

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Customs Appeal No.75514 of 2018**

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/1931-1934/2017 dated 20.11.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

**M/s. Geotrans Maritime & Logistics Private Limited**

(5/I, B.T. Road, Mitra Bagan, Kolkata-700056.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Port), Kolkata**

**.....Respondent**

(15/1, Strand Road, Custom House, Kolkata-700001.)

**WITH**

**Customs Appeal No.75515 of 2018**

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/1931-1934/2017 dated 20.11.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

**Shri Tirthankar Chakraborty, Director**

**M/s. Geotrans Maritime & Logistics Private Limited**

(5/I, B.T. Road, Mitra Bagan, Kolkata-700056.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Port), Kolkata**

**.....Respondent**

(15/1, Strand Road, Custom House, Kolkata-700001.)

**APPEARANCE**

Shri R.K.Kar, Consultant for the Appellant (s)

Shri M.P.Toppo, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)**

**FINAL ORDER NO. 75575-75576/2022**

DATE OF HEARING : 11 August 2022  
DATE OF DECISION : 05 December 2022

**P.K.CHOUDHARY :**

The present two Appeals are filed, one by the Company and the other by the Director assailing the order of the Ld.Commissioner(Appeals) against imposition of penalty of Rs.5.00 Lakhs each on the Company as well as on the Director under Section 114(i) of the Customs Act, 1962.

2. A Customs proceedings had been initiated against a number of Noticees including M/s. Geotrans Maritime & Logistics Pvt.Ltd., 5/I, B.T. Road, Mitra Bagan, Kolkata-700056 (hereinafter referred to as the Appellant) vide Show Cause cum Demand Notice dated 22.06.2010 issued under Section 124 of the Customs Act, 1962 (hereinafter referred to as the said Act) involving seizure of Red Sandal Wood weighing 3120 Kgs. recovered from a container No.CRXU-2443114 (20') attempted to be exported out of India.

3. The brief facts and circumstances leading to the issuance of the above mentioned Show Cause Notice to the Appellant are narrated below:-

3.1 A specific information was received by the Officers of DIU(P), Kolkata that one container bearing No.CRXU-2443114 (20') stuffed with Red Sandal Wood will enter the dock area of N.S. Dock on 27/06/2009 for export. The Officers located the said container lying near Berth No.5. The said container sealed with lead seal and agent's bottle seal was detained under detention letter dated 27/06/2009.

3.2 In response to the said detention letter, one Shri Dilip Kumar Sarkar, an authorized representative of M/s. R.N.Lall & Bros. (hereinafter referred to as the CHA) appeared before the Officers of DIU (P) and produced the original Shipping Bill No.5558270 dated 25/06/2009 and other documents including ARE-1 No.0122/C-1/SE/2009-10 signed by the Superintendent of Central Excise, Range-III, Howrah West Division, Haldia Commissionerate. According to the said shipping bill, the consignor was found to be M/s. Saila Enterprises, Sabujpally, Gouranganagore, Rajarhat, Kolkata and the consignee was reported to be M/s.Teekay International of Dubai, UAE. The said ARE-1

submitted by the CHA indicated that the manufacturer of the goods under export was M/s. Saila Enterprises of Jagalpur and the goods supposed to be exported were described as 'Cast Iron Products' having gross weight of 17,142 Kgs.

3.3 The container was opened in presence of Shri Dilip Kumar Sarkar, the representative of CHA and two independent witnesses and found to contain a number of wooden logs instead of Cast Iron Products as declared in the Shipping Bill as well as in the ARE-1. On physical examination the recovered logs appeared to be Red Sandal Wood. A panchnama was drawn in presence of Shri Dilip Kumar Sarkar and two independent witnesses.

3.4 A statement was recorded from Shri Dilip Kumar Sarkar on 27/06/2009 who inter alia stated that one Shri Tirthankar Chakraborty of M/s. Geotrans Maritime & Logistics Pvt.Ltd. had handed over the documents to the said CHA and the said documents were subsequently handed over to him by his Company M/s. R.N.Lall & Brothers for processing and completing the customs formalities.

