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

Customs Appeal Nos. 79645, 79650-79652 of 2018

Arising out of Order-in-Appeal Nos.62-67/Pat/Cus/Appeal/2018 dated 09.07.2018 passed by the Commissioner of Customs (P), Patna

1. **M/s Ram Dayal Singh,**
Prop- M/s Vaishali Sedds Corporation,
Rajendra Chowk Hajipur-844101.
2. **M/s Chandeshwar Kumar**
Jai Maa Durga Transport
Vaishali Pump Pachis Kurwan
Hajipur, Bihar-844101
3. **M/s Mukesh Kumar**
Vill- Rambhandra Po Hajipur
Vaishali, Bihar-844101.
4. **M/s Bimal Paswan**
Vill.- Bahrani Ps. Jandaha
Vaishali, Bihar

….Appellant (s)

Vs.
Commissioner of Customs (Port), Patna
Central Revenue Building 5th Floor
Bir Chand Patel Marg, Patna-800001.

….Respondent (s)

Appearance:
Shri K. K. Pandey, Advocate for the Appellant (s)
Shri A. K. Singh, (AR) for the Respondent(s)

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

Final Order Nos.75105-75108/2020

Date of Hearing:- 07.11.2019

Date of Pronouncement:-22nd January, 2020

PER SHRI P.K.CHOUDHARY:

These appeals are directed against the impugned order dated 09.07.2018 passed by the Ld. Commissioner (Appeals) CGST & Central Excise, Patna.

2. Briefly stated the facts of the case are that on 05.11.2014, the Customs officers (Prev.), Patna, while patrolling Bhithamore near Indo-Nepal border saw a truck parked on the roadside and some persons were unloading some packages from the said truck. The said Officers,

intercepted the truck and found 508 cartons, remained out of 530 cartons of pesticides. After thorough investigation, a show cause notice dated 30.04.2015 was issued to the appellants alleging that they were found involved in illegal attempt for exportation of 508 cartons of pesticides without any valid Bill of Export and the same are liable for confiscation under Section 113(b) and 115(2) of the Customs Act, 1962, and liable for imposition of penalty. The adjudicating authority confiscated the seized goods and imposed redemption fine and also imposed penalties on the appellants herein. The Commissioner (Appeals) upheld the adjudication order.

3. M/s Indofil Industries Ltd. And M/s Excel Crop Care Ltd, submitted that they have exported the goods through Land Customs Station, Jaynagar. The other appellants argued the matter at length. On perusal of the impugned order, it appears that the Commissioner (Appeals) in his 23 pages order, recorded the submission of the appellants and also quoted the adjudication order partly and have given a cryptic finding as under:-

> "On examination of case records as well as all grounds of appeal. I find that there was a deliberate attempt for illegal export in this case. Moreover, I find that the Ld. Adjudicating Authority has passed a reasoned and speaking order. All the appellants were found involved in the illegal attempt of export without following prescribed procedures and formalities through authorized routes.
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> 9. I, therefore, find that all appellants simply ignored and violated the prescribed procedures of Export and thus their attempt for export can not be treated to be legal & proper. The impugned order is appropriate. Appeals are therefore rejected."

4. Since it appeared that the Commissioner (Appeals) has passed the order mechanically without assigning any reason in respect of the submissions made before him. This Bench vide order no. FO/A/77869-

77874/2017 set aside the order passed by the Commissioner (Appeals) and remanded the matter to the Commissioner (Appeals) for fresh decision on the basis of submissions made by the noticees.

