

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Customs Appeal No. 86090 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/451/18-19 dated 22.01.2019 passed by the Commissioner (Appeals), Customs Excise & GST, Nagpur)

**Vandana Global Ltd.
Siltara Indl. Growth Centre,
Phase II Sitara Raipur**

.....Appellant

VERSUS

**Commissioner of Central Excise, Nagpur
PO Box 81, GST Bhavan, Civil Lines
Telangkhedi Road,
Nagpur**

.....Respondent

APPEARANCE:

Shri R.K. Tomar, Advocate for the appellant
Shri Ram Kumar, (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86010/2023

DATE OF HEARING : 05.01.2023

DATE OF DECISION : 27.06.2023

Per: AJAY SHARMA

This appeal has been filed from the impugned Order-in-Appeal dated 22.1.2019 passed by the Commissioner (Appeals) upholding the Order-in-Original but modifying the same by reducing the penalty on the appellant from Rs.1 crores to Rs. 50 lakhs under Sections 114(i), 114(iii) and 114AA of the Customs Act, 1962.

2. The issue involved herein is whether the appellant is liable to pay any penalty under Sections 114(i), 114(iii) and 114AA of the Customs Act, 1962 for not acting judiciously and with diligence despite a clear finding that they are not directly involved in the smuggling of red sanders?

3. The appellants are exporters of Sponge Iron. A specific intelligence was received by the officers of Directorate of Revenue Intelligence, Nagpur Regional Unit (DRI) that Red Sanders were being illegally exported to Dubai through ICD, Nagpur by a Chennai based syndicate. Intelligence further indicated that offenders got the containers stuffed with export goods of the appellant herein and diverted such goods on the way to a godown situated at Raipur for tampering and stuffing of red sanders and that one container stuffed with red sanders was going to be exported from ICD, Nagpur. Based on the said intelligence on 2.10.2016 the officers of DRI intercepted one *container No. GESU 2821397* at ICD, Nagpur which was accompanied with ARE-1 dated 1.10.2016 of the appellant. On verification of ARE-1, the description of the goods were found to be '*sponge iron*'. Statements of three persons, accompanying the container, were recorded u/s. 108 of Customs Act, 1962. Based on the statements, the officers of DRI raided the godown located at Raipur and seized trucks and the red sanders alongwith other material in the said godown. The statements of few more persons working there were also recorded u/s. 108 *ibid*. The stock of red sanders of 576 logs weighing 11.00 MTs was

intended to be exported although the same is prohibited. The container No. *GESU 2821397* was opened for examination on 3.10.2016 and it was found containing red sanders of 14.055 MTs as well white colour bags containing sponge iron weighing 5.478 MTs. Thereafter container No. *GESU 3058211* shipped by the appellant on 28.9.2016 was recalled and examined by DRI under panchnama dated 13.10.2016 and on examination the bottle seals of shipping line as well as of ICD, Nagpur were found intact. In this container the appellant, as per the documents, had shipped 400 bags of sponge iron having net weight of 20,000 kgs to Prime Global General Trading LLC, UAE, Dubai vide Bill of Lading dated 28.9.2016 and Invoice dated 19.9.2016. But on physical examination it found containing 17060 kgs of red sanders and only 4150 kgs of sponge iron and those were also seized by DRI on 19.10.2016.

4. After thorough investigation including recording the statements of the persons concerned u/s. 108 ibid it was found that syndicate of one Abdul Jafer had managed to illegally export 13 consignments/containers of red sanders in the guise of sponge iron in the name of the appellant and out of the 13 consignment DRI was able to call back one consignment from Dubai and one container/consigned was intercepted by the DRI on 2.10.2016 as mentioned above. According to DRI the syndicate consisting of Shri Abdul Jaffer, Shri Ajay @ Topiwala @Rajiv Gupta, Shri Rajesh Subramaniam, Shri Pannalal Meena, Shri Rajendran and Shri Senthil, was involved in the illegal

export of "Red Sanders", a prohibited item, by replacing the sponge iron in factory stuffed containers. The export goods i.e. sponge iron was stuffed in the containers at the factory premises of Vandana Global Ltd. located at Raipur, under the supervision of Central Excise officers initially and under self sealing procedure later on. The said containers were transported to a godown that was taken on lease by Abdul Jaffer. At the godown, the containers were opened by tampering with the rivet of the handles with the help of Shri Rajendran or Shri Senthil. After breaking the rivets of the handles of the container, the original export consignments were replaced/partially replaced with the logs of Red Sanders to match the original weight. The containers were thereafter refixed with other rivets, without damaging or tampering with the bottle seals, and exported to the desired destinations. Accordingly a show cause notice dated 22.3.2017 was issued against the offenders for absolute confiscation of the goods seized.

5. Since this appeal has been filed by appellant therefore I am confining it to the role *qua* the appellant only. The role of the appellant, as per the said show cause notice, is that they failed to monitor the receipts of their export proceeds in accordance with circular dated 8.11.2013 issued by RBI and also that had they acted judiciously with due diligence, the export of 13 containers of red sanders could have been avoided and therefore penalty u/s. 114(i), 114(iii) & 114AA *ibid* were proposed against them in the said show cause notice which culminated into the

Order-in-Original dated 17.4.2018 by which the adjudicating authority imposed penalty of Rs.1 crore on the appellant u/s. 114(i), 114(iii) & 114AA ibid. On Appeal filed by the appellant, the 1st Appellate Authority reduced the said penalty to Rs.50 lakhs.