3.5 Shri Tirthankar Chakraborty (Appellant No.2) was summoned under Section 108 of the Customs Act, 1962 and his voluntary written statement was obtained on 28/06/2009. In the said statement, he inter alia stated that he was a Freight Forwarder and was the owner of the company named M/s. Geotrans Maritime & Logistics Pvt.Ltd. The function of the said company was to procure orders from the potential exporters and to provide them suitable containers and CHA to facilitate their export. The subject consignment covered under the relevant shipping bill and ARE-1 belong to one Shri Rabi Agarwal, owner of M/s. Saila Enterprises who had requested him to provide a 20' container and a suitable CHA for completing the customs formalities. He procured the container from M/s. Marine Container Services (I) Pvt.Ltd. and introduced the CHA M/s. R.N.Lall & Brothers to Shri Rabi Agarwal for export of the subject consignment.

3.6 Shri Swapan Kumar Ghosh, Superintendent of Central Excise who is supposed to have signed ARE-1 stated that the ARE-1, Annexure-C1

and the Invoices produced by the CHA were all forged. He has further confirmed that no manufacturing unit in the name of M/s. Saila Enterprise was functioning and registered in his jurisdiction. He had denied to have signed the said documents produced by the CHA.

3.7 Shri Bimal Kumar Saha, the declared exporter of the goods in his statement on 30/06/2009 recorded under Section 108 of the said Act stated that he was proprietor of M/s. Saila Enterprises which was registered with Rajarhat Municipality. He used to export fruits to Bangladesh through land customs route. At present he had no business of import and export. He has denied to have any connection with the consignment detained by the officers of DIU(P).

3.8 A summon under Section 108 of the said Act was issued to Shri Ashok Kumar Verma, Partner/proprietor of M/s. R.N.Lall & Brothers for appearing on 01/07/2009, who authorized his manager Shri Sukhendu Maity for the said purpose. Shri Maity stated that being the authorized representative of the CHA, he had processed the said shipping bill and dealt with Shri Tirthankar Chakraborty, Director of M/s. Geotrans Maritime & Logistics Pvt.Ltd. had handed over all the documents to him through a messenger on 23/06/2009; that the said documents were further processed on 25/06/2009 and the shipping bill was generated at the customs house on the same date; that they picked-up the said container for transportation of the same; that stuffing and arrangement of CE seal was arranged by the said container agent, that the container reached N.S. Dock on 27/06/2009; that they did not know the exact location of loading of the container; that they had no idea that Cast Iron was not loaded in the container; that they had not received any payment so far and that they had not taken any authorization from the exporter for the job.

3.9 In response to a summon dated 02/07/2009 issued under Section 108 of the said Act Shri Liaquat Ali, representative of M/s. Marine Container Services (I) Pvt.Ltd. stated that the subject detained container was handed by his company as container agent; that the subject container was provided by them to M/s. Geotrans Maritime &

Logistics Pvt.Ltd. on 24/06/2009 for the shipment to port-Jebel Ali er M.V. Dalian, Voyage-02; that one Shri Debasish of M/s. Geotrans Maritime & Logistics Pvt.Ltd. had contacted their marketing team over phone requesting for one 20' container and their company as per procedure asked for booking details; that the same was submitted by Shri Debasish by Fax; that on receipt of the details the container agent issued a Pick-up letter to pick-up the container from their depot and the Carting Order along with one bottle seal bearing No.PM-105760; that copies of the pick-up letter and Carting Order were provided by him; that after container was detained by the customs authority, their marketing personnel contacted one Shri Tirthankar of the Appellant's company, that person told that customs had called me and would let them know the details; that the details about the fact of the container were still awaited; that he personally did not know Shri Tirthankar but the marketing personnel of his company knew Shri Tirthankar.

3.10 On 03/07/2009 the container was opened in presence of Shri Dilip Kumar Sarkar, the authorized representative of the CHA, Shri Liaquat Ali the representative of M/s. Marine Container Services (I) Pvt.Ltd., Shri A.Roychoudhury, Inspector of Wild Life Preservation (Eastern Region) and two independent witnesses. On opening it was found that the container was stuffed with Red Coloured wooden logs believed to be Red Sandal instead of Cast Iron as declared in the shipping bill, invoice and ARE-1. The said goods vlaued at Rs.15,45,000.00 were seized under Section 110 of the said Act on the reasonable belief that the same were liable to confiscation under Section 113 of the said act. The said container and the truck were also seized under Section 110 of the said Act.

