

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.**

Appeal No. C/161,976/2012

(Arising out of Order-in-Original No.37/2009 dt.04.03.2009
passed by the Commissioner of Customs & Central Excise)

Daroowala Bros & Co. : Appellant
Shri Pervez J. Irani

VS

Commissioner of Customs (Gen.), Mumbai : Respondent

Appearance

Shri Neerav Mainkar, Advocate for Appellant

Ms. Trupti Chavan, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 16/02/2018
Date of pronouncement: 26/04/2018

ORDER NO. AI/ 86236-86237/2018

Per : Ramesh Nair

These appeals are directed against Order-in-original passed by the Commissioner of Customs, New Custom House, whereby Ld. Commissioner imposed penalty of Rs. 2 lacs under Section 114(i) of Customs Act, 1962 on CHA, M/s. Daroowala Brothers and Company and also imposed penalty of Rs. 1.5 lacs on Shri. Pervez Irani.

2. The facts of the case is that Shri Bernard Moris Gerald, Pune had filed Manual Shipping Bills No. 2000000157 dated 29-7-2008 through CHA Ms. Daroowala Brothers and Company in respect of export of 533 numbers of mix sizes Indian teakwood of total FOB value of Rs.21,02,287/-. On the detailed examination of the baggage, it was found that baggage consist of 537 blocks of teakwood total weighing 8652 kgs whereas declaration as per shipping bill was for 533 numbers of teakwood of total weight of 11230 kgs and it was found that the goods attempted to be exported is prohibited goods under provision of Schedule 2 of Exim Policy read with Foreign Trade(Development and Regulation) Act, 1992 of Customs Act, 1962. Accordingly, goods were confiscated under Section 113(d) and (h) of Customs Act, 1962, penalty of Rs. 2 lacs was imposed on the exporter Shri. Barnard Moris Gerald, Pune and also penalties were imposed of Rs. 2 lacs and Rs. 1.5 lacs on Daroowala Brothers and Company and Shri. Pervez Irani therefore present appeal.

3. Shri. Neerav Mainkar Ld. Counsel appeared on behalf of the appellant M/s. Daroowala brothers and Company and Shri Pervez Irani, however none appeared on behalf of Shri Bernard Moris Gerald, Pune, whose appeal is also listed along with the appeals in this case, therefore the appeal No. C/551/09 is adjourned. Registry shall list this appeal in due course.

4. I take up the appeal of M/s. Daroowala brothers and Shri Pervez J Irani. Ld. Counsel submits that as per the statement of Shri Pervez J Irani, partner of M/s. Daroowala brothers and

company, the nature of the wood was not known to the appellant and therefore under confusion he could not know that the goods is prohibited for exports. However he has filed shipping bills on the basis of documents provided by the exporter, therefore he has no malafide intentions to attempt the exports of prohibited goods therefore appellant should not be liable for any penalty. He submits that goods were released for back to town therefore appellant being CHA having limited role, should not be fastened with penalty. He submits that appellant being CHA prepared the check of list in line with CHALR 2004 based on export documents submitted by the exporter. Appellant had no knowledge of the facts that goods to be exported were prohibited goods as exporter in his documents had declared the same to be mix size Indian teakwood. On this basis manual shipping bill was generated and assessed on first check basis by the Customs Officers. He submits that even in the statement of exporter he has not implicated the appellant in the export of teakwood except that he was misguided by someone whom he did not name therefore in any case the appellant being CHA was not having knowledge about the nature of the goods and prohibition thereof for export.

5. On the other hand, Ms. Trupti Chauhan Ld. Superintendent (A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order.

6. I have carefully considered the submissions made by both sides and perused the records.

7. I find that appellants were imposed penalty on the ground that they filed shipping bills in respect of prohibited goods. As per the facts and the statements of exporters as well as appellant, it is clear that appellant being CHA has filed shipping bills only on the basis of documents provided to them by the exporter. The appellants were not aware about the technical characteristic of product, therefore it cannot be said that appellants have knowingly attempted to clear prohibited goods for export. It is also observed that in the statement of exporter, he has not implicated the appellant regarding mis-declaration of the goods. The appellants also in their statement clearly stated that they were not knowing about the goods being prohibited. In this facts, I find that appellant being CHA having limited role for filing the shipping bill that too on basis of documents provided to them cannot be held guilty for attempting the export of prohibited goods, therefore in my considered view the appellants are not liable for penalty. Moreover, as regard the penalty on Shri. Pervez Irani, he being a partner of CHA firm penalty cannot be imposed on him as held in various judgements:-

- (i) *Eagle Impex vs. CC, Kandla – 2017 (350) ELT 107 (Tri.-Ahmd.)*;
- (ii) *Sunshine Overseas vs. CCE&ST, Surat – 2016 (339) ELT 431 (Tri.-Ahmd.)*;
- (iii) *Amritlakshmi Machine Works vs. CC(I), Mumbai – 2016 (335) ELT 225 (Bom.)*.

8. As per my above discussions, I set aside the penalties imposed on the appellants and appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in court on 26/04/2018)

(Ramesh Nair)
Member (Judicial)

SM.