

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST BLOCK NO II, R K PURAM, NEW DELHI-110066  
BENCH-SM  
COURT NO. III**

**Customs Appeal No. C/52163/2018**

**Arising out of Order-in-Appeal No.CC(A) CUS/D-  
II/ICD/Export/TKD/809/2018, Dated  
Passed by the Commissioner (Appeals), New Delhi**

**Date of Hearing: 28.01.2019**

**Date of Decision: 28.01.2019**

**M/s MCT DELUXE HONOUR INDUSTRIES PVT LTD**

**Vs**

**COMMISSIONER OF CUSTOMS  
NEW DELHI, ICD**

**Appellant Rep by: Mr S S Dabas, CA**

**Respondent Rep by: Ms Tamanna Alam, DR**

**CORAM: Ashok Jindal, Member (J)**

**Cus - The assessee filed a shipping bill containing 70 packages and on examination, 6 packages were found of red sanders, which is prohibited item and cannot be exported - The 6 packets of red sanders were absolutely confiscated - Remaining goods, namely, handicraft furniture of woods /metal were held liable for confiscation and allowed to redeem on redemption fine of Rs.2.00 Lakhs - Penalties under Section 114 (i) & 114 (iii) of the Customs Act, 1962 were imposed of Rs.5.00 Lakhs and 3.00 Lakhs respectively - On being asked about the invoice, assessee failed to produce the invoice before the Bench for proper examination of contents of invoice - Therefore, adverse view has been taken against the assessee and it is observed that in the guise of handicraft furniture and woods/ metals the assessee intended to export red sander - Therefore, red sander is absolutely confiscated - For that part of the order, no infirmity is found - The other goods are also liable for confiscation as in the guise of these goods, the assessee sought export of red sander - As goods are held liable for confiscation, but these goods are not contravened goods, therefore, allowed to be redeemed on payment of redemption fine of Rs.1,50,000/- - With regard to penalty of Rs.3.00 Lakhs imposed on assessee, as it has been held that goods are liable for confiscation, therefore, penalty under Section 114 (iii) is rightly imposed on assessee - With regard to penalty of Rs. 5.00 Lakhs imposed on assessee under Section 114 (i) of the Customs Act, 1962 for attempting to export prohibited goods, the said penalty imposed on assessee is on higher side; therefore, the same is reduced to Rs.3.00 Lakhs:  
CESTAT**

**Appeal partly allowed**

**Case laws cited:**

***Mazda Chemicals vs. CC (Prev.), Ahmedabad - 1996 (88) ELT 767 (Tri.)... Para 3***

***Santosh Radio Products vs. CC (Port), Kolkata - 2018 (359) ELT (713) (Tri.-Kolkata)... Para 3***

**FINAL ORDER NO. 50267/2019**

**Per: Ashok Jindal:**

**The appellant is in Appeal against the impugned order wherein the export consignment has been confiscated and part consignment is allowed to be redeemed on payment of redemption fine and penalties are also imposed.**

**2. The facts of the case are that the appellant filed a shipping bill on 14.04.2014 for export of handicraft items. There were 70 packages packed in a consignment, which were packed in a container. On examination of the container containing the consignment, it was found that out of 70 consignments 6 packets are red sanders, which is prohibited item and cannot be exported. In these set of facts, proceedings were initiated against the appellant. Various statements were recorded. Thereafter, the show cause notice was issued to the appellant to confiscate the entire consignment and to take action against the appellant. The matter was adjudicated. The 6 packets of red sanders were absolutely confiscated. Remaining goods, namely, handicraft furniture of woods /metal were held liable for confiscation and allowed to redeem on redemption fine of Rs.2.00 Lakhs. Penalties under Section 114 (i) & 114 (iii) of the Customs Act, 1962 were imposed of Rs.5.00 Lakhs and 3.00 Lakhs respectively. Against the said order, appellant is before me.**

**3. The Id. Counsel for the appellant submits that the value taken by the authorities below while valuing the red sanders as well as the handicraft furniture is not correct. As the value of the whole consignment was about Rs.11.00 lakhs and value of red sanders is of about Rs.1,38,000/- but they have taken the value of red sanders at Rs.3,06,000/- and others at Rs.11,27,111/- respectively. But nothing was explained how the value of the said goods were arrived. Therefore, the value taken by the Revenue and imposing redemption fine is not correct. He further submits that as all the goods were separately packed in separate packages, therefore, the handicraft furniture of woods/ metal cannot be confiscated as held by this Tribunal in the case of *Mazda Chemicals vs. CC (Prev.), Ahmedabad - 1996 (88) ELT 767 (Tri.)* and *Santosh Radio Products vs. CC (Port), Kolkata - 2018 (359) ELT (713) (Tri.-Kolkata)*. He further submitted that if the goods are held liable for confiscation, in that circumstances also, the redemption fine imposed of 2.00 Lakhs on the appellant is on higher side.**

**4. With regard to penalty imposed of Rs.3.00 Lakhs under Section 114 (iii) of the Customs Act, it is his submission that the said penalty can impose only if the goods are held liable for confiscation under Section 113 of the Act**

and in this case goods were not confiscated under Section 113 of the Act, therefore, penalty under Section 114(iii) cannot be imposed. With regard to penalty is of Rs.5.00 Lakhs imposed on the appellant, it is his submission that the value of red sanders is Rs.1,38,000/- whereas penalty imposed of Rs.5.00 Lakhs which is on higher side. With regard to absolute confiscation of red sanders, it is his submission that red sander has been loaded without the knowledge of the appellant by the staff of the appellant. Therefore, the red sanders cannot be confiscated, as the same has been purchased by the appellant under auction by Tamil Nadu Government and appellant has applied for a license on 13th February, 2014 for manufacturing certain items out of that red sander. Therefore, he prayed that impugned order is to be set aside.

5. On the other hand, Id. A.R. supported the impugned order and submits that red sander is a prohibited item and cannot be exported. Therefore, appellant was exporting red sander under the guise of handicraft items . In that circumstance, whole of the consignment is liable to be confiscates and redemption fine and penalty imposed on the appellants are justified.

6. Heard both the parties. Considered the submissions.

7. On consideration of submissions made by both the sides, the facts are not in dispute that the appellant filed a shipping bill containing 70 packages and on examination 6 packages were found of red sanders. On being asked about the invoice, the Id. Counsel for the appellant failed to produce the invoice before the Bench for proper examination of the contents of the invoice. Therefore, adverse view has been taken against the appellant and it is observed that in the guise of handicraft furniture and woods/ metals the appellant intended to export red sander. Therefore, red sander is absolutely confiscated. For that part of the order, I do not find any infirmity.

8. With regard to the confiscation of handicraft furniture and wood/ metals the main contention of the Id. Counsel for the appellant is that they were in separate packages and are free items for export. Therefore, the same cannot be confiscated. To support this contention he relied on the two decisions of this Tribunal, viz. Mazda Chemicals (supra) and Santosh Radio Products (supra). I have gone through both the decisions. In the case of Mazda Chemicals (supra), I find that from the facts, it is not coming out whether it is an export consignment or import consignment. Moreover, the case of the appellant in the said case was absolute confiscation of Soda Ash whereas in the Truck containing certain contravened items. But in that said case, the appellant did not sought the release of the contravened items and disowned the same. But in this case both red sander as well as handicraft items are owned by the appellant. Therefore, facts of the said case are not applicable to this case. Further, in that case of Santosh Radio Products (supra), the appellant was an importer and having no knowledge of the goods found in the container. But in this case, the red sander as well as the other handicraft items were owned by the appellant and shipped from their

own premises for export of the same. Therefore, the said facts are not applicable in this case.

9. Further, the Id. Counsel for the appellant has raised an issue of valuation, how the valuation has been arrived. On the contrary the appellant has failed to produce the invoices of the said goods. Therefore, the valuation taken by the Revenue is taken as correct. At this time, the Bench also found that as the appellant has raised an issue of valuation, therefore, why not matter be transferred to Division Bench of this Tribunal, but on perusal of the records, I find that the said issue has been dealt by this Tribunal on 28.09.2018 wherein, this Tribunal hold that it is a case of mis-declaration and is to be dealt by Single Member Bench. Therefore, I am dealing this issue.

10. Therefore, I hold that the other goods are also liable for confiscation as in the guise of these goods, the appellant sought export of red sander. As goods are held liable for confiscation, but these goods are not contravened goods, therefore, allowed to be redeemed on payment of redemption fine of Rs.1,50,000/-.

11. With regard to penalty of Rs.3.00 Lakhs imposed on the appellant, as it has been held that goods are liable for confiscation, therefore, penalty under Section 114 (iii)) is rightly imposed on the appellant to the tune of Rs.3.00 Lakhs. Therefore, penalty of Rs.3.00 Lakhs imposed on the appellant is affirmed.

12. With regard to penalty of Rs. 5.00 Lakhs imposed on the appellant under Section 114 (i) of the Customs Act, 1962 for attempting to export prohibited goods, I find that the said penalty imposed on the appellant is on higher side; therefore, the same is reduced to Rs.3.00 Lakhs.

13. In view of the above, the following order is passed:-

a) Red sander being 450 Kg is absolutely confiscated.

b) The other goods, namely, handicraft furniture of wood/metal are liable for confiscation and can be redeemed on payment of redemption fine of Rs.1,50,000/-.

c) Penalty of Rs.3.00 Lakhs under Section 114 (iii) of the Customs Act, 1962 is affirmed and penalty of Rs.3.00 Lakhs is reduced under Section 114 (i) of the Act for attempting to export of prohibited goods.

(Dictated & Pronounced in the open Court).