CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH – COURT NO.504

Custom Cross Application No. 148 of 2012
Custom Appeal No. 925 of 2012

(Arising out of Order-in- Original No. 18/2012-13 dated 31.07.2012 passed by the Commissioner of Customs (Export), Nhava Sheva)

M/s Mohammad Ali Ghaem Maghami ....Appellant

VERSUS

Commissioner of Customs (Export) ....Respondent
Nhava Sheva

WITH

Custom Cross Application No. 149 of 2012
Custom Appeal No. 926 of 2012

(Arising out of Order-in- Original No. 18/2012-13 dated 31.07.2012 passed by the Commissioner of Customs (Export), Nhava Sheva)

M/s Perma Shipping Line (I) Pvt. Ltd. ....Appellant

VERSUS

Commissioner of Customs (Export) ....Respondent
Nhava Sheva

APPERANCE:

Shri V.K. Ramabhadran, Sr. Advocate & Subra Karmakar, Advocate for the Appellant
Shri A.P. Kothari, Addl. Commr. 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/86002-86003 / 2019

Date of Hearing: 08/05/2019
Date of Decision: 08/05/2019

PER: D.M. MISRA

These two appeals are filed against order-in-original no. 18/2012-13 passed by Commissioner of Customs (Export), Nhava Sheva.

2. On the basis of intelligence that Red Sanders was to be smuggled out of the country, in the guise of machinery parts under shipping bill no. 8127000 dated 08.02.2010 filed in the name of M/s. Marvelous Engineers Pvt Ltd., investigation was initiated by the Customs department. On completion of investigation, show cause notice was issued on 07.07.2011 proposing confiscation of the Red Sanders and action against various persons involved in the said attempt of illegal export of Red Sanders by proposing penalty against each of them. On adjudication, the red sanders totally weighing 7.7 metric tonnes valued at Rs. 62.00 lakhs was absolutely confiscated and penalty on various persons including the present Appellant have been imposed. Hence, the present appeal by the appellant M/s Perma Shipping Line (I) Pvt. Ltd. and Shri Mohammad Ali Ghaem Maghami, Director.

2. At the outset, the Ld. Advocate for the appellant has submitted that M/s Perma Shipping Line (I) Pvt. Ltd.has supplied the container to M/s Sungrace Logistics Pvt Ltd, who in turn, provided the same to Shri Manoj Vichare of Sara Logistics. It is his contention that except

providing the containers on lease, they have no other role in the alleged attempt to export the Red Sanders in the guise of machineries. The only omission on the part of the Shipping Line was that they were not vigilant about the probable misuse of the container and seal owned and provided by them that the container would be used to smuggle red sanders. It is his contention that therefore, imposition of penalty under Section 114A on M/s Perma Shipping Line (I) Pvt. Ltd. and its Director Shri Mohammad Ali Madghami is unwarranted and in any case disproportionate. Referring to the judgment of this Tribunal in the case of Marvelous Engineers Pvt. Ltd Vs. Commissioner of Customs (Export), Mumbai 2014 (300) ELT 275 (Tri-Mumbai) arising out of the same order-in-original, this Tribunal considering the role of freight forwarder M/s Sungrace Logistics Pvt Ltd and its Director Shri Dattatray B Suryawanshi reduced the penalty from Rs. 130.00 lakhs to Rs. 1.00 lakh on Sungrace Logistics Pvt Ltd and set aside the penalty on its director.

3. Ld. AR for the Revenue reiterated the findings of the Ld. Commissioner.

4. we find that this Tribunal while considering the appeal filed by M/s Marvelous Engineering Pvt Ltd, arising out of the same order-in-original passed by the Commissioner of Custom (Export), Mumbai examined the role of freight forwarder, which is more or less similar to that of the present appellant, M/s Perma Shipping Line (I) Pvt.

Ltd., who has supplied two containers to shipping line observed as follows:

> 5.7 As regards the penalty imposed on the freight forwarder M/s. Sungrace Logistice Pvt. Ltd. and its Director Shri Dattatray B. Suryawanshi, the negligence on their part is very evident. They undertook the transaction on the basis of e-mail received from Shri Manoj Vichare of M/s. Sara Logistics. They did not verify whether M/s. Sara Logistics existed at all. Being a freight forwarder, theya re expected to know the existence or otherwise of M/s. Sara Logistics, which is also in the same business. However, the fact is that M/s. Sara Logistics did not exist at all. They were not vigilant about the probable misuse of the container and the seal provided by them by unscrupulous elements. By providing the container and the seal to person who were neither the legal exporters nor to the CHA, they committed a grave error. Further, they received the export documents from M/s. Sara Logistics only on the basis of e-mail correspondence and this has happened not only once but in respect of seven transactions. Thus, there is a clear omission on their part as a result of which the container provided by them was misused for the smuggling of red sanders, which is a banned item for export. Therefore, they are liable to penalty under Section 114(i) of the Customs Act, but the penalty has to be commensurate with the gravity of the offence committed. There is no evidence available on record to establish their active involvement in the smuggling activity. Taking into the facts and circumstances of the case and also noting the fact that there was no deliberate involvement on their part in the smuggling of red sanders wood logs, we reduce the penalty from Rs. 130 lakh to Rs. 1 lakh. Since the penalty has been imposed on the firm, there is no need to impose a separate penalty on the Director of the company and the same is set aside.

4. In the present case also while imposing penalty on the Appellants more or less similar role of the Appellants has been recorded by the adjudicating authority in the impugned order. In these circumstances following the aforesaid observation of the Tribunal and considering that the present Appellants are situated at the same plane, the penalty on M/s Perma Shipping Line India Pvt Ltd is reduced from Rs. 130.00 lakh to 1.00 lakh and penalty on the director of the company is set aside. Appeals and Cross objections are disposed of accordingly.

(Dictated & pronounced in open Court)

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

(P. Anjani Kumar)
Member (Technical)

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