IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

(Virtual Mode of Hearing)

Customs Appeal No. 70018 of 2013

(Arising out of Order-in-Original No. CCP/NER/13/2012 dated 09.11.2012 passed by Commissioner of Customs (Prev.), Shillong.)

M/s Ashok Kumar Agarwal,
Proprietor M/s Bharti Traders,
(41/119, Barahaji ka Rasta,
Gangouri Bazar, Jaipur, Rajasthan)

..Appellant

VERSUS

Commissioner of Customs (Prev.), Shillong,
(NER, 110, Mahatma Gandhi Road, Shillong, Meghalaya)

.. ...**Respondent**

APPERANCE :

Shri Arun Goyal, Advocate for the Appellant
Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

FINAL ORDER No…76531/2025

DATE OF E- HEARING : 22.05.2025
DATE OF DECISION : 22.05.2025

PER R. Muralidhar :

The case pertains to seizure of Red Sanders at Check Gate Vairengte, on intelligence that there was movement of Red Sanders from Silchar to Mizoram on 07.08.2010. The consignment was subsequently claimed by one Shri V Z Kapmawia, who admittedly stated that he intended to sell the consignment at Aizwal and Kolasib and in event he failed, he intended to export to Burma. Based on the statements recorded from various persons, proceedings were initiated even against the present appellant. After due process, the adjudicating authorityimposed penalty of Rs.1,00,000/- against the present appellant under Section 114 of the Customs Act 1962. Being aggrieved by the impugned order imposing penalty on him, the appellant has filed this appeal before the Tribunal.

2. The Learned Counsel appearing on behalf of the appellant, during the course of e-hearing, takes us through the relevant paragraph of the Order in Original, giving the finding on the role of the appellant. The Para 8.6 of the OIO is reproduced below:

> "Shri Ashok Kumar Agarwal alias Ajoy, proprietor of M/s Bharti Traders, Jaipur, Rajasthan stated that the charges framed in the show cause notice are based on whims and fancies of the investigating officers of DRI, without any evidence either concrete or even circumstantial. However, I do not find any force in his submission since investigation conducted has proven otherwise. <u>The two road carriers styled as S.K. Road lines and Balaji Transport Company through which Shri Agarwal had stated to transport the red sanders wood logs meant for M/s Faiz Warsi Enterprise from Jaipur to Delhi were found to be non-existent</u>. He had initially denied talking to Shri V.Z. Kapmawia but when confronted, <u>he admitted that he was called up twice in his mobile phone by Shri V.Z. Kapmawia after the seizure had taken place in the instant case. I find Shri Kapmawia would not have called Shri Agarwal had there been no dealings between them</u>. In my opinion, Shri Ashok Kumar Agarwal, was the man who arranged the covering documents i.e., the tax invoice and the road challan for Shri V.Z. Kapmawia in respect of the seized red sanders wood logs meant for illegal export to Myanmar through M/s Faiz Warsi Enterprise. He was well aware about the illegality of his act and was trying to escape the clutches of law<u>. In the instant case, I find that the investigation has brought sufficient evidence to indicate that Shri Ashok Kumar Agarwal has actively abetted in the attempt of smuggling of red sanders wood logs to Myanmar</u>. I therefore find Shri Ashok Kumar Agarwal alias Ajoy liable to penalty under Section 114 of the Customs Act, 1962" [emphasis supplied]

2.1 The Learned Counsel submits that the appellant has valid Licence from the Govt. of Andhra Pradesh for trading in Red Sanders. Knowing the same, the main notice V Z Kapmavia, has approached the appellant after 18 days of the seizure for providing the Invoice, so as to give a legal status to the seized goods. The appellant has refused to do so. Therefore, the telephonic conversations being referred to in the OIO are in this regard. Had the appellant been involved in any way, immediately after the seizure, the telephone call would have been made. But since the very first call was after 18 days, it shows that the appellant was in no way connected with the seized goods, but was contacted only for obtaining the Invoice for the seized consignment so as to legitimize the entire transaction.

2.2 The appellant had searched the website and given the details of the Vehicle owners to the Department. The Dept could not locate these vehicle owners after their physical search. But the documentary evidence suggest the credentials of the vehicle owners. If they were not found by the Revenue, their non-availability cannot be attributed to the appellant in any way. The Ld Advocate takes us to Page 107 and 108 of the Appeal paper book wherein the details of these vehicle owners are shown as per the details given in the website.

2.3 When the appellant procures the Red Sanders from the authorities in Andhara Pradesh Forest Dept., in the normal course, they bear 'hammer mark'. In the seized consignments such 'hammer mark' was not found. Therefore, it is clear that the goods in question do not have any connection with the appellant.

2.4 No corroborative evidence to implicate the appellant has been brought in with the Revenue to fortify their allegations.

3. In view of the foregoing, it is prayed the appeal may be allowed.

4. The Ld. AR appearing on behalf of the Revenue reiterates the detailed findings of the Adjudicating authority and prays that the appeal may be dismissed.

5. On a query from the Bench about the outcome of the cases against the other noticees including the main notice V Z Kapmavia, the Ld A R submits that except of V Z Kapmavia, no other notice has preferred any appeal. The appeal filed by V Z Kapmavia has been dismissed by the Tribunal on account of non-prosecution.

6. We find that the allegations against the appellant are patchy and are very short as can be seen from the Para 8.6 of the OIO reproduced above. The appellant has provided evidence to the effect that they have cooperated and even given the details of the Vehicle Owners / Transporters, but they could not be located by the Revenue. Further, it is on record that the appellant operates under a proper license to trade in “Red Sanders” and the seized goods do not bear the “Hammer Mark” on them. The very fact that the telephonic discussion with V Z Kapmavia took place only after 18 days of the seizure, leads us to believe the version of the appellant that it was V Kapmavia who was trying to give a legal hue to the transaction by trying to procure a bill

from the appellant knowing that they have the license for such trading. We find that the appeal filed by V Kapmavia has been dismissed on account of non-prosecution. Hence, nowhere the actual role of the appellant in the alleged attempt to smuggle the goods to Mynmar has come out clearly. Allegations based on assumption and presumptions, without proper back up corroborative evidence, cannot be legally sustained.

7. Considering the above facts, we set aside the penalty imposed on the appellant and allow the appeal. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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