

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

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 88138 of 2013

(Arising out of Order in Original No.45/2013/CAC/CC (E)/YG/GR.VII dated 31/05/2013 passed by Commissioner of Customs, (Export), New Custom House, Mumbai)

Sanjay D. Bhalerao

114 Vaibhav Appt., Sanghani Estate,
Ghatkopar (W), Mumbai 400 086.

.....Appellant

VERSUS

**Commissioner of Customs
(Export), Mumbai**

New Custom House, Ballard Estate,
Mumbai 400 001.

.....Respondent

Appearance:

Shri N.D. George, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

AND

Customs Appeal No. 88608 of 2013

(Arising out of Order in Original No.45/2013/CAC/CC (E)/YG/GR.VII dated 31/05/2013 passed by Commissioner of Customs (Export), New Custom House, Mumbai)

HDFC Bank Ltd.

HDFC Bank House, Senapati Bapat Marg,
Lower Parel (West),
Mumbai 400 013.

.....Appellant

VERSUS

**Commissioner of Customs
(Export), Mumbai**

New Custom House, Ballard Estate,
Mumbai 400 001.

.....Respondent

Appearance:

Shri D.B Shroff, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86364-86365/2023

Date of Hearing: 11.09.2023

Date of Decision: 11.09.2023

PER : S. K. MOHANTY

Feeling aggrieved with the Order-in-Original No.45/2013/CAC/CC(E)/YG/GR.VII dated 31.05.2013 (for short, referred to as 'the impugned order'), both the appellants Shri Sanjay D. Bhalerao and M/s Centurian Bank of Punjab (now HDFC Bank) have filed these appeals before the Tribunal. Vide the impugned order, the learned adjudicating authority has imposed penalty of Rs.57,39,594/- and Rs.1,00,00,000/- respectively on the appellants under Section 114 of the Customs Act, 1962.

2. The case involved in these appeals relates to overvaluation of export of goods made by M/s Sri Balaji Overseas, Mumbai for availment of higher rate of drawback. The department had conducted inquiry in to the matter and recorded the statements from various persons and based on the relied upon documents, the adjudged demands were confirmed on different persons, including imposition of penalties on the appellants.

3. Learned Advocate appearing for the appellant Shri Sanjay D. Bhalerao submitted that no specific investigation was conducted at the appellant's end and no statement has been recorded in context with the alleged overvaluation of exported goods. He further submitted that the Show Cause Notice dated 28.03.2009 has not been issued to the appellant, by framing the charges against him for imposition of the penalty. In this context, he has referred to page 35 in the show cause notice to state that the appellant's name is not appearing in the list furnished therein for service of the notice. Thus, he submitted that in absence of proper substantiation of the case against appellant, imposition of penalty is highly uncalled for and accordingly, is liable to be set aside.

4. Learned Senior Advocate appearing for the other appellant M/s HDFC Bank submitted that in compliance to the AD (GP series) Circular No. 4 dated 19.05.1999 issued by the Reserve Bank of India (RBI), the appellant had complied with the conditions enumerated therein and thus,

it cannot be exposed to the penal consequences as per the provisions of law. He further submitted that the appellant as a 'approved banker', has no role to play with regard to the goods, which were allegedly exported in contravention of the statutory provisions. Hence, he submitted that the case of the appellant is outside the scope and purview of Section 114 *ibid*, for imposition of penalty. In this context, he has relied upon the Order dated 07.01.1986, passed by this Tribunal in the case of *Bank of Madura Ltd. and Others Vs. Collector of Customs, Madras & Others* - 1987 (28) E.L.T. 396 (Tri.) and Order dated 03.06.2011 passed in the case of *IDBI Bank Ltd. Vs. Commissioner of Customs (Export), New Delhi* - 2011 (274) E.L.T. 439 (Tri.).

