CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.504

Custom Appeal No. 1026 of 2012

(Arising out of Order-in- Original No. COMMR.RK/17/2012/ADJN. ACC (X) dated 31.07.2012 passed by the Commissioner of C ustoms (Export), ACC, Sahar, Mumbai.)

M/s Dilip v. Hemrajani, ...Appellant
Block No. 113/65, Hindustan Chowk,
Mulund Colony (West), Mumbai-82

VERSUS

Commissioner of Customs (Exports) ....Respondent
Air Cargo Complex Sahar, Mumbai

WITH

(i) Custom Appeal No1027/2012 (Shashmira Edwin Pandya);
(i) Custom Appeal No. 1028/2012 (Santosh Mishra);
(iii) Custom Appeal No. 1092/2012 (Ibrahim Umar Sayed);
(iv) Custom Appeal No. 1105/2012 (Vijay Madjukar Joshi);

(Arising out of Order -in- Original No. COMMR.RK/17/2012/ADJN. ACC (X) dated 31.07.2012 passed by the Commissioner of C ustoms (Export), ACC, Sahar, Mumbai.)

APPERANCE:

Shri Ashok Kumar Singh, Adv. & N.S. Patel Advocate and none for the Appellant no. 5
Shri Bhushan Kamble, Asst. Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85841-85845/2019

Date of Hearing: 22/04/2019
Date of Decision: 22/04/2019

Officers of Special Investigation & Intelligent Branch (SIIB) export of Air Cargo Complex, Mumbai intercepted 44 packages said to contain the Readymade Garment …. To Khartoum (Sudan). It was found that the value of the export goods was overstated with a vi ew to obtain more drawback and there was misdeclaration of quantity also. The said goods were presented for export while Shipping Bills filed by M/s. Krazee Enterprises. </s. Galaxy Pet Packaging Systems & M/s. Mak Overseas under 10 Shipping Bills filed th rough the CHA i.e. Shree Samudhri Enterprises. Investigation was conducted and on the basis of the markets away it was confirmed that the value of the goods was inflated. The show cause notice proposing to confiscate the impugned goods total value 14,33,54 8/ - (as against the declaration value on 61,99,020/ - and seeking to impose penalty on different persons/companies involved in the case. The show cause notice was adjudicated by Commissioner of Customs (Export), Air Cargo Complex, Sahar *vide* order - in - original no. COMMR / RK / 17 / 2012/ADJN ACC (X) dated 31/07/2012. Learned Commissioner has confiscated the goods absolutely and impose penalties on nine different persons. The following have filed the appeals mentioned therein against the said order

1. Dilip V. Hemrajani 1026/12
2. Shashmira Edwin Pandya 1027/12
3. Santosh Mishra 1028/12
4. Ibrahim Umar S ayed 1092/12
5. Vijay Madhukar Joshi 1105/12

the value of the export goods; as an individual. He introduced Shri Prakash Golatkar of M/s. Shubham Freight Forwarders and a rrange the IEC holder for exports; the goods were in the custody of department; no drawback was sanctioned or paid. He further submitted that Shri Khalil Mohamed and Shri Nooruddin did not have I.E. Code for exports; they contracted Shri Dilip Hemrajani of M/s. Krupa Clearing; Dilip Hemrajani organised export goods with the help of M/s. Shashmira Edwin Pandya and contracted the Frieght Forwarders. Shree Prakash Golatkar organised and arranged I.E. code, value declaration invoice etc. He submitted that the a ppellant has no role in these activities, therefore, the penalty imposed on him may be set aside, he relied upon the following cases.

i) **2006 (195) ELT 9 (Bombay).**
Jayantilal Thakkar & Company V/s Union of India,

ii) **2000 (199) ELT 711 (Tri Banagalore);**
Vaspa r Concept (P) Ltd. V/s Commissioner of C.Ex Bangalore.

iii) **2004 (166) ELT 255 (Tri Del);**
C.C.Ex. Ghaziabad V/s Dabur India Ltd;

iv) **2005 (180) ELT 489 (Tri Bangalore);**
Volvo India Private Limited V/s. C.C. Chennai.

v) **2012 (275) ELT 582 (Tri. Mumbai)**
Saurabh Organics Pvt Limited.

2.1 Learned Advocate Shri Ashok Kumar Singh and Advocate N.S. Patel for Dilip Hemrajani submitted that partner of Saikrupa Clearing Agency submitted that the adjudicating authority has filed to appreciate that the export documents were prepared by him or were

2.2 Learned Counsel for M/s Shashmira Edwin Pandya submitted that there was no notice cited in the form of statement or in the form of document to prove her role. The documents were prepared by her and were prepared in her presence; she was acting only as a freight broker agent and sub-agent of M/s. Patel Air Freight and the role of the notice were more than bringing the consignment from different shops to M/s Patel Air Freight.