3.11 In his statement dated 09/07/2009 recorded under Section 108 of the said Act, Shri Tirthankar Chakraborty stated that he knew Shri Rabi Agarwal, the alleged exporter for the last two months through telephonic conversation only; that the subject export consignment was the first job being handled by him for the said exporter, that the booking details form for the container was filled by his employee Shri

Debasis Banerjee; that the pick-up letter for the container was issued by M/s. Marine Container Services (I) Pvt.Ltd. in favour of his company; that he did not know as to who had sealed the container and who had brought the container to dock for export; that he came to know about the detention of the consignment from the officers of DIU(P); that despite repeated efforts he could not contact Shri Rabi Agarwal.

3.12 Shri Debasis Banerjee, an employee of M/s. Geotrans Maritime & Logistics Pvt.Ltd. stated that he was told by his Director Shri Tirthankar Chakraborty that one container had to be handed over by their company and the papers related to the shipment was handed over to him by a representative of Shri Rabi Agarwal on 24/09/2009 in their office at 5/I, B.T. Road, Mitra Bagan, Kolkata-700056; that on receipt of those documents he went to the customs house and handed over the export documents i.e. Invoice, Packing List, Statutory Declaration Form (SDF) Form and Annexure-D to an employee of M/s. R.N.Lall & Brothers, that in order to procure the container No.CRXU-2443114 (20') he contacted one Shri Siddharta of M/s.Marine Container Services (I) Pvt.Ltd. the container agent; that the booking format was supplied by Shri Siddharta to him and then he filled up the booking format and sent the same to M/s.Marine Container Services (I) Pvt.Ltd. by Fax for issuance of Pick-up Letter for the said container agent; that he then contacted Shri Rabi Agarwal who told him to hand over the Pick-up letter to Md.Alam Khan (Mobile No.9836461246); that he then contacted Md.Alam Khan over phone who told him to send the pick-up letter by Fax No.24392102; that Md. Alam Khan confirmed him over phone that he had received the pick-up letter sent by Fax and he would pick-up the container from the container agent; that he also stated that he did not know where the container was loaded however, while handing over the agent's seal received from CHA to one representative of Shri Rabi Agarwal, he asked about the loading point, to which the representative of Shri Rabi Agarwal replied that the container would be loaded at Domjur, Howrah; that thereafter Shri Rabi Agarwal informed him over phone that the loaded container had reached the dock and accordingly

he had passed the message to Shri Dilip Kumar Sarkar of the said CHA and asked him to do the needful.

3.13 The Wild Life Crime Control Bureau informed the Customs department vide letter dated 23/07/2009 that on examining the representative sample of the seized goods, it revealed that those were Red Sanders. The Red Sanders have been notified as prohibited goods by Notification No.31/86-Cus dated 15/02/1986 as amended by Notification No.32/2005-Cus (NT) dated 11/04/2005.

3.14 Md.Shamim Akhtar, the proprietor of M/s. M.Hussain requested the Commissioner of Customs (Preventive), West Bengal to provisionally release the seized vehicle, the said vehicle was released provisionally on 12/08/2009 against a bond for Rs.1.00 Lakh and on cash deposit of Rs.10,000.00.

3.15 After conducting further investigation the officers came to the conclusion that :-

- (a) The seized Red Sandal Wood were attempted to be illegally exported out of India in contravention of the provisions of the said Act and were liable for confiscation under Section 113(d) of the Act.;
- (b) M/s. R.N.Lall & Brothers, the CHA did neither take any authorization from the exporter nor execute any written contract with the exporter and have rendered themselves liable to penal action under Section 114(1) of the Act.
- (c) Shri Tirthankar Chakraborty, the Director of the Appellant Company by his act of omission and commission abetted the attempt of illegal export of Red Sandal Wood and rendered himself liable for penal action under Section 114 of the Act.
- (d) The Truck bearing No: AS01-1326 is liable to confiscation under Section 115(2) of the said Act as the same was used for transportation of the prohibited goods.
- (e) By giving the truck on hire without ascertaining the genuineness of the client, Md.Shamim, proprietor of Md.Hussain is guilty in abetting the illegal export of Red Sandal Wood and

rendered himself liable for penal action under Section 114 of the said Act.

