

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, BANGALORE

Appeal No. C/21564/2018-SM

Arising out of OIA No. 25/2018-19, Dated: 30.05.2018
Passed by Commissioner of CUSTOMS(Appeals), COCHIN

Date of Hearing: 30.01.2019

Date of Decision: 08.05.2019

K N VENUGOPAL
S/o A N L NARAYANAN MENON
IX/285 A, ALAPPATI HOUSE COL VISHWANATHAN ROAD
EROOR WEST, TRIPUNITHURA ERNAKULAM
KERALA-682036

Vs

COMMISSIONER OF CUSTOMS COCHIN-CUS
CUSTOM HOUSE COCHIN, KERALA-682009

Appellant Rep by: Shri P A Augustian, Adv.
Respondent Rep by: Dr J Harish, Jt. Commissioner AR

CORAM: S S Garg, Member (J)

Cus - The assessee was involved in alleged smuggling of Red Sander which was unearthed by DRI - Assessee as well as other accused had made statements before Customs officer under Section 108 of Customs Act, 1962 wherein they have admitted their role in said smuggling of Red Sander - The original authority in has discussed the role played by assessee in the alleged smuggling of Red Sander which is a prohibited item for export - The confessional statement of assessee and other persons who were involved in smuggling fully corroborated by documentary as well as circumstantial evidences of the case and the statements of co-accused - The objection of assessee that cross-examination was denied is not sustainable in view of various decisions relied upon by Revenue wherein it has been held that cross-examination cannot be claimed in every case as a matter of right - With regard to quantum of penalty imposed on assessee under Section 114 and 114AA of Customs Act, 1962, it is on a higher side because the original authority has imposed penalty of Rs.2.5 lakhs each under Section 114 and Section 114AA on the main accused viz. Mr. Abdul Razak and Shri K.P. Sibin - These two persons were the prime persons in the attempted smuggling of the Red Sander logs but inspite of that the original authority has imposed the penalty of Rs.2.5 lakhs for each offence - Therefore assessee has rightly been convicted under Sections 114 and 114AA of the Customs Act, 1962 - But the amount of penalty to Rs.2.5 lakhs is reduced for each offence under Sections 114 and 114AA of the Customs Act, 1962: CESTAT

Appeal dismissed

Case laws cited:

Kellogg India Pvt. Ltd. Vs. UOI - 2005-TIOL-165-HC-MUM-CX... Para 4.1

Shree Venkatesh Metal Corporation Vs. CCE, Mumbai-V [2012(284) ELT 663 (Tri. Mumbai)]... Para 4.1

Rathi Ispat Ltd. [2001(129) ELT 701 (Tri. Del.)... Para 4.1

Surjeet Singh Chhabra Vs. UOI - 2002-TIOL-158-SC-CUS... Para 5

Jagdish Shanker Trivedi Vs. CC, Kanpur - 2005-TIOL-851-CESTAT-DEL... Para 5

Naresh J. Sukhawani Vs. UOI - 2002-TIOL-387-SC-CUS ... Para 5

K.P. Abdul Majeed Vs. CC, Cochin - 2012-TIOL-1221-CESTAT-BANG ... Para 5

FINAL ORDER NO. 20400/2019

Per: S S Garg;

The present appeal is directed against the impugned order dt. 30/05/2018 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant Shri K.N. Venugopal is the owner of a freight forwarding company M/s. Unicom Logistics, Cochin. On the basis of intelligence received by DRI, that a container bearing No.CRSU 1378497 would be containing Red Sander Logs, an item prohibited for export, the container was restrained at International Container Transshipment Terminal, Vallarpadam, Cochin on 08/01/2015. The container was declared to contain 480 nos of plywood covered under Shipping Bill No.7061124 dt. 06/01/2015 exported by M/s. Liberty Marketing, Mumbai, Maharashtra. The officers of DRI conducted detailed examination of the container on 09/01/2015 which resulted in the recovery and seizure of 11, 178 kgs of Red Sander Logs having market value of Rs.1,90,02,600/- and international grey market

value of approximately Rs.4,47,12,000/- which were placed inside plywood boxes. The Additional Commissioner of Customs, Custom House, Cochin-9, who adjudicated the case found that Shri K.N. Venugopal, owner of a freight forwarding company M/s. Unicom Logistics, Cochin was the main contact of financier Shri Abdul Razak M @ Ashraf and he conspired with others to arrange for all the operations in Cochin. The Additional Commissioner of Customs vide Order (Original) No.027/2017 dt. 30/03/2017 confiscated the Red Sanders absolutely and imposed penalty of Rs.5 lakhs under Section 114 of Customs Act, 1962 and Rs.5 lakhs under Section 114AA of Customs Act, 1962 on Shri K.N. Venugopal. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner(Appeals) who rejected the same. Hence the present appeal.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that both the authorities have failed to appreciate that neither the appellant nor its employees were involved in handling container allegedly loaded with Red Sanders and not prepared even the documents pertaining to the said exports and the allegation that the appellant had knowledge regarding the content in the container is not true. He further submitted that appellant was held guilty on the basis of the statement made by the co-accused whose statement under Section 108 of Customs Act, 1962 was recorded during the course of investigation. He further submitted that no evidentiary value can be given to the statement recorded under Section 108 of the Customs Act, 1962 unless the same is tested by cross-examination. It is his further submission that in the present case, in spite of the specific request by the appellant for cross-examination of other coaccused, the adjudicating authority failed to extend adequate opportunity for cross-examination of the person whose statements have been relied upon by the adjudicating authority. He further submitted that both the authorities have failed to establish that the appellant had any financial enrichment in the alleged illegal export of Red Sander. He further submitted that the requirements of Section 114AA have not been complied with in the present case because in order to attract penalty under Section 114AA, the prosecution has to establish that the appellant has knowingly signed or used declaration statements or documents pertaining to the export whereas in the present case, there is no document or declaration which is signed by the appellant to allege as falling under Section 114AA of the Customs Act. . he further submitted that the appellant has a track record and was not involved in any illegality neither in the past nor in the present. He further submitted that the investigation in the present case has not been fair and also not in accordance with law. For denying the right of cross-examination of the witnesses, the appellant has submitted that their statements cannot be relied upon. For this submission, he relied upon the following decisions:-

i. *Kellogg India Pvt. Ltd. Vs. UOI [2006(193) ELT 385 (Bom.)] = 2005-TIOL-165-HC-MUM-CX*

ii. *Shree Venkatesh Metal Corporation Vs. CCE, Mumbai-V [2012(284) ELT 663 (Tri. Mumbai)]*

iii. *Rathi Ispat Ltd. [2001(129) ELT 701 (Tri. Del.)*

4.2. He also submitted that the imposition of penalty under Sections 114 and 114AA is very high because the main accused Abdul Razak M @ Ashraf and Shri K.P. Sibhu who have been named as prime accused in the attempted smuggling of Red Sander have been imposed Rs.2.5 lakhs each only whereas the appellant who is not the main culprit has been imposed with the penalty of Rs.5 lakhs each under Section 114 and 114AA which is disproportionate and discriminatory vis-à-vis other accused who were the main conspirators and kingpins.

5. On the other hand, the learned AR defended the impugned order and submitted that the original authority has discussed the entire evidence and the role of the appellant in the said smuggling. The role of the appellant has been discussed in para 46.1 and 46.2 of the Order-in-Original wherein it has been observed that the smuggling syndicate co-ordinated by Mr. K.N. Venugopal i.e. the appellant who misused the IEC code M/s. Liberty Marketing to smuggle out Red Sander, an item prohibited for export. Although one consignment was exported on behalf of M/s. Liberty Marketing prior to the impugned export, Shri Shanmugham, Director had not endorsed any of the shipping bills or any declaration which were done by Shri Sanoj on the direction of Shri K.P. Sibhu. The learned AR also relied upon the following decisions in order to buttress his argument that cross-examination is not a right.

i. *Surjeet Singh Chhabra Vs. UOI [1997(89) ELT 646 (SC)] = 2002-TIOL-158-SC-CUS*

ii. *Jagdish Shanker Trivedi Vs. CC, Kanpur [2006(194) ELT 290 (Tri. Del.)] = 2005-TIOL-851-CESTAT-DEL*

iii. *Naresh J. Sukhawani Vs. UOI [1996(83) ELT 258 (SC)] = 2002-TIOL-387-SC-CUS*

iv. *K.P. Abdul Majeed Vs. CC, Cochin [2014(309) ELT 671 (Ker.)] = 2012-TIOL-1221-CESTAT-BANG*

6. After considering the submissions of both sides and perusal of the material on record, I find that the appellant was involved in the alleged smuggling of Red Sander which was unearthed by DRI. Further I find that the appellant as well as other accused had made statements before the Customs officer under Section 108 of the Customs Act, 1962 wherein they have admitted their role in the said smuggling of Red Sander. Further I find that the original authority in paragraphs 46.1 and 46.2 of the Order-in-Original dt. 30/03/2017 has discussed the role played by the appellant in the alleged smuggling of Red Sander which is

a prohibited item for export. Further I find that the confessional statement of the appellant and other persons who were involved in the smuggling fully corroborated by the documentary as well as circumstantial evidences of the case and the statements of the co-accused. Further I find that the objection of the appellant that cross-examination was denied is not sustainable in view of the various decisions relied upon by the Revenue cited supra wherein it has been held that cross-examination cannot be claimed in every case as a matter of right. Further I find that with regard to quantum of penalty imposed on the appellant under Section 114 and 114AA of the Customs Act, 1962, it is on a higher side because the original authority has imposed penalty of Rs.2.5 lakhs each under Section 114 and Section 114AA on the main accused viz. Mr. Abdul Razak and Shri K.P. Sibiu. In para 48(f) and 47 of the Order-in-Original, original authority has observed that Mr. Abdul Razak @ Ashraf is the prime person in the attempted smuggling of Red Sander and Mr. Sibiu was the Operation Manager of the smuggling syndicate who coordinated the operation and he was also instrumental in tampering with the latches of the container so as to enable to open Customs sealed container without breaking up the seals. These two persons were the prime persons in the attempted smuggling of the Red Sander logs but inspite of that the original authority has imposed the penalty of Rs.2.5 lakhs for each offence. Therefore I am of the considered opinion that the appellant has rightly been convicted under Sections 114 and 114AA of the Customs Act, 1962 and I uphold the conviction. But I reduce the amount of penalty to Rs.2.5 lakhs (Rupees two lakhs and fifty thousand only) for each offence under Sections 114 and 114AA of the Customs Act, 1962. With this modification, the appeal is dismissed.