CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86698 of 2019

(Arising out of Order-in-Appeal No.29-30/SIIB/EXPORT/2019/JNCH/APPEAL/I dated 07.03.2019 passed by Commissioner of Customs (Appeals) JNCH, Nhava Sheva)

M/s Hindustan Cargo Ltd. **.....Appellant**
201, 2nd Floor, A Wing, Avvshya House, Cst Road, Kalina, Santacruz (E), Mumbai-400098.

VERSUS

Commissioner of Customs, Nhava Sheva-II **.....Respondent**
JNPT, Custom House, Nhava Sheva,
Raigad-400707.

WITH

Customs Appeal No. 86707 of 2019

(Arising out of Order-in-Appeal No.29-30/SIIB/EXPORT/2019/JNCH/APPEAL/I dated 07.03.2019 passed by Commissioner of Customs (Appeals) JNCH, Nhava Sheva)

Manjusha S. Desai **.....Appellant**
Cargo Office No.202, A Wing, 2nd Floor,
Kapil Tower, Dr. Ambedkar Road, Near Old RTO, Pune-411001.

VERSUS

Commissioner of Customs, Nhava Sheva-II **.....Respondent**
JNPT, Custom House, Nhava Sheva,
Raigad-400707.

Appearance:

Shri C. M. Sharma, Consultant for the Appellant
Shri S. K. Hattangadi, Authorized Representative for the Respondent

WITH

Customs Appeal No. 87056 of 2019

(Arising out of Order-in-Appeal No. 71 & 72/CAC/2019/JNCH/APPEAL/I dated 29.03.2019 passed by Commissioner of Customs (Appeals) JNCH, Nhava Sheva)

Vijay C Suttatti **.....Appellant**
43 Hadapsar Industrial Estate,
Pune-411013.

VERSUS

Commissioner of Customs, Nhava Sheva-II .....**Respondent**
JNPT, Custom House, Nhava Sheva,
Raigad-400707.

AND

Customs Appeal No. 87213 of 2019

(Arising out of Order-in-Appeal No. 71 & 72/CAC/2019/JNCH/APPEAL/I dated 29.03.2019 passed by Commissioner of Customs (Appeals) JNCH, Nhava Sheva)

Suttati Enterprises Pvt. Ltd. .....**Appellant**
43 Hadapsar Industrial Estate,
Pune-411013.

VERSUS

Commissioner of Customs, Nhava Sheva-II .....**Respondent**
JNPT, Custom House, Nhava Sheva,
Raigad-400707.

Appearance:

Ms Shamita Patel, Advocate for the Appellant
Shri S. K. Hattangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86020-86023/2022

Date of Hearing: 18/07/2022
Date of Decision: 18/07/2022

PER : S.K. MOHANTY

Brief facts of the case, leading to these appeals, are as under:

1.1 On the basis of specific intelligence, the officers of SIIB (Export), JNCH put on hold one (01) factory stuffed container bearing number NYKU3242157 (20) at JNPT Port and recalled another factory stuffed container bearing no. TGHU7868770 (40) vide letters dated 10.06.2014 and 11.06.2014, respectively. Preliminary enquiries revealed that the containers were cleared vide Shipping Bills No.

3087166 dated 03.05.2014 and 3198825 dated 09.06.2014 filed by Customs Broker(CB) firm M/s. Hindustan Cargo Limited on behalf of the exporter M/s. Suttatti Enterprises Limited under Duty Drawback Scheme. The goods declared under both the Shipping Bills were "Electro forged Steel Grating Bearing Bar" having a declared total FOB value of Rs.24,78,609.20 under claim of total drawback for Rs.42,137/-. The buyer for both the shipments was M/s Active Chain Trading Co. LLC, Dubai, UAE. Let Export Order for both the Shipping Bills was given on the basis of Central Excise examination report (for examination of factory stuffed goods under the supervision of officers of the Central Excise, Lonikalbhor Range, Pune-VII Division). Both the containers were stuffed at the factory premises of the exporter in pursuance of the factory stuffing permission and under the supervision of Central Excise officials of Loni Kalbhor Range, Pune-VII Division.

1.2 The containers used in this export i.e. Container No. TGHU7868770(40) was arranged by the Shipping Line, M/s. CMA CGM Agencies (India) Pvt. Ltd. Mumbai and Container no. NYKU3242157(20') was arranged by the Shipping Line, M/s. NYK Line (India) Ltd., Nhava Sheva, Tal-Uran and the transportation of these containers was arranged by Shri Rajesh Pandit through M/s. Patel Transport.

1.3. On examination, both the containers were found in sealed condition with the seal nos. tallying with the concerned export documents. It was found that both the containers were stuffed with wooden logs of different sizes which appeared to be red sanders. The goods were seized and on testing of samples, Wildlife Crime Control Bureau (WCCB) vide their letter dated 24.07.2014 have confirmed that the goods were found to be Red Sanders (Pterocarpus santalinus). The said goods also fall in endangered species and listed in Appendix II of Convention on International Trade in Endangered Species of Wild Flora & Fauna (CITES).

2. On the basis of investigation, show cause proceedings were initiated by the department, seeking imposition of penalties on various persons, including the appellants herein under Section 114 (i)

of the Customs Act, 1962. The matter arising out of the SCNs were adjudicated upon by learned Additional Commissioner of Customs NS-II, JNCH, Nhava Sheva vide Order-in-Original No.814/2017-18/CAC/ADC NS-II/JNCH dated 29.03.2018, in confirming the proposals made in the SCNs. On appeal against the said adjudication orders, learned Commissioner (Appeals) vide the impugned order Nos. 29 to 30/SIIB (Export)/2019/JNCH/Appeal-I dated 07.03.2019 has modified the adjudication order to the extent of reducing the quantum of penalty from Rs.5,00,000/- to Rs.2,00,000/- and Rs.50,000/- in respect of the appellants M/s. Hindustan Cargo Limited and Smt. Manjusha S. Desai respectively. Further, vide the impugned order No. 71 & 72 (CAC)/2019(JNCH)/Appeal-I dated 29.03.2019, learned Commissioner (Appeals) has upheld the adjudication order dated 29.03.2018, insofar as penalties imposed on M/s. Suttati Enterprises and Shri Vijay Sutatti are concerned.

3. Feeling aggrieved with the impugned orders dated 07.03.2019 and 29.03.2019 passed by learned Commissioner (Appeals), the appellants have preferred these appeals before the Tribunal.

4. Heard both sides and perused the records.

5. In respect of the appeals filed by the appellants M/s. Hindustan Cargo Ltd. and Smt. Manjusha S. Desai, the impugned order dated 07.03.2019 has recorded the following observations:

> "9. The OA observed that the appellants failed to do KYC verification of transporter as stipulated in Public Notice No.17/2012 dated 02.03.2012. The O.AS. also observed that both the appellants were aware of the fact that the arrangement of transport of goods to CFS/Port was not being done by exporter but by the buyer's agent. Hence their action is in violation of Customs Circular No.57/1998-Customs dated 04.08.1998.
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> 11. There is no material on record to come to the conclusion that the appellant had in any way abetted the offence in attempting to illegally export Red Sander Wood Logs. This clearly shows that the present appellants whose role was to assist the exporter, cannot be implicated in the act of smuggling of Red Sanders.

> However, undisputedly, the appellants failed to comply with the KYC norms as stipulated in the Public Notice No. 17/2012. Similarly, the appellants also failed to advise the exporter to comply with the directions of Circular No.57/1998……….”

5.1. On perusal of the above findings recorded in the impugned order, it transpire that no evidences were adduced by the department to prove that the above appellants have ever instigated or conspired or intentionally aided the exporter to fraudulently export the goods. Thus, in absence of any evidence to suggest that the appellant had connived with the exporter, non-performance of duty, by itself, would not call for any penal action on the appellants. With regard to invocation of the provisions of Section 114(i) *ibid*, it is a settled principle of law that for imposing the personal penalty, there should be acceptable legal evidence on record about the acts of commission or omission by the appellants. In the present case, no evidence is available on record, which pin point that the appellant had the knowledge of the illegal activities, concerning exportation of Red Sanders. Therefore, I am of the considered view that penal liabilities confirmed on the appellants M/s. Hindustan Cargo Ltd. and Manjusha S. Desai in the impugned order cannot be sustained.

6. The appellant M/s. Suttati Enterprises Ltd. is the exporter of the goods viz. ”Electro Forged Steel Grating Bearing Bar” as mentioned in shipping bills. Shri Vijay C. Suttati is the Managing Director of the said exporting firm. The charges levelled against both the appellants are that they have negotiated with one Shri Vijay Pandit for accepting to the transportation arrangements made by the buyer (consignee), instead of doing the same by themselves for transporting the goods to the CFS/Port of export. The reason for arrangement of the transportation by buyer was that the rate offered was cheaper. Both authorities below in these cases have accepted the facts that the containers were factory stuffed under the supervision of Central Excise Officer’s and that the goods were substituted mid-way between the factory and the port. It is not the case of Revenue that the goods meant for export as per the shipping bill were actually loaded into the containers at the factory. Further, the department in this case have not submitted any evidence that the appellants herein

had any prior knowledge about the prohibited goods, changed en-root from the factory to the port of export. The only allegation levelled against the appellants is that due to negligence of the exporters, the perpetrators were able to substitute the goods with red sanders. Since the appellants were not aware about the actual contents in the container at the port of export, it cannot be said that they had acted in a manner or did any act, for exportation of the prohibited goods i.e. red sanders. Thus, under the circumstances of the case, the provisions of Section 114 (i) *ibid* shall not be invoked for imposition of penalties on the appellants M/s. Suttati Enterprises Ltd. and Shri Vijay C. Suttati.

7. In view of the foregoing discussions, I do not find any merits in the impugned orders, insofar as imposition of penalties on the appellants is concerned. Therefore, the appeals are allowed in favour of the appellants, by setting aside the impugned orders passed by the learned Commissioner (Appeals).

(Operative part of the order pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

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