CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Customs Appeal No: 85116 of 2013

[Arising out of Order-in-Appeal No: 663(Adj.Export)/2012 (JNCH) IMP-88 dated 12th November 2012 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Kailash Bahiru Jadhav … ***Appellant***
Room No.7, Shiv Malhar CHS Ltd, Asalpha Village,
Ghatkopar (West), Mumbai 400 086

versus

Commissioner of Customs (Export) …***Respondent***
JNCH, Nhava Sheva, Uran, Dist: Raigad

APPEARANCE:

Shri DH Nadkarni, Advocate for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86092 / 2019

DATE OF HEARING:	26/02/2019
DATE OF DECISION:	13/06/2019

PER: C J MATHEW

In this appeal of Shri Kailash Bahiru Jadhav against order-in-appeal no. 663(Adj.Export)/2012 (JNCH) IMP-88 dated 12th

November 2012 of Commissioner of Customs (Appeals), Mumbai – II against the upholding of the order of the original authority imposing penalty of ₹ 3,00,000/- on the appellant herein, it would appear that the proceedings emerged from alleged overvaluation of export goods with intention to avail excess drawback. The claim of the appellant is that they had nothing to do with the exporter and that there was no evidence of any involvement in abetment of fraud.

2. According to Learned Counsel for appellant, Shri Kailash Jadhav was Director of M/s Sun Clearing & Forwarding Services Pvt Ltd and allowed another person to file export documents on their behalf which, according to them, may have been in violation of regulation 13(b) of Customs House Agents Licensing Regulation, 2004 which the original authority has held to suffice for the finding that

> *'these callous attitudes alone .... confirms his active abetment to the fraud which rendered him to penal action under Section 114 of Customs Act, 1962.'*

Learned Counsel places reliance on the decision of the decision of the Tribunal in *RP Sethi v. Commissioner of Customs, New Delhi [2002 (140) ELT 482 (Tri.-Del.)]*

3. We have heard Learned Authorised Representative.

4. It is seen that the agency was subject to proceedings under

Customs House Agents Licensing Regulation, 2004 for breach of regulation 13(b) which pertains to transaction of business by an agent or through their employees in customs stations.

5. The provisions of section 114 of Customs Act, 1962 are invocable for any act of commission or omission in relation to goods that are consequently rendered liable to confiscation under section 113 of Customs Act, 1962. That the said goods were confiscated is not in doubt. The question that arises for consideration is whether a custom house agent, who, under the statute as well as under the Regulations framed for implementation of the statute, are required to be associated with the goods can, independently, be proceeded against, for imposition of penalties under some other provisions.

6. The Customs House Agents Licensing Regulation, 2004 which is a comprehensive self-contained scheme for licensing, operations, monitoring and regulation, is a standalone provision. Indeed it is a special provision in the Customs Act, 1962 by which, a whole range of activities in connection with which proceedings may be initiated for breach thereof. Implicitly, every agent who has a licence has to be connected with import or export of goods and if an agent could be proceeded against under section 114 of the Customs Act, 1962 merely because of being an agent, it would necessarily follow that every agent must be made a noticee in all proceeding under section 111 and

113 of Customs Act, 1962 which does not appear to be the intent of the legislation. It is seen from the impugned order that it is the role of the appellant herein as a ‘custom house’ agent that was found sufficient to invoke the penal provision. As separate provisions exist in the Customs House Agents Licensing Regulation, 2004, the invoking of such for violations for imposing of penalty under section 114 of Customs Act, 1962 is patently incorrect.

7. For the above reason, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 13/06/2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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