CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Miscellaneous Application No. 85410 of 2025
&
Customs Miscellaneous Application No. 85550 of 2025
In
Customs Appeal No. 87781 of 2023

(Arising out of Order-in-Original No.50/SA(50) ADG (ADJ.)/DRI, MUMBAI/2019-20 dated 24.10.2019 passed by the Additional Director General (Adjudication), D.R.I., Mumbai)

Global Impex Trading **.... Appellant**
36/3, Haji Jumma Compound, Sewri Cross Road,
Sewri (West), Mumbai – 400 015.

Versus

The Additional Director General, **.... Respondent**
(Adjudication) Mumbai
New Customs House, Ballard Estate,
Mumbai- 400 001.

APPEARANCE:

Shri Ramchandra Mattiyil a/w Ms Ashmita Kurulekar, Advocates for the Appellants

Shri Ram 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/86252/2025

Date of Hearing: 21.02.2025

Date of Decision: 08.08.2025

Per: S.K. MOHANTY

The applicant/appellant has filed this miscellaneous application being No. C/Misc.85410/2025, praying for amendment of the portion of prayer in the appeal memorandum. The prayer made by the applicant is considered and accordingly, the following 'prayer clause' as per the miscellaneous application is considered for the purpose of disposal of the appeal.

"PRAYERS

The Appellant therefore most humbly prays that this Hon'ble Tribunal be pleased to:

A. Quash and set aside the impugned Order-in-Original No. 50/SA(50)ADG(ADJ.)/DRI Mumbai/2019-20 dated 24.10.2019 to the following extent:

1) Absolute confiscation under Section 113 (d) of 2961 kilograms of shark fins stored at Mumbai and of 5061.88 kilograms of shark fins stored at Mumbai and of 5061.88 kilograms of shark fins stored at Verawal, Gujarat.
2) Redetermination of value of 2961 kilograms of shark fins as 20,54,93,400/- (Twenty crores, fifty-four lakhs, ninety-three thousand and four hundred rupees only) and of 5061.88 kilograms of shark fins as 35,12,94,472/- (Thirty-five crores, twelve lakhs, ninety-four thousand and four hundred and seventy-two rupees only).
3) Imposition of penalty of Rs. 7,00,00,000/- (Seven crores rupees only) under 114 (i) on the Appellant through its proprietor, Mr. Sarafath Ali.

B. Such other reliefs as may be deemed fit in the facts and circumstances of the case in favour of the Appellant.

C. Grant consequential reliefs."

1.2 Revenue has also filed the miscellaneous application, numbered as C/Misc.85550/2025, praying for change in the cause title in respect of the respondent's particulars in the appeal filed by the appellant. Prayer made by Revenue is considered and accordingly Registry is directed to incorporate the following changed name and address of the respondent in the appeal records:

*"Principal Commissioner/Commissioner of Customs (Preventive)
Jamnagar, Sarda House, opp. Panchvati, Bedi Bander Road,
Jamnagar, Gujarat – 361 001."*

2.1 The appellant herein, is the sole proprietorship concern, owned and managed by its proprietor Shri M. Sarafath Ali. The appellant is engaged *inter alia*, in the business of export of fish and other marine products, including 'shark fins'. Export of shark fins are prohibited as per the Notification No. 110 (RE 2013) / 2009-14 dated 06.02.2015, issued by the Central Government, in exercise of the powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992. In this case, on the basis of an intelligence received that the appellant was attempting to export prohibited shark fins, the officers of Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit had conducted a search on 01.09.2018 in the office premises of the appellant. The search resulted in recovery of 2961 kilograms of dried shark fins stored in the cold storage at Mumbai godown and 5061.88 kgs. of shark fin stored at Verawal godown. DRI placed the shark fins under seizure, with the reasonable belief that those were attempted to be illegally exported. After investigation, a Show Cuse Notice (SCN) dated 27.02.2019 was issued by the department, proposing for re-valuing the shark fins at USD 1000 per Kg.; confiscation of the same under Section 113(d) of the Customs Act, 1962; and for imposition of penalty under Section 114(i) *ibid* on the proprietor of the appellant Shri. M. Sarafath Ali and other three employees of the appellant's firm. The matter arising out of the SCN dated 27.02.2019 was adjudicated vide the Order-in-Original dated 24.10.2019 (for short, referred to as the 'impugned order'), wherein the learned Additional Director General (Adjudication), D.R.I., Mumbai has confirmed the proposals made in the SCN for confiscation of the goods, accepted the value proposed for re-determination by DRI and imposed penalty of Rs.700,00,000/- on the proprietor of the appellant. However, the impugned order has acquitted the other co-noticees, who are the employees of the appellant's firm. Feeling aggrieved with the impugned order dated 24.10.2019, the appellant has preferred this appeal before the Tribunal.

