stored at Patna, to be illegally transported under concealment of trucks to area of North-Eastern state, bordering Indo-Bangladesh border for onward illegal export to Bangladesh, one such consignment loaded on truck No.WB612391 is about to move to Tripura after loading the said goods from a local unauthorized godown. Acting on such specific information, the officers of DRI ambushed at around 23.30 hrs. of 07.06.2009 near Didarganj, Patna. On enquiry, the driver disclosed that onion is loaded on his truck and proceeded to produce documents containing Bill of one Shankar Traders, Commission Agent, Bazar Samity, Patna (Bihar) (Sl.No.Nil, dated 07.06.2009) whereby 351 bags (15 MT) of onion were consigned to one Pooja Interprises, Dharmunagar, Tripura under a consignment note (Challan No.I 012, dated 07.06.09) of Mata Transort, Transport Nagar, Pahari, Patna. Thereafter, a thorough search of the truck was conducted which resulted in recovery of 351 Cartons, each containing two original company cartons of Phensedyl NEW Cough Linctus 100 ML [contains Codeeine Phosphate I.P. (10mg. in 5 ml.)] (Manufacturer M/s. Piramal Healthcare Ltd., India) found concealed underneath 200 bags of Onion. For concealment purposes, 50-bottle pack (having company sticker and tapes) of two original company cartons were kept and packed inside one plain cardboard carton and tied with string, so that without opening the said string, contents of the cartons could not be ascertained. As such a total of 35,100 bottles were recovered. Further, as per the information, one set of Registration plates of a different Reg. no.AS-01 B 5795 was also recovered from the cabin of the said truck.

4. That there is no corroborative evidence indicating that the seized goods were destined for Bangleadesh.

5. It was also put forth by the Appellant that he was the owner of the godown situated at Dadar Mandi, Gulzarbagh from where goods were reportedly loaded (as admitted by the driver of the truck in his statement). Further, 26000 bottles of Phensedyl New Cough Linctus 100 ml were recovered as well from the said premises. The Appellant had duly revealed that he was the owner of the godown premises and that the said godown was lawfully rented out to Mr. Pappu Jaiswal who happened to be the owner of the seized goods. The Appellant had further provided the address of Shri Pappu Jaiswal which was apparently 2nd Floor, Vishnu Market, Raja Bazar, Patna. Further, on 12.06.2009 the Appellant had duly stated that Shri Pappu Jaiswal had claimed himself as C&F agent of a medical Firm and had accordingly taken the said godown on rent for the past 9 months. He had also admitted that the Shri Pappu Jaiswal alone looked after the entire work of unloading the goods and retained the keys of the godown as well.

6. The Ld.Authorized Representative appearing on behalf of the Revenue argued that Phensedyl Cough Linctus is a specified item under the Customs Act, 1962 which was required to be purchased and sold under proper invoices and certain statutory records were required to be maintained as per the provisions of Drugs & Cosmetics Act. That appellants generated fake vouchers/invoices in the name of fictitious persons to cover the seized goods. Ld. Authorized Representative thus strongly defended the order passed by the First Appellate Authority.

7. Heard both sides and perused the Appeal records.

8. Penalty have been imposed upon the appellant with respect to seized goods under Section 114 of the Customs Act, 1962 which according to the Revenue were meant for export to Bangladesh. However, it is observed from the statement of the driver of the intercepted truck that nowhere it is stated that the seized goods were

being taken out of the country to Bangladesh. It is observed from the case records that a consignment of Phensedyl Cough Linctus was found concealed in a truck under bags onion. It is also observed that certain procedures were required to be followed during the movement of Phensedyl Cough Linctus under the Drugs & Cosmetics Act, as it contains Salts of Codein - a narcotic substance. The method of concealment and preparation of fake vouchers/invoices no doubt creates suspicion regarding illegal activities being undertaken by the C&F Agents. However, there is nothing on record that these activities suggest that the Phensedyl Cough Linctus was meant for export to Bangladesh. The manner of concealment and documentations could also be adopted to overcome the restrictions imposed under the Drugs & Cosmetics Act during movements within India. For violation of any of the procedures prescribed under the Drugs & Cosmetics Act, a person could be punished under the relevant provisions of Drugs & Cosmetics Act but these violations cannot be made as the basis for taking action under the Customs Act, 1962. It is also observed by the adjudicating authority, that Phensedyl Cough Linctus is a specified goods under Section 11-I of the Customs Act, 1962. As per Notification No. 31/2008-CUS. (N.T.), dated 25-3-2008, an area of 50 kms. in width from the land border with Bangladesh is treated as a 'specified area'. On a specific query from the Bench, the ld. AR could not explain as at which stage the goods under seizure were within 50 kms. distance from the land border with Bangladesh. In the absence of any documentary evidence, suggesting that seized goods were meant for export to Bangladesh, it cannot be held that the appellant can be visited with penalty under Section 114 of the Customs Act, 1962. Accordingly appeals filed by the appellant is required to be allowed.

9. It is also evident from the records of the present case and from the statement of the Appellant herein which nowhere shows that the Appellant was involved in purchase/sale of contraband goods. There is nothing on record to suggest that the Appellant has forged or fabricated documents and/or aided Shri Pappu Jaiswal in illegal export

of the said goods. In absence of any cogent evidence, penalty imposed in terms of Section 114 of the CA'62 is uncalled for. No evidence has been adduced against the Appellant to show his prior knowledge with regard to illegal export of the seized goods. In absence of any corroborative proof, the personal penalty imposed on the Appellant cannot be sustained and is therefore set aside.

Appeal filed by the Appellant is allowed with consequential relief, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm