CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Customs Appeal No. 85579 of 2020

(Arising out of Order-in-Appeal No. 09 to 14(CAC)/2020(JNCH)/Appeal-I dated 06.02.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva)

Shri Suryabhan Eknath Dhurpate **Appellant**
4th Floor, 408, Plot No. 61,Sector 11,
CBD Belapur, Navi Mumbai 400 614.

Vs.

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

Appearance:

Shri Anil Balani with Ms. Riya Gupta, Advocates, for the Appellant
Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 01.02.2023
Date of Decision: 01.02.2023

FINAL ORDER NO. A/85135/2023

This appeal is directed against Order-in-Appeal No. 09 to 14(CAC)/2020(JNCH)/Appeal-I dated 06.02.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva. By the impugned order, Commissioner (Appeals) has held as follows:-

"17. in view of the above discussions. I uphold the Order-in-Original No. 1175/2018-19/JC/NS- CAC dated 12.03.2019 passed by the Joint Commissioner of Customs, NS-11, JNCH, Nhava Sheva as far as the same is concerned with the appellants M/s Aditya Investment & Exim Trade Co.. Veeaar Fabware Pvt. Ltd., M/s Vedant Trade Impex Pvt. Ltd., M/s Simplex Fabware Pvt. Ltd. M/s Vihaan Infin and Exim Pvt. Ltd. and Shri Suryabhan Eknath Dhurpate, Proprietor of M/s Sanket Overseas. Accordingly. 6 Appeal No (s) 30/2019, 31/2019, 33/2019 to 35/2019 and 28/2019 filed by M's Aditya Investment & Exim Trade Co., M/s Veeaar Fabware Pvt. Ltd., M/s Vedant Trade

Impex Pvt. Ltd., M/s Simplex Fabware Pvt. Ltd., M/s Vihaan Infin and Exim Pvt. Ltd. and Shri Suryabhan Eknath Dhurpate, Proprietor of M/s Sanket Overseas are rejected/dismissed."

1.2 In this case, I am concerned with the appeal of Shri Suryabhan Eknath Dhurpate.

2.1 Intelligence was gathered by Directorate of Revenue Intelligence (DRI), Zonal Unit, Ahmedabad indicated that M/s Aditya Investment and Exim Trade Co. (hereinafter referred to as "Aditya" for the sake of brevity), M/s Veeaar Fabware Pvt. Ltd. (hereinafter referred to as "Veeaar" for the sake of brevity), M/s Vihaan Infin &Exim Pvt. Ltd. (hereinafter referred to as "Vihaan" for the sake of brevity), M/s Vedant Trade Impex Pvt. Ltd. (hereinafter referred to as "Vedant" for the sake of brevity) and M/s Simplex Fabware Pvt. Ltd. (hereinafter referred to as "Simplex for the sake of brevity) had fraudulently availed Special Focus Market Scheme (SFMS) benefits, by producing forged House BL and landing certificate, wherein consignee country was deliberately mis-declared by them for the purpose of availing undue benefit under SFMS. It was gathered that Shri Ramesh Singh, who is one of the proprietors/Directors in all the above said five exporting firms looks after all the activities had adopted this modus operandi mainly in respect of purported exports to Land Locked countries Ie. CIS countries namely Armenia, Azerbaijan, Kazakhstan and Tajikistan etc., wherein nearest port is Bandar Abbas (Iran). However, the goods had never travelled to the destination shown on the export documents.

2.2 Accordingly investigations were undertaken and a show cause notice was issued to the appellant asking them to show cause as to why:-

"(i) the goods with declared FOB value of as mentioned in Column-3 of above Table exported by them under benefit of Focus Market Scheme(FMS), as detailed in Annexures mentioned in Column-7 of above Table and attached to the SCN, should not be held liable to confiscation under Section 113 (1) of Customs Act, 1962 read with Sub-section (1) of Section 11 of the Foreign

Trade (Development 86 Regulation) Act, 1992 86 Rule 14(2) of Foreign Trade (Regulation) Rules, 1993.

(ii) the duty as mentioned in Column-4 of above Table relatable to SFMS Authorisations issued by the DGFT under Special Focus Market Scheme of Foreign Trade Policy, as detailed in para-8.1 of the SCN, should not be demanded and recovered from them under Section 28 AAA of the Customs Act, 1952 along with interest in terms of Section 28AA of the Customs Act, 1962.

(iii) The amount as mentioned in Column-5 of above Table paid by them under TR-6 Challan as mentioned in Column-6 of above Table should not be appropriated towards duty liability as in (i) above.

(iv) Penalty should not be imposed on them under Section 114(ii) of the Customs Act, 1962.

23. Shri Ramesh Singh, Proprietor of M/s Aditya Investment and Exim Trade Co., and director of M/s Veeaar Fabware Pvt. Ltd., M/s Vihaan Infin & Exim Pvt. Ltd., M/s Vedant Trade Impex Pvt. Ltd. and M/s Simplex Fabware Pvt. Ltd., having office at 607, 6th Floor, Filix Commercial Complex, Opp. Asian Paints, L.B.S. Marg, Bhandup (W), Mumbai-78 was also called upon to show cause in writing to the Additional Commissioner of Customs, Nhava Sheva- 11[earlier Customs (Exports)), Jawaharlal Nehru Customs House, Nhava Sheva, Tai- Uran, Dist: Raigad, Maharashtra: 400707, as to why:

(i) Penalty should not be imposed on him under Section 114(iii) and Section 114AA of the Customs Act, 1962 separately for his individual role in each of the five firms as cited above.

24. Shri Suryabhan Eknath Dhurpate alias Suresh Matre, Proprietor M/s Sanket Overseas, 4th Floor, 408, Plot No. 61, Sector-11, CBD, Belapur, Navi Mumbai was also called upon to show cause in writing to the Additional Commissioner of Customs; Nhava Sheva-II [earlier Customs (Exports)]. Jawaharlal Nehru Customs House, Nhava Sheva, Tal- Uran, Dist: Raigad. Maharashtra: 400707, as to why:

(i) Penalty should not be imposed on him under Section 114 (iii) and Section 114AA of the Customs Act, 1962 separately for his individual role in each of the five firms as cited above."

2.3 After considering the submissions, the matter was adjudicated by the Joint Commissioner holding as follows:-

"ORDER

(i) I order for confiscation of the goods with total declared FOB value of Rs. 13,38,00,317)-(Thirteen Crore Thirty Bight Lakh Three Hundred Seventeen Only) as mentioned in Column 3 of above Table exported by them under benefit of Focus Market Scheme (FMS), as detailed in Annexures mentioned in Column-7 of above Table of para 21, under the provision of Section 113 (1) of Customs Act, 1962 read Sub-section (1) of Section 11 of the Foreign Trade (Development & Regulation) Act, 1902 & Rule 14(2) of Foreign Trade (Regulation) Rules, 1903. However the said goods are not available for confiscation hence I refrain from imposing any fine in lieu of confiscation u/s 125.

(ii) I demand and order to recover the duty total amount to Rs. 51,61,870/- (Rupees Fifty one Lakh Sixty One Thousand Eight Hundred Seventy Only) as mentioned in Column-4 of above Table of para 21 relatable to SFMS Authorisations issued by the DGFT under Special Focus Market Scheme of Foreign Trade Policy, as detailed in para-11.1, from M/s Aditya Investment and Exim Trade Co., and director of M/s Veeaar Fabware Pvt. Ltd., M/s Vihaan infin & Exim Pvt. Ltd., M/s Vedant Trade Impex Pvt. Ltd, and M/s Simplex Fabware Pvt. Ltd. under Section 28 AAA of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962.

(iii) I order to appropriate the total amount to Rs. 51,42,886/- (Rs. Fifty One Lakh Forty Two Thousand Eight Hundred Sixty Six Only) as mentioned in Column-5 of above Table of para 21 paid by M/s Aditya Investment and Exim Trade Co., and director of M/s Veeaar Fabware Pvt. Ltd.. M/s Vihaan Infin & Exim Pvt. Ltd., M/s Vedant Trade Impex Pvt. Ltd. and M/s Simplex Fabware Pvt.

Ltd.under TR-8 Challan as mentioned in Column-6 of above Table of para 21 towards duty liability as in (1) above.