2.2 Learned Advocate appearing for the appellant submitted that the department had mainly proceeded against the appellant for confirmation of the adjudged demands, based on the statements recorded from the proprietor and the employees of the appellant under summons that the impugned goods were stored for the purpose of export. He submitted that immediately upon recording of the said statement, the proprietor as well as the other employees (co-noticees) had retracted the said statements before the Additional Chief Metropolitan Magistrate, Esplanade, Mumbai, stating *inter alia*, that those were recorded by the officers of D.R.I. by using threat and coercion; that the same was not true and voluntarily given by them; that the D.R.I. officers had not provided any chance to the signatories to read the computerized statement and that the said statements were signed against their will and by using the force etc. Thus, learned Advocate submitted that the retracted statements cannot be accepted or considered as guilt of admission, unless there are other corroborative evidences that the disputed goods in question were meant for export only. He further submitted that storage of shark fins or trading of the same in the domestic market is not prohibited in law. In this context, learned Advocate has relied upon the judgment delivered by the Hon'ble Supreme Court in the case of *A.Tajudeen Vs. Union of India* – 2015 (317) E.L.T. 177 (S.C.) and the judgment of Hon'ble Delhi High Court in the case of *Directorate of Revenue Intelligence Vs. Mahendera Kumar Singhal* - 2016 (333) E.L.T. 250 (Del.).

2.3 Learned Advocate further submitted that the impugned order has valued the subject goods at USD 1000 Per kg., based on the statement of Shri Sarafath Ali, which was subsequently retracted. He has stated that as per the statement, the shark fins were sold in the range of USD 500 per kg., to USD 1500 per kg., depending on their size in Hongkong market. Thus, he submitted that the principles of valuation provided under the statute had been completely dis-regarded by the adjudicating authority. Learned Advocate has relied upon the judgment of Hon'ble Supreme Court, in the case of *Commissioner of Customs (Imports), Mumbai Vs. M/s. Ganapati Overseas* – 2023 (10) TMI 364-SUPREME COURT and the orders of this Tribunal, passed in the case of *Jeen Bhavani International & Ors. Vs. Commissioner of Customs - Nhava Sheva-III* -2022 (8) TMI 237-CESTAT MUMBAI and *Junaid Kudia Vs. Commissioner of Customs – Mumbai Import-II* -2023 (9) TMI 22-CESTAT MUMBAI, to state that valuation cannot be based on the retracted statement. Learned Advocate further submitted that at the time of seizure, the impugned goods were valued at Rs. 4000/- per kg. arbitrarily. In this context, he submitted that prior to the imposition of ban on export of shark fins, the appellant used to export the same, ranging between the price of USD 10 to USD 140 per kg., which had never been disputed by the department. He submitted that even if the inflation aspect is considered for determination of the price, then also, there is no rationale for arriving at the exorbitant valuation of USD 1000 per kg.

2.4 Learned Advocate also submitted that there was no attempt made by the appellant to export the shark fins, as alleged by the department. To strengthen such stand, he has submitted that no contracts were entered into between the appellant and the overseas buyers for supply of shark fins; there is no contract of price negotiation; no special godown was hired for storing export goods. Thus, he submitted that the charges levelled in the impugned order that the appellant had attempted to export the said goods, cannot be sustained. Learned Advocate further submitted that the impugned order has confirmed the charges leveled in the SCN solely based on the past exports and the retracted statement made by the proprietor of the appellant. He has stated that no evidences were available of record to establish that the appellant had committed any act to put the intention into action for illegally exporting the shark fins. To support such stand that the onus entirely lies with the Revenue to prove intention to export of goods, which is absent in the present case, learned Advocate has relied upon the judgments delivered by the Hon'ble Supreme Court in the case of *State of*