5. Heard both sides and examined the case records.

6. We find that the department had not issued any summon(s) to the appellant Shri Sanjay D. Bhalerao for recording of statement(s) with regard to irregular exportation of the subject goods and for ascertaining his specific role with regard to such activities. Though, the impugned order has stated that the appellant had earned 50% of profit out of the export proceeds, but did not elaborate any findings with regard to the actual role played by the appellant in irregular exportation of the goods. Further, we also find that the proceedings were initiated by the department in a casual manner, inasmuch as the name of the appellant has not been correctly mentioned either in the SCN or in the impugned order. Thus, in absence of proper substantiation of the case, especially with regard to the appellant herein, we are of the view that the penal provisions contained in Section 114 *ibid*, cannot routinely be invoked for penalising the appellant.

7. In this case, the exports had been made under the claim of drawback, in Dollar terms to Dubai and under 'Re-payment of State Credit Scheme', popularly known as 'Rupee Rouble Trade' to Russia. The foreign remittance for exports made to Dubai has to come in the form of USD; and in case of export to Russia, no foreign remittances were received, since the goods had been shown as exported under 'Rupee

Rouble Trade'. In case of 'Rupee Rouble Trade', the remittance was paid by the RBI in equivalent Indian Rupees, based on advice received from Bank for Foreign Economic Affairs (BFEA) through the designated bank of the exporter. Circular No.4 dated 19.05.1999 (supra) issued by the RBI has clarified on various issues relating to export made to Russia under 'Rupee Rouble Trade'. The clarifications relevant for consideration of the present dispute itemized in the impugned order at paragraph No.7.2 are given herein below:

"(c) The LC was received by the Banker of the Indian Exporter and was got registered from the RBI, Mumbai. The receipt of LC and registration of same was advised to the exporter by the Bank. Even amendments in LC were to be got registered with RBI. Only after the registration by the RBI, the exporter could export the goods.

(e) The Indian Bank would scrutinize the Documents presented by the exporter (Shipping Bill. Bill of Lading, etc.) as per the terms & conditions of LC and send the same on collection basis to the Russian designated Bank, which was to report discrepancy, if any, within seven working days. If no discrepancy was reported within seven days then the documents were considered compliant and claim was lodged with RBI."

8. On reading of the above clarification, it makes the position clear that the Indian bank's role is confined only for scrutinization of documents to be submitted by the exporter and to forward the same to the Russian designated bank. It has also been provided that if no discrepancy report is received from the Russian Bank within seven days, then the documents sent by the Indian bank should be considered as sufficient for lodgment of claim with the RBI. In this case, the documents forwarded by the appellant i.e., M/s HDFC Bank were found to be in order by the overseas bank, which is evident from the fact that no discrepancy was reported by them within the stipulated time frame. Further, it is not the case of Revenue that with regard to the disputed transactions, the banker was not registered with the RBI. Since, based on the available records, evidencing export of the goods under the scheme of 'Rupee Rouble Trade', the RBI has remitted the rupees in favour of the exporter through approved banking channel, it cannot be

said that the appellant had played any role with regard to irregular exportation of the goods. In other words, when the appellant's role starts after exportation of the goods and issuance of the Let Export Order (LEO) and issue of exchange control copy of Shipping Bill by the Customs department, it would not be proper to allege that the appellant had omitted or did some act in relation to improper export of goods. We find that the Tribunal in the above referred cases has exonerated the bank from the penal consequences provided under Section 114 *ibid*. Such exoneration is with the objective that the liability has been cast only on the person, who is involved in unlawful activities with regard to the goods liable for confiscation. In the present case, since the appellants' role as a banker has started after physical exportation of the goods, more particularly after issuance of LEO and physical movement of goods from the port of export, it cannot be said that they were involved in improper exportation of goods and consequently, would be exposed to the penal liabilities provided under Section 114 *ibid*.

9. In view of the foregoing discussions, we do not find any merits in the impugned order, in so far as it has imposed penalties under Section 114 *ibid*, on the appellants. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants.

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

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)