(iv) I impose a Penalty of Rs.21.19,004/- (Rupees Twenty One Lakh Nineteen Thousand Four Only) on M/s Aditya Investment and Exim Trade Co., Rs. 16,75,956/- (Rupees Sixteen Lakh Seventy Five Thousand Nine Hundred Fifty Five Only) on M/s Veeaar Fabware Pvt. Ltd.. Rs. 7,88,443/- (Rupees Seven Lakh Eighty Eight Thousand Four Hundred Forty Three Only) on M/s Vihaan Infin & Exim Pvt. Ltd., Rs. 3,95,623/- (Three Lakh Ninety Five Thousand Six Hundred Twenty Three Only) on M/s Vedant Trade Impex Pvt. Ltd. and Rs. 1,82,845/- (Rupees One Lakh Eighty Two Thousand Eight Hundred Forty Five Only) on M/s Simplex Fabware Pvt. Ltd. respectively under Section 114(ii) of the Customs Act, 1962.

(v) I impose a Penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on Shri Ramesh Singh, Proprietor of M/s Aditya Investment and Exim Trade Co., and director of M/s Veoaar Fabware Pvt. Ltd., M/s Vihaan Infin & Exim Pvt. Ltd., M/s Vedant Trade Impex Pvt. Ltd. and M/s Simplex Fabware Pvt. Ltd, under Section 114().

(vi) I impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on Shri Ramesh Singh under Section 114AA of the Customs Act, 1962 separately for his individual role in each of the five firms as cited above.

(vii) I impose a penalty of Rs. 10,00,000 (Rupees Ten Lakh Only) on Shri Suryabhan Eknath Dhurpate alias Suresh Matre, Proprietor M/s Sanket Overseas under Section 114 (1) and Rs. 10,00,000 (Rupees Ten Lakhs Only) under Section 114AA of the Customs Act. 1062 separately for his individual role in each of the five firms as cited above."

2.4 The order was challenged by the appellant and various other persons before Commissioner (Appeals). Commissioner (Appeals) has by the impugned order dismissed the appeal of the appellant. Appellant has filed this appeal against the penalty imposed on him under Section 114(iii) and under Section 114AA of the Customs Act, 1962.

3.1 I have heard Shri Anil Balani with Ms. Riya Gupta, Advocates for the appellant and Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 For imposing penalty on the appellant, Joint Commissioner vide order-in-original observed as follows:-

"27.11 I find that Shri Suryabhan Eknath Dhurpate alias Suresh Matre, Proprietor of M/s Sanket Overseas has abetted Shri Ramesh Singh to obtain FMS Authorisation from DGFT by issuing fake/bogus Landing certificates, which Shri Suresh Matre admitted in his statement dated 29.09.2015 and 13.05.2016 (discussed at Para-6.2 above), From the statement of Shri Ramesh Singh (discussed at Para-9 above), it is evident that the clearance of export of the said impugned goods was handled by Shri Suresh Matre who arranged clearance of goods and filed shipping Bills. The facts were also known to Shri Suresh Matre that these goods were not to be exported to the countries declared on the export documents and knowing fully he issued or arranged fake/ bogus landing certificates and House BL/Multi-modal transport documents. All the aforesaid acts of omission and commission on the part of Shri Suresh Matre, Proprietor of M/s Sanket Overseas rendered the said goods exported by all five exporters viz. "Aditya", "Veeaar "Vihaan", "Vedant" and "Simplex", liable to confiscation under Section 113 (1) Customs Act, 1962. I find that Shri Suresh Matre had consciously and deliberately dealt with goods which he knew or had reason to believe that the same were liable to confiscation under the provisions of section 113 (1) of the Customs Act, 1962. All the above acts of omission and commission on his part have rendered him liable to penalty under Section 114() and 114AA of the Customs Act, 1962."

3.3 For upholding the penalty imposed, Commissioner (Appeals) has observed as follows:-

"16.1 The appellant Shri Suresh Matre has filed appeal by contending that the appellant did not commit any act which rendered the goods liable for confiscation under Section 113 of the Customs Act. If the goods are exported to a destination different from the one indicated in the documents, it does not make the goods liable for confiscation under Section 113 of the Customs Act. In this regard, as discussed in hereinabove the benefit Special Focus Market Scheme is applicable to export the goods to notified countries and the goods where they were diverted are not notified in Special Focus Market Scheme and thus country of export was misdeclared in the S/Bs and thereby exporters fraudulently availed the benefits under Special Focus Market Scheme (SFMS) Therefore, invocation of Section 113(1) is justifiable. From the investigations it is evident that Shri Suresh Matre of M/s Sanket Overseas, who is a forwarder had arranged the containers and booked the consignments to shipping lines, as per direction of Shri Ramesh Singh arranged fake/bogus landing certificates on their company's letter head or printed on the letter head of M/s Wheels & Waves Logistics Pvt. Ltd., as proof regarding the delivery of the goods to the consignees based at Armenia and Azarbaijan. The said landing certificates and House, BLs/Multi Modal transport documents were submitted by the above 5 exporters to the DGFT to claim export benefits Le. SFMS for CIS countries. Thus, in this manner, exporters in connivance with the appellant Shri Suresh Matre of M/s Sankst Overseas hatched a conspiracy for fraudulently availing Special Focus Market Scheme (SFMS) benefits by producing forged House BLs/Multi-modal transport documents and landing certificates, wherein consignee countries were deliberately mis-declared by them for the purpose of availing undue benefit under SFMS. Therefore, conscious role of Shri Suresh Matre of M/s Sankst Overseas in aiding and abetting the exporters to avail fraudulent SFMS benefit is evident. Therefore there is nothing wrong in the imposition of penalty on Shri Suresh Matre in the case.

16.2 The appellant has contended that in a similar matter the Hon'ble Settlement Commission vide its Order No. dated 30.5.2017 imposed a penalty of Rs. 50,000 only. In this regard, I find that proceedings before the Hon'ble Settlement

Commission and Adjudicating Authority are entirely different and are not comparable. In the proceedings the Hon'ble Settlement Commission a noticee files application for settlement of the case only after disclosure of true liability and making payment thereof, whereas in the adjudication proceedings, the noticee agitates the allegations levelled in the SCN. Therefore, ratio of the decision of the Hon'ble Settlement Commission passed in other case is not applicable to present case."

3.4 Counsel for the appellant contended that in a similar case where the exporter along with the appellant approached the Settlement Commission under Special Focus Market Scheme, the Settlement Commission has penalized the appellant with penalty of Rs.50,000/- only the on payment of the entire duty to the Revenue. In the present case also the exporter has made the payment of Rs.51,42,866/- towards the total demand of Rs.51,61,870/- as he needed some more time to approach the Settlement Commission to pay the remaining amount. Thus the penalty imposed on the appellant is excessive.

3.5 The facts in the present case are identical to the case of the appellant settled by the Settlement Commission in a similar matter on the role of the applicant. The Bench observed as follows:-

"7.2 Bench notes that co-applicant prepared document and was aware that these goods were not to be exported to countries declared in the export documents. They issued fake/bogus landing certificates, House BLs/Multimodal transport documents. Therefore they have abetted main applicant to avail undue benefits in the form of SFMS which led to huge evasion of duty. As much co-applicant has rendered himself liable to penal action as proposed in the SCN.

7.3 However, taking note of the fact that they have extended cooperation to revenue and main applicant has paid entire duty, interest & penalty, Bench finds it a fit case to be settled by granting partial immunity from penalty to co-applicant."

3.6 The Commissioner (Appeals) in para 16.2 of the impugned order has observed, as reproduced above, in respect of the above order of the Settlement Commission. Undisputedly there is no denial vis-à-vis the role of the appellant in the acts undertaken leading to loss of revenue. However, taking note of the fact that the appellant is not the actual beneficiary but is only the freight forwarder arranging for container, taking the consignment to shipping lines etc. as per the directions of Shri Ramesh Singh, I find that penalty imposed on the appellant is excessive.

4.1 Accordingly, in my view, the interest of justice will be met if the penalties are reduced to Rs.2.5 lakhs under Section 114(iii) and Rs.2.5 lakhs under Section 114AA of the Customs Act, 1962.

4.2 With the above modification, the impugned order in respect of the appellant is upheld.

4.3 Appeal is disposed of.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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