2.3 Learned Counsel on behalf of Shri Santosh Mishra submitted that adjudicating authority has violated the principle of natural justice inasmuch as cross-objection of Shri Karam Hussain Khan as requested was not allowed; the appellant has not signed and declarations; the only allegation made against the appellant was that, he introduced Shri Sanjay Yadav and Rajesh Upadhyaya I.E.C. holder of M/s Galaxy Pet Packages Systems, Shri Kahaz Khan change into contract of Shri Ibrahim Umar Sayed; no allegations were made against Shri Sanjay Yadav and Rajesh Upadhyaya, the allegations against the appellant does not stand.

2.4 Learned Counsel for Shri V.M. Joshi, Manager of Shri Samudhri Enterprises submitted that he was not personally involved in the malpractices of the exporters; he has acted in his capacity as the Manager of M/s Samudhri Enterprises, the CHA through whom goods of the CHA formation has been penalised. Though, he has no role in the i nflation of the prices of export goods, therefore, the Learned Adjudicating Authority fail to appreciate the fact that his statement Shri Rakesh Desai employee of Khash Export has stated that they prepared the documents at the behest of Prakash Golatkar as the adjudicating authority has not appreciated the facts of the case and circumstances in a proper manner penalty impose on him needs to be set aside.

2.5 All the Counsels have in addition have submitted that the fact that goods are purchased from diff erent shops and that foreign exchange is realised is not denied by the investigation. The only adjudication was that the value of the goods was inflated to get higher Drawback imposed of the persons penalised had no role and had no benefit in the acts of c ommission or omission by the exporter. The said Drawback have also not been sanctioned whereas it is alleging that Drawback of Rs. 6 lakhs were admitted to be availed fraudulently. Penalties of total Rs. 1.5 crores were imposed on persons not concerned wit h the export.

3. Learned AR for the department has reiterated the findings of order -in -original and has submitted that all the persons penalised has some role or the other in abating the offence of the exporters. Heard both sides on perusal of the record of the case. It is seen that out of

Shri Khalik Mohamed, Ibrahim ARE dab, Shri Karam Hussain Khan and Shri Mohamed Kasim Ibrahim did not file any appeal.

3.1 Coming to the role of Shri Ibrahim Umar Sayed, Learned Commissioner had given a clear finding that Shri Sayed with knowledge colluded in exporting package rules as Cargo under claim of drawback; he pointed out for the IEC and passed on them to Shri Prakash Golatkar; Shri Rakesh Desai stated that Shri Sayed prepared the invoices for the exports and that Shri Sayed accepted that he was to share on certain amount of the drawback.

3.2 The Learned Commissioner given a finding that M/s Shashmira Edwin Pandya partner of M/s Saikrupa Clearing Agency was aware of the fact that though the goods were exported as package, they were being export under drawback claim; our knowledge of differential payment of right amount and the manner in which extra drawback can be uptend deny or claim of ignorance actual moment of goods was done by her company. She was being briefed by Dilip Hemrajani about the developments, therefore, it cannot be said that she has acted just as a Freight Forwarder.

3.3 In respect of Shri Santosh Mishra Learned Commissioner recorded that on going through statement it is appellant that Shri Santosh Mishra has arranged the IEC of M/s Galaxy Pet Packaging Systems and he was knowing that the goods would be exported in

Commissioner given finding that the guilt of Shri Mishra is not mitigated in absence of any charges against Shri Yadav. Regarding Shri V.M. Joshi, the Learned Commissioner has found that he was working as Manager of Shri Samudhri Enterprises, had been admittedly working for such forms i.e. M/s Krazee Enterprises, Galaxy Pet Packaging Systems & Mak Overseas since April, 2010 alongwith Shri Dilip Hemrajani, Shri Prakash Galotkar and Shri Ibrahim Umar Sayed; Shri Joshi being a person who filed the Shipping Bill was expected to verify the veracity of the documents and the anticipation of the exporters; though Shri Joshi has First Hand Information, he just to remain silent and thus abated the acts of Commission or omission of the exporters in the misdeclaration and wrong claim of drawback.

3.4 We find that even though all the persons had some role in the alleged admit of export through package under claim of drawback, the fact remains that none of them are proved to be the ultimate beneficiaries had the offence paving committed. Moreover, the fraudulent arrangement of drawback admitted was only to the tune of 6 lakhs imposition of huge penalties ranging from 2 lakhs to 35 lakhs on individuals is not acceptable. Penalties imposed should be answered with the officers. Therefore, we find that though imposition of penalties on the above file appellant is justified the quantum of penalty imposed is not justifying and maintainable.

4 In view of the above ... he restrict the penalty imposed on Shri

Edwin Pandya, Shri Santosh Mishra & Shri V.M. Joshi to Rs. 25,000/-

each. All the above filed appeals are disposed of in the above terms.

(Dictated & pronounced in open Court)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

**sb*