Maharashtra Vs. Mohd. Yakub And Others – 1983 (13) E.L.T.1637 (S.C.), *Malkiat Singh And Another Vs. State of Punjab* – (1969) 1 Supreme Court Cases 157, and the orders of this Tribunal, passed in the cases of M/s. *Gudiseva Vasuki Vs. Commissioner of Central Excise & ST, Hyderabad-III* – 2017 (9) TMI 760 – CESTAT HYDERABAD, *Tele Brands (India) Pvt. Ltd. & Ors. Vs. Commissioner of Customs (Import), Mumbai* -2016 (1) TMI 97-(Tri. – Mumbai) and *V. Thirubalagan Vs. Commissioner of Customs* – 2023 SCC OnLine CESTAT 646.

3. On the other hand, learned Authorized Representative appearing for the Revenue has reiterated the findings recorded in the impugned order.

4. Heard both sides and examined the case records.

5. The issues involved in this appeal, for consideration by the Tribunal are, whether the impugned order passed by the original authority is proper and justified under law, insofar as it has ordered for:

(i) absolute confiscation of the impugned goods stored at Mumbai and Verawal, under Section 113 (d) of the Act of 1962;

(ii) re-determination of value of the impugned goods; and

(iii) imposition of penalty on the appellant through the proprietor Shri Sarafath Ali.

6.1. As per the provisions of Section 113 of the Act of 1962, goods attempted to be improperly exported, are liable for confiscation. Clause (d) of Section 113 *ibid* provides for confiscation of any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under the Act of 1962 or any other law for the time being in force.

6.2 On the issue of 'attempted to export', it is an undisputed fact that shark fins were stored by the appellant in its cold storage facility at Mumbai and at the open storage place at Verawal, the fact of which has also been acknowledged at paragraph 5.8 in the impugned order. The shark fins were kept in HDPE bags and in some cases, Corrugated boxes placed in HDPE bags. It is also undisputed that no documentary evidences viz., shipping bill, proforma invoice, communications in the form of emails, letters, etc., were relied upon by the department either in the show cause notice or in the impugned order. The impugned order has also accepted that both the localities i.e., Mumbai and Verawal are not 'customs area' or areas notified as such, in the Act of 1962. In support of the conclusion that the impugned goods were attempted to be exported, the original authority has relied upon the judgements in the case of *A.K. Subramani Vs. Commissioner of Customs (Port-Export), Chennai* – 2017 (358) E.L.T. 77 (MAD.) and *Umeshwar Prasad* Vs. *Commissioner of Customs, Patna* – 2018 (361) E.L.T. 486 (Pat.). Further, he had also held that since shark fins were intended to be exported out of India, those goods qualify to be considered as export of goods. However, on reading of the above judgements relied upon in the impugned order, we find that the crux of the case involved therein was factually different, than those involved in the present case. In the said decided cases, seizure of red sanders/paddy & rice, and their ultimate connection for movement to the port area/ customs border area, for the purpose of export was established; whereas, contrary is the situation in the present case, inasmuch as the seized goods i.e., shark fins were found stored at the designated storage place, belonging to the appellants, having no connectivity with the load port, if any, for alleged exportation of the same to outside India. In other words, in order to constitute an act of attempt to export, the ingredients required to be fulfilled are intention, preparation and preliminary act to export. We find that the department had not brought on any iota of evidence to prove their case that the appellant had intended to export the shark fins.

6.3 We find that the issue of 'attempting to export' has been adequately addressed to by the Hon'ble Supreme Court, in the case of *Malkiat Singh and Anr. Vs. State of Punjab – (1969) 1 Supreme Court Cases 157.* The issue involved in the said case was that one Shri Malkiat singh was driving a truck, carrying 75 bags of paddy towards the Delhi border; carrying paddy across the border was considered to be export as per Section 2 of Punjab Paddy (Export control) Order, 1959; the 1959 Order further defined the phrase 'attempt to export', as a restricted activity, to be allowed only under a permit issued by the State Government. Considering such factual matrix, the question before the Hon'ble Court was whether, the seizure of truck moving towards the border, laden with paddy, can be considered as an activity of attempt to export or otherwise? In paragraphs 6 and 7 of the judgement, the Hon'ble Supreme Court have ruled on the issue, which are quoted as below:

> *"6. ….The truck with the loaded paddy was seized at Samalkha well inside the Punjab boundary. It follows therefore that there*

was no export of paddy within the meaning of para 2(a) of the, Punjab Paddy (Export Control.) Order, 1959. It was, however, argued on behalf of the respondent that there was an attempt on the part of the appellants to transport paddy to Delhi, and so there was an attempt to commit the offence of export. In our opinion, there is no substance in this argument. On the facts found, there was no attempt on the part of the appellants to commit the offence of export. It was merely a preparation on the part of the appellants and as a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after the preparations are made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly, to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it; amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but, if he bends down near the stack and lights a match which extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it. Sir James Stephen, in his Digest of Criminal Law, Article 50, defines an attempt as follows:

> *"an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such series of acts begins cannot be defined, but depends upon the circumstances of each particular case."*

7. The test for determining whether the act of appellants constituted an attempt or preparation is whether the overt act already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they have no license to carry the paddy and they may have changed their mind at any place between Samalkha barrier and the Delhi Punjab boundary and not have proceeded further in their journey…..".

6.4 Further, the concept of 'attempting to export' was also dealt with by the Co-ordinate Bench of this Tribunal in the case of *V. Thiruvalagan Vs. Commissioner of Customs* - 2023 SCC online CESTAT 646. The relevant paragraph recorded therein is extracted herein below:

> *"19. So, it is important to understand the meaning and scope of attempt in importing or exporting any prohibited goods or in contravention of the provisions of the Customs law. An attempt ordinarily means an intend combined with an act falling short of the thing intended. It is an effort or endeavor to accomplish a crime, amounting to more than mere preparation or planning for it, which, if not prevented, would have resulted in full consummation of the act attempted, but which, in fact, does not bring to pass the party's ultimate design. In order to constitute an Act of Attempt, the Act must possess four characteristics: first, it must be a step toward a punishable offence; second, it must be apparently (but not necessarily in reality) adapted to the purpose intended; third, it must come dangerously near to success, fourth it must not succeed…..".*

7. On the question of valuation of the seized goods, the original authority has re-determined the value, based on a statement rendered from Shri M.Sharafat Ali. The statement reads "*on being asked I have to state that the price in Hongkong for the shark fins is 1200 to 1500 USD per kgs for big fins, USD 650 for medium fins and USD 500 for smaller fins*". This statement stood retracted, wherein Shri Sharafat Ali had stated that he was forced to sign a computerized statement and it was recorded by Officers of DRI, using threat and coercion. We find from the case records that the retraction was submitted before the Additional Chief Metropolitan Magistrate Esplanade, Mumbai. It is observed that in the statement recorded by the department, there is no mention of the period, the quantity, quality etc., of the shark fins which would fetch the price mentioned by Shri Sharafat Ali. There were no follow-up questions to elicit further relevant information to ascertain whether he had sold shark fins at that rate and if so, under which Shipping Bills the said goods were exported and what was the value declared in those shipping bills. In absence of any such relevant details, no reliance can be placed on the said statement, especially when it stood retracted. No further follow up statements were taken to substantiate the said value. No corroborative statements from the other co-noticees involved in the show cause proceedings were also taken in respect of the transaction value of the consignment. In absence of any corroborative evidences, redetermination of value, that too at a much higher price in the impugned order, in our considered view, is contrary to Customs Valuation (Determination Of Value Of Export Goods) Rules 2007 read with Section 14 of the Customs Act, 1962.

8. On the issue of invocation of the provisions of Section 114(i) of the Act of 1962 for imposition of penalty on the proprietor of the appellant Shri Sarafat Ali, the said statutory provisions are applicable only in the eventuality, where the goods are liable for confiscation under Section 113 *ibid*. As discussed in the previous paragraphs, we have concluded that the shark fins were not liable for confiscation inasmuch as there was no attempt to export of the same by the appellant. Thus, in our considered view, the impugned order imposing penalty on the proprietor cannot be sustained.

9. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order, insofar as it has confiscated the shark fins, re-determined the value at higher side and imposed penalty on the proprietor of the appellant Shri Sarafat Ali. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Order pronounced in open court on 08.08.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM