

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

CUSTOMS APPEAL No.101 of 2012

[Arising out of Order-in-Original No. 18626/2012 dated 31.03.2012 passed by the Commissioner of Customs (Port-Export), Custom House, No.60, Rajaji Salai, Chennai 600 001]

M/s. Chakiat Agencies

No.40, Rajaji Salai,
Chennai – 600 001.

Appellant

Vs.

Commissioner of Customs (Exports)

Custom House,
No.60, Rajaji Salai
Chennai 600 001.

Respondent

CUSTOMS APPEAL No.102 of 2012

[Arising out of Order-in-Original No. 18626/2012 dated 31.03.2012 passed by the Commissioner of Customs (Port-Export), Custom House, No.60, Rajaji Salai, Chennai 600 001]

M/s.Soji Kuriakose,

Manager (Exports),
M/s.Chakiat Agencies,
No.40, Rajaji Salai,
Chennai – 600 001.

Appellant

Vs.

Commissioner of Customs

Custom House,
No.60, Rajaji Salai
Chennai 600 001.

Respondent

APPEARANCE:

Shri S. Sankaravadivelu, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Mr. Vasa Seshagiri Rao, Member (Technical)

FINAL ORDER NO. 40042-40043 / 2023

Date of Hearing: 03.02.2023

Date of Pronouncement: 08.02.2023

Per : Ms. Sulekha Beevi C.S.

The above appeals arise out of the same Order-in-Original and are therefore heard together and disposed by this common order.

2. Based on the intelligence that "Muriate of Potash", a restricted item for export, is smuggled out of India in the guise of 'Industrial Salt', the Officers of Custom House, Chennai detained an export consignment of 150 MTs of cargo declared as 'Industrial Salt' on 24.07.2009. The cargo was packed in polyethylene bags of 50 gms each and were lying in the CFS area. The consignment was covered under 6 Shipping Bills and was destined to Vietnam and Malaysia. The goods were examined in the presence of two independent witnesses, CHA, representative of exporter and the representative of CFS. On a reasonable belief that the consignment is misdeclared, samples were drawn for the purpose of chemical examination. The samples were forwarded to M/s.Coromandal Fertilizers Ltd., Chennai on 29.07.2009 for the purpose of chemical analysis to confirm the composition. After chemical examination, it was found that the consignment was "Muriate Potash" (Potassium Chloride). Based on the investigation, show cause notices were issued to the exporter and various other persons including M/s.Chakiat Agencies, who is the CHA, and Shri Soji Kuriakose who is the Manager(Exports) of the CHA firm (the appellants herein). After

adjudication, the original authority imposed penalty of R.1,00,000/- each on the appellants. The above appeals have been filed against such order.

2. Ld. Advocate Shri S. Sankaravadivelu appeared and argued on behalf of the appellant. He submitted that the appellants had filed shipping bills as a Custom House Agent on behalf of the exporter M/s.Forever Exports, Bangalore. The goods were declared as 'Industrial Salt' on the basis of the documents furnished by the exporter. The exporters had submitted copies of test report given by the Geological and Metallurgical Laboratories, Bangalore and Bangalore Test House, certifying that the goods were "Industrial Salt". On the basis of such documents, the appellant had accepted to handle the consignment. They had no occasion to know that the cargo attempted to be exported was MOP. They came to know about the misdeclaration only when the customs authorities informed them. The appellant therefore cannot be alleged to have knowingly handled the documents and abetted commission of smuggling of MOP. As a CHA, they had merely filed documents based on the details and the test report furnished by the exporter. They had no opportunity to handle or examine the goods and therefore cannot be held responsible for any violation in respect of the value or misdeclaration of the goods. The provisions invoked for imposing penalty against these appellants do not sustain for the reason that they had no role in the attempt to export the restricted goods.

3. Ld. Counsel stressed that there is no direct evidence to establish that the appellant had in any manner assisted the exporter to procure the restricted items. As a CHA, the appellants have relied on the documents furnished to them by their client. The provisions under the Customs Act cannot be invoked to impose penalty alleging that the appellant has not taken due diligence before filing the shipping bills. The CHALR is a self-contained subordinate Regulation, which itself provides for penalties for the non-compliance of the conditions prescribed therein. In the present case, the issue is with respect to classification. The goods had to be sent for chemical examination to form an opinion as to the classification of the goods. The appellant has relied on the documents furnished by exporter and it is utterly false to hold that the appellant had abetted by misclassifying the goods. Ld. counsel relied upon the decision of the Tribunal in the case of *HIM Logistics Pvt. Ltd. Vs CC New Delhi* - 2016 (340) ELT 388 (Tri-Del) to support his argument that the penalty cannot be imposed upon the CHA for incorrect classification of goods. He prayed that the penalties may be set aside.

4. Ld. A.R Shri R. Rajaraman appeared and argued for the Department. He supported the findings in the impugned order. Ld. A.R adverted to para-65 of the impugned order and argued that Shri Soji Kuriakose had admitted that exporter had submitted copies of test reports given by Geological and Metallurgical Laboratories and

Bangalore Test House certifying that the goods are 'Industrial Salt'. The CHA even then accepted to handle the consignment. The test reports have stated that the samples are naturally occurring Potassium Chloride. The goods therefore should have been rightly classified under ITC HS 31042000. Instead of this, CHA had declared the goods as 'Industrial Salt' falling under ITC HS28273990 which actually covers other Chlorides, Chloric oxides and Chloride hydroxides. CHA ought to have taken note of the fact mentioned in test report that the samples are naturally occurring Potassium Chloride. Ld. A.R therefore argued that by incorrect classification the appellants have abetted in the attempt to export the restricted goods. He prayed that appeals may be dismissed.

5. Heard both sides.

6. The Commissioner (Appeals) has imposed penalty of Rs.1 lakh each on the appellants under Section 114 of the Customs Act, 1962. The main allegation is that as a CHA, the appellants have abetted in the attempt to export the restricted goods by misclassifying the goods. On perusal of records, it is seen that along with consignment documents, the exporters have provided to the appellant a test report dated 03.04.2009 issued by Geological and Metallurgical Laboratories, Bangalore. In the said test report the composition of the sample is given in detail. The report reads as under :

“The sample is crystalline in nature with pink colour. Majority of the portion is soluble in water. The chemical composition and the visual observations indicate the material to be potassium chloride having very low concentration of chlorides of calcium, magnesium, sodium and insoluble.

The material is naturally occurring mineral, which is the product of a mining industry. Further process of this material leads to various applications.

Sample is identified as naturally occurring Potassium chloride, a mine product.”

7. The contention of the department is that as it is stated in the report that the sample is naturally occurring Potassium Chloride, the CHA ought to have been diligent while filing the shipping bills. The report indicates potassium chloride (KCL) content as 97.61% by weight. There is no mention that the sample is of "fertiliser grade" or "fertiliser". Further, it is not stated specifically that it is MOP. There is another report dated 07.05.2009 from the same laboratory addressed to the Joint Commissioner of Customs, Inland Container Depot, Whitefield, Bangalore. In the said report also, it is stated that the samples are naturally occurring inorganic chemical compounds. There is no mention of Muriate of Potash. In the test report dated 16.04.2009 issued by Bangalore Test House, there is no mention that it is a MOP or "fertiliser grade". It is recorded in this report 'industrial salt' is of technical grade.

8. In para-2 of the impugned order, the adjudicating authority has noted the details of the test report issued by Coromandal Fertilisers Ltd. on 03.08.2009. The test report says that the samples contain more than 60% of "water soluble potash as K_2O (%); having more than 65% of articles in the range of 1.7 mm to 0.25 mm in size;

having a moisture content of less than 0.5% and sodium as NaCl percent by weight (on dry basis) less than 3.5%. On the basis of this test report, the department has concluded that the consignment declared as 'Industrial Salt' (Potassium Chloride) is Muriate of Potash.

9. Be that as it may, the appellant as a CHA cannot be expected to examine and ensure the nature of the goods in the consignment. In para-65 of the impugned order, the adjudicating authority has observed that when the test report mentioned that the samples are naturally occurring Potassium Chloride, the CHA ought to have classified the goods under ITC HS 31042000; and they ought to have not assisted the exporter in misdeclaring the goods as ITC HS as 28273990. The classification is not mentioned in the test reports. The main reason for imposing penalty on the appellants is that they did not ensure correct classification of the goods so as to see whether the goods are restricted items. The original authority has held that the appellant has abetted in the attempt to export restricted goods as they did not exercise due diligence to ascertain the correctness of the information imparted by their client. There is no allegation or evidence to establish that the appellant had indulged in any overt act or played any role in any manner so to assist the exporter in his attempt to export the goods. The issue of classification is of complex nature.

10. The Tribunal in the case of *HIM Logistics Pvt. Ltd.* (supra) has held as under :

“2. From the impugned order, it appears that the original authority has levied the penalty only on the ground that the appellant has failed to exercise due diligence to ascertain the correctness of the information as regards the correct classification of the goods being imported by his client. The appellant is mainly a CHA and the issue of classification is of complex nature. It cannot be said that the CHA should have information that the goods were ‘Food Supplements’ and not ‘Medicaments’. It is for the Customs Department to classify the goods. Under these circumstances, the levy of the penalty is not justified. By following the earlier decision of the Tribunal dated 28-4-2016, we find no reason to sustain the penalty and, therefore, set aside the impugned order. The appeal stands disposed of accordingly.”

11. After appreciating the evidence and following the decision of the Tribunal in the above case, we are of the view that the penalty imposed on the appellants under Section 114 of the Customs Act is not warranted and are therefore required to be set aside which we hereby do. The impugned order is modified to the extent of setting aside the penalties imposed on these appellants.

The appeals are allowed in the above terms with consequential relief, if any, as per law.

(Pronounced in open court on 08.02.2023)

Sd/-
(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Sd/-
(**VASA SESHAGIRI RAO**)
Member (Technical)