4. After coming to such prima facie conclusion, the subject Show Cause Notice was issued to the following persons:

- (i) M/s. R.N.Lall & Brothers, CHA
- (ii) Shri Ashok Kumar Verma, Partner of CHA M/s. R.N.Lall & Bros.
- (iii) M/s. Geotrans Maritime & Logistics Pvt.Ltd.
- (iv) Shri Tirthankar Chakraborty, Director of M/s. Geotrans Maritime & Logistics Pvt.Ltd.
- (v) M/s. M.Hussain;
- (vi) Md.Shamim Akhtar, Proprietor of M/s. M.Hussain and owner of Truck No.AS01-1326.

5. The Appellant submitted the defence reply to the Show Cause Notice vide their letter dated 20/07/2010 firmly denying and disputing each and every allegation made against him in the Show Cause Notice and submitted that he merely acted as a Freight Forwarder and procured the container and arranged CHA to the exporter for facilitating export and completed the customs formalities. He did not take any part in stuffing and loading the consignment in the container, processing the shipping bill and other related documents to be presented before customs, nor engaged in the transportation of the said goods from the place of loading to N.S. Dock. Therefore the allegation of abetting in the attempted illegal export of prohibited goods is absolutely baseless, not supported by any direct, supportive, corroborative or cogent evidence. The entire proceedings against him have been framed on the basis of assumption and presumption without conclusively establishing any direct nexus between him and the exporter.

6 The authorized representative of the Appellant made further submission that the proceedings against the Appellant was framed on the basis of mere suspicion without adducing any justifiable evidence. No penal proceedings under the Customs Act can be initiated against

any person merely on the basis of suspicion without justifiable and conclusive evidence.

7. The adjudicating Additional Commissioner did not accept the contention and explanation of the Appellant and imposed penalty of Rs.5.00 Lacs on the Appellant under Section 114(i) of the said Act apart from ordering confiscation of the seized goods and imposing penalty on the clearing agent firm. The adjudicating Authority did not find any substance in the allegation against the transport company and its owner and refrained from imposing any penalty on them. He has also ordered for final release of the truck.

8. The Appellant being aggrieved with the said order passed by the Additional Commissioner of Customs (Port) filed an appeal before the Commissioner(Appeals) Kolkata under Section 128 of the said Act.

The Stay application filed by the Appellant along with the Main Appeal came up for hearing before the Commissioner(Appeals) the Commissioner(Appeals) after considering the submissions made by the Appellant passed Stay Order No.35 and 36/CUS(Apprg)/KOL(P)/2013 dated 20.09.2013 directing the Appellant to make pre-deposit of Rs.1,25,000/- as a condition for taking up the main appeal. The Appellant deposited Rs.1,25,000/- vide pay order no.046514 dt.10.12.2013 drawn on Axis Bank Limited.

9. Thereafter the main appeal was heard by the Commissioner(Appeals) and the impugned order in appeal no.KOL/CUS(Port)/AA/1931-1934/2017 dated 20.11.2017 was passed by way of rejecting the appeal.

10. Hence the present Appeal before this Tribunal.

11. Heard both sides and perused the appeal records.

12. I find that Shri Tirthankar Chakraborty has deposed in his voluntary statements as under :-

- Invoice, packing list, SDF form & Form C-1 was handed over to me by a representative of M/s. Saila Enterprises.
- I know Mr. Ravi Agarwal for the last two months only through phone and this is the first consignment I have done for him.

Other than the Telephonic conversation by mobile I have no other means of connection with Mr. Agarwal.

- Although the letter to pick up the container has been received from MCS (I) Pvt.Ltd., we did not pick the container instead we faxed the copy to Mr. Ravi Agarwal whose fax No. is 2439-2102, which is normal practice done by all freight forwarders. So the lifting/pickup must have been done by Mr. Ravi Agarwal A/c. Saila Enterprise.
- I don't have a slightest of idea who has sealed the containers, though I was informed by Mr. Agarwal that the container is supposed to have a Central Excise seal and I do not know who brought the container to the dock for export.
- Mr. Agarwal on 27.06.09 at around 11.00 AM phoned me and informed that the container has reached the dock area and standing in line for entry in the dock, then I phoned up Mr. Dilip Sarkar of M/s. R.N.Lal & Bro's the clearing agent and informed him to do the necessary job for export/ or other clearing Agents formalities.
- I came to know that the container of the sealed consignment was detained by Customs Authority by a Telephone call from the DIU (P)'s Office on 28.06.09 at 1.30 PM. I then immediately contacted Mr. Ravi Agarwal and informed him that there was a problem from Customs and he should come to the Dock immediately. Then when I arrived near to Fancy Market at Khidderpore I again rang him to know his whereabouts. But his mobile was found to be switched off. Repeated tries was done but to no avail.
- I am a Freight Forwarder and own the Company M/s. Geotrans Maritime & Logistics (Pvt.) Ltd., located at 5/1, B.T. Road, Mitra Bagan, Kolkata-700056. The functioning of my company is to procure orders from the potential exporters and then to provide them with suitable containers and CHA to facilitate their export. In return of my job I get some service charges from my clients.