6. Learned counsel for the appellant submits that the appellant has nothing to do with the export etc. of the red sanders and therefore the provisions of section 114 ibid are not applicable to the appellant as they have not done anything or omitted to do anything leading to confiscation of the red sanders u/s. 113(d) & (g) ibid as they have not exported it and in the absence of any onus on the appellant for liability of confiscation of the said goods under any provision of sec.113 ibid , penalty u/s. 114 ibid cannot be imposed. According to learned counsel the appellant had exported sponge iron and the export procedure was completed for the purposes of Customs Act, 1962 when the containers stuffed with sponge iron were sealed for export purpose in the factory premises under the supervision of the officers of Customs and Central Excise and for the illegal replacement of sponge iron with prohibited red sanders, the appellant cannot be blamed. Even the Revenue has not made out any case against the appellant that he has anything to do with the said red sanders and therefore the provisions of section 114(i) ibid are not applicable. He also submits that the show cause notice did not propose to confiscate *sponge iron* whereas the other persons involved in the smuggling of red sanders have

been asked to explain why the export goods i.e. sponge iron should not be confiscated therefore having not invoked section 113 ibid qua the appellant provisions of Sec.114 (iii) ibid cannot be invoked against them. So far as provisions of Section 114AA ibid are concerned they can be invoked only when a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in material particular in the transaction of any business for the purpose of the Customs Act whereas there is no such allegations against the appellant and therefore this provision also cannot be invoked and resultantly the appellants cannot be held liable for any penalty. Learned counsel also submits that in support of their submissions they had submitted various case laws before the learned commissioner but the same were simply rejected by the said authority without any discussions about them in the impugned order. Per contra learned authorised representative appearing for revenue supported the findings recorded in the impugned order and prayed for rejection of appeal.

7. I have heard learned counsel for the appellant and learned authorised representative for the revenue and perused the case records including the written submissions/synopsis and case laws placed on record. The allegation against the appellant, for which they were penalized, was that they did not act judiciously as they failed to monitor the receipts of their export proceeds in accordance with the RBI circular (supra) and had they acted

judiciously with due diligence, the export of 13 containers of red sanders by misuse of their export documents and cargo, could have been avoided. We cannot lose sight of the fact that the appellant themselves are victim of fraud perpetrated by the said syndicate who are into the smuggling of red sanders. The case laws cited by the appellant against imposition of penalty on them were held as not applicable by the learned Commissioner without any discussions merely by stating that '*it do not help their cause*' and thus '*not relevant*'. The following case laws were cited before me on behalf of the appellant against imposition of penalty on the Appellant:-

- (i) *M/s. Ashoke Enamel & Glass Work Pvt. Ltd. vs. Commr. Customs (Port) 2016(10)TMI 292 – Cestat Kolkata*
- (ii) *Nanda Incorporated vs. CC, Chennai; 2017(11) TMI 252-Cestat Chennai*
- (iii) *Shri Subhas Bose vs. Commr. Customs; 2016(8) tmi 305- Cestat Kolkata*
- (iv) *Swaroop Shipping Services vs. CC, Chennai; 2008(2) TMI 709-Cestat, Chennai*
- (v) *Ruchi Soya Ind. Ltd. vs. CC, Indore; 2012 (280 ELT 65 (Tri.Del.)*
- (vi) *Shri Ahimsa Mines & Minerals Ltd.vs.CCE, Jaipur; 2012(283) ELT 141 (Tri.Del)*
- (vii) *Bombino Express P.Ltd,vs, /CC, Aiport ; 2017(3) ;TMI 447-Cestat Mumbai.*
- (viii) *Vinay Aggarwal vs. CC, Jaipur; 2016(4) TMI 970-Cestat Delhi*
- (ix) *CC vs. B. Dhananjayan; Final Order No. 42471/2021 dtd. 17.12.2021*
- (x) *Mohammed Irfan Abdul K. Munshi vs. CC; 2022(12)TMI 485-Cestat Mumbai*

Out of the case laws cited above, sr. Nos.(i) to (v) were also cited before the learned Commissioner but were discarded without any discussions by merely terming them as 'not

relevant'. Here I like to point out that the authorities below were also under an obligation to act judiciously and they are (in particular learned Commissioner) not justified in brushing aside the case laws cited by the appellants in support of their submissions without any discussions by merely terming them as 'not relevant'. It is the first principle that justice need not only be done but must be seen to be done and by his act learned commissioner has not only violated the said basic principle but also the principle of natural justice. Noticing that there is violation of natural justice in the cases, it would not be proper for me to deal with the matter on merits. Therefore without expressing any opinion on merits, I am inclined to remand the matter back to the learned Commissioner to decide the same afresh after following the principle of natural justice and dealing with the case laws on which the appellants are placing reliance.

8. Accordingly the impugned order is set aside and appeal is allowed by way of remand to the learned Commissioner for fresh decision, after taking into consideration all the evidences/case laws relied upon by the appellant.

(Pronounced in open Court on 27.06.2023)

(Ajay Sharma)
Member (Judicial)

//SR