5. The Commissioner (Appeals) vide his order dated 09.07.2018 observed as under:-

> "10. From the discussion above, one thing is clear. It is not a very clear cut case. On the one hand there are substantial documents buttressing the claim of the appellants about the entire operation being perfectly legal and there being no wrongdoing on their part. On the hand there is no satisfactory explanation for the truck being present at Bhithamore instead of Jainagar wherefrom it was to leave the Indian borders. While the appellants have tried to explain this by way of nearness of Janakpurdham from Bhithamore as compared to Jainagar. But wasn't this fact known to all before the truck started from Hajipur? Why were the documents, including road permit, issued showing Jainagar as the check post? The appellants have claimed and indeed submitted copies of the earlier Bills of Export when the check post of Jainagar was changed to Bhithamore. It is baffling why such a thing happened time and again. The change in check post requires intimation to the competent authorities which has not been done. Except for the appellant no. 01, none of the other two exporters have submitted proofs of receipt of payment. All these gives rise to credence of the department that this was an attempt to export the goods illegally to Nepal in order to evade import duty of Nepal by the Napalese importer. The appellants stated that they have sold the remaining 22 boxes in the domestic market. At the time of export, they have claimed to have issued invoice for the entire consignment and subsequently they are saying that it was sold in the domestic market. Did they issue another invoice? Did they cancel the

original one? Did they inform the competent authority? There is nothing on record. So the entire story of 22 boxes not being loaded and the document issued by the transporter are nothing but concocted story meant to mislead the Department. Additionally, there is also intent to evade VAT which is not charged in case of export. All the exporters claimed that the export procedure was to be completed by the Transporter but the transporter claims he had nothing to do with it. This is baffling. There are some glaring omissions in the investigation as well. There is nothing on record to show who directed the driver to go to Bhithamore instead of Jainagar. They should have enquired from the Commercial Tax department as to whether they allow exemption of VAT, in case of export, with / without proof of export and whether they allow it if the check post has been changed without intimation / necessary amendment.

11. I believe there is no case against appellant nos. 1 and 2. They have complied all the provisions and whatever lapses are there, like change of checkpost, are because of the transporter. The cases of rest of the appellants' points towards glaring omission and commission as discussed above. The shortage in cartons, found at the time of seizure, belonged to the appellant no. 01. The transporter seems to be the main player in this mischief. The owner of the vehicle should have ensured due diligence while ordering the driver to proceed to sensitive border area. He should have been alert to change of border checkpost. The driver has not revealed the whole truth."

6. Shri K. K. Pandey, Advocate appeared for the appellant and Shri A. K. Singh A. C. (AR) appeared for the respondent.

7. Heard both sides and perused the appeal records.

8. It is observed that the ld. Commissioner (Appeals) has almost reiterated the previous order and did not either got the documents

submitted by the appellants further verified or justified the order with proper reasoning

9. From perusal of the records, it is observed that the Department could not justify the reason for not chasing the persons alleged to have carried the boxes in their hands or on head load on foot to Nepal though at 07.00 hrs. though they had the motor vehicle and manpower.

It was also not clear as to how the Driver and Khalasi allowed unknown persons to unload cartons without their permission as no third person was available in that truck/vehicle.

It is also observed that there is no explanation given by the Department for not showing all the documents recovered from the Driver/Vehicle in the seizure list as claimed by the appellants. For example, Invoice No. U-9 dated 03.11.2014 of M/s Vaishali Seed.

In respect of the pesticides sold to M/s Vaishali Seed, M/s Dow Agro Science India (P) Ltd, appears to have satisfied the investigating agency, with documents and stated that M/s Vaishali Seed was their Distributor and the impugned pesticides were actually supplied to them. The seizure was effected due to shortage of 22 (twenty two) cartons of pesticides in the truck. It is observed that later the appellant accounted for the same. There was no further investigation to verify the claim of the appellant but it was simply observed as concocted.

The goods of other two parties were released though the goods of all three parties were seized from the same truck and booked for attempt to illegal export.

11. On the basis of the above discussion, it appears that the investigation agency could not prove beyond doubt that the goods were

actually attempted to export illegally to Nepal. The activities of the appellants may be suspicious but not enough to hold charge of attempted to export in the absence of positive evidence.

12. In view of the above discussions, the impugned order passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeals filed by the appellants are allowed with consequential relief.

(Pronounced in the Open Court on……22nd January, 2020.)

Sd/-
(P.K. Choudhary)
Member (Judicial)

T.K.