It is pertinent to mention that my main job is to provide containers to the exporters. On an average I provide about 50-60 containers per month to the exporters and once in a while provide CHA to the exporters as per their request. I was asked to clarify a few points regarding the Shipping Bill No.5558270 dated 25.06.09 wherein a consignment of 19 crates of CAST IRON PRODUCTS (UN-MACHINED) C.I. MANH, weighing 17142 kg. (gross weight) covered under A.R.E.1 No.0122/CI/SE/2009-10 dated 26.06.09 were brought to NSD for exportation to a foreign destination. The subject consignment belongs to one Mr. Ravi Agarwal, owner of M/s. SAILA ENTERPRISES who requested me to provide a 20' 7 ft. container and a suitable CHA for the said job. Accordingly a container was requisitioned from the container agent M/s. Marine Container Line and CHA M/s. R.N.Lall & Brothers was provided to Mr. Ravi Agarwal for exportation of the subject consignment. Like many other clients Mr. Ravi Agarwal is also one of my client whom I know since last three (3) months. Mr. Agarwal's contact Tel No. is 9830381707 who is a resident of Alipore area in Kolkata. As far as I remember Mr. Agarwal's address and telephone (office) is available in my office which I will provide tomorrow i.e. on 29.06.2009.

- Mr. Ravi Agarwal always spoke to me on telephone from the above telephone No.9830381707 asking for service charges etc. I have never met him and he promised that he will be paying the charges through a bank cheque for the said job which I have not yet received from him.
- This is to add that I am ready to co-operate with Customs authorities in regard to their case in future and I am ready to give any further statement in future if required.
- The set of documents handed over to me by a staff of Mr. Ravi Agarwal was shown to the Customs Authority who had taken a

photostate copy of the said set of documents duly authenticated by my signature.

- The above statement was written by one Custom Officer as stated by me on my request since due to some nervous problem I am not in a position to write properly.

13. I find that the Appellant is neither a Customs Clearing Agent nor an exporter/importer. The Appellant's main business activities remain restricted to the booking of empty containers as per the requirement of the exporter and in appropriate cases merely suggested the suitable Clearing Agent to facilitate their export and with this their activities come to an end. The Manager of M/s. Marine Container Services (I) Pvt.Ltd. mentioned in his submission that the said container belongs to Perma Container Line and M/s. Marine Container Services is the agent of M/s.Perma Container Line. He also confirmed that the container was issued to M/s. Geotrans Maritime & Logistics Pvt.Ltd. for their shipment to Port-Jebel Ali on M.V. Dalian, Voyage-02 on 24.06.2009. I find that the Department proceeded against the Appellant on the ground that they failed to bring forward the real exporter and thereby abetted and connived with the exporter in the attempt of illegal export of prohibited goods. I find that in the present electronic era, procuring orders and conducting business activities online taking advantage of internet facility is a normal phenomenon. The allegation of abetting in the attempted illegal export of prohibited goods are not supported by any direct, corroborative or cogent evidence. The entire proceedings against the Appellants have been framed on the basis of assumption and presumption without conclusively establishing any direct nexus between the Appellants and the exporter. It is also not understood that why the exporter was not traced to bring the entire proceedings to a logical end.

14. It has been held time and again that separate penalty on the company and the Director for the same default should not be imposed.

15. In view of the above discussion, the impugned order is modified to the extent of setting aside of penalty of Rs.5.00 Lakh each imposed

under Section 114(i) of the Customs Act, 1962 on M/s.Geotrans Maritime & Logistics Pvt.Ltd. and its Director Shri Tirthankar Chakraborty, the Appellants before me. Accordingly, the Appeals filed by the Appellants are allowed with consequential relief as per law.

The Appeals filed by the Appellants are thus allowed.

(Order pronounced in the open court on 05 December 2022.)

Sd/  
**(P.K.CHOUDHARY)**  
**MEMBER (JUDICIAL)**

sm