IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Customs Appeal No. 75072 of 2017

(Arising out of Order-in-Original No.KOL/CUS/PORT/COMMR/62/2016 dated 29.09.2016 passed by Commissioner(Port), Customs, Kolkata)

M/s. Universal Agencies : Appellant

VERSUS

Commissioner of Customs, Kolkata. : Respondent

APPEARANCE:

Shri . N.K.Chowdhury & Mr. Nilotpal Chowdhury, Advocate for the Appellant

Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75936/ 2024

DATE OF HEARING :3.05.2024

DATE OF DECISION: 21.05.2024

Order : [Per Shri Ashok Jindal]

By this appeal the appellant is challenging imposition of penalty on the appellant.

2. The facts of the case are that the consignment of 38 bales of Jute Hession Cloth for export was loaded in a container on 24.07.2013 by M/s. KGN Enterprises in the presence of Custom officer of CWC, CFS, Khidderpore and was board to discharge at Kolkata. The appellant had been authorized to do the clearance job on 26.07.2013 and 27.07.2013. Based on intelligence, the DRI office along with the Custom officers examined the goods in the presence of the representative of the appellant and the independent witnesses found that 11 bales of

Jute Hessian cloths and wooden logs which appeared to be Red Sander. Accordingly, goods were seized. Thereafter, the statements of the exporter person were recorded and a Show Cause Notice was issued on 23.01.2014 proposing confiscation of the Red Sander and Jute Hessian cloths found during the course of investigation and proposal was also made for imposition of penalty on the appellant. On 14.10.2016 a penalty of Rs. 25,00,000/- was imposed on the appellant alleging that the appellant has not verified the existence of exporter and the authenticity of the documents placed before them by one Shri Amber Mani Dutta. Therefore, the goods were liable to confiscate for investigation and the appellant was engaged in illegal export of Red Sanders.

3. The Ld. Counsel for the appellant submits that the appellant received the job of clearance of the said consignment from one Shri Amber Mani Dutta who was not having his CHA license and used to bring business for the appellant and requested for filing the documents to the appellants on behalf of the exporter.

4. The appellant undertook the job of clearance of the said goods for export and the goods were loading in the presence of custom officer from CFS, Khidderpore and later on, the goods did not reach to the Port in time and in between goods were exchanged. The allegation against the appellant is that the appellant has not verified the incidents of the exporter. Therefore, the appellant was engaged in the activity of illegal export of the Red Sanders.

5. It is his submission that the appellant was given job by Shri Amber Mani Dutta and was known

to the appellant and on the basis of that, the appellant took the job of clearance of the said consignment but the goods were loaded in the presence of the Custom authorities.

6. In that circumstances, it cannot be held that the appellant was having any knowledge of illegal export of Red Sander. At the most, the proceedings against the appellant were required to be sustainable in (CHALR), 2004. But no proceedings were initiated against the appellant under (CHALR), 2004.

7. In that circumstances, no penalty is imposed upon the appellant.

8. The Ld. Authorized Representative supported the impugned order.

9. Heard the parties and considered the submissions.

10. We find that the goods in question were loaded in the presence of the custom officer at CFS, Khidderpore and in between Khidderpore and port the goods were exchanged. It was not in the knowledge of the appellant. Thus, the only allegation against the appellant was that the appellant has not verified the incidents of the exporter. For the said allegation, the appropriate proceedings were initiated against the appellant for violation of regulation under (CHALR), 2004 whereas penalty has been imposed on them under Section 112 (b) of the Customs Act, 1962. As no proceedings have been initiated against the appellant for violation of the regulations under the CHALR, 2004, therefore, we hold no penalty can be imposed on the appellant under Section 112 (b) of the Customs Act for

violation of the provisions/regulations of the CHALR, 2004.

11. The same view was taken by the statement in the case of M/s. Jaiswal Import Cargo Services Ltd. Vide Final Order No. 75846/2024 dated 01.05.2024.

10. In view of this, we set aside the penalty imposed upon the appellant.

11. In the result, we allow the appeal with consequential relief, if any.

(pronounced in open court on 21.05.2024)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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