

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

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 76431 of 2014**

(Arising out of Order-in-Original No. KOL/CUS/PORT/29/2014 dated: 31.03.2014  
passed by Commissioner of Customs (Port) Custom House, 15/1 Stand Road,  
Kolkata-700 001)

**M/s. National Agency**

(Kazi Bagan Lane, Howrah-711 104.)

**...Appellant**

*VERSUS*

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

(Custom House, 15/1 Strand Road, Kolkata- 700 001.)

**...Respondent**

**APPEARANCE :**

Present for the Appellant : Mr. Shakeel Md. Akhtar, Advocate

Present for the Respondent : Mr. Faiz Ahmed, Authorized Representative

**CORAM:**

**HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)**

**HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)**

**FINAL ORDER No...76540/2023**

DATE OF HEARING :16.08.2023

DATE OF PRONOUNCEMENT : 01.09.2023

**PER: RAJEEV TANDON**

The present appeal is filed by M/s. National Agency Customs House  
Agent, assailing the Order in Original No. KOL/CUS/PORT/29/2014 dated

31.03.2014 imposing a penalty of Rs. 50,00,000/- (Fifty lakh) on the appellants under Section 114(1) of the Customs Act 1962<sup>1</sup>.

2. Based on intelligence regarding export of Red Sanders Wood mis-declared as Royal Chimney by one M/s Ashoke Enamel and Glass Works Pvt. Ltd. Kolkata the DRI detained two containers under export, vide shipping bill No. 1760925 dated 14.09.2012. The said containers upon examination in the presence of representatives of the exporters/CHA/Freight forwarder and others were found to contain Red Coloured Logs of different sizes and diameters. These were found to be in actuality "Red Sanders Wood" weighing 5050 kg. The said containers were transported under ARE-1 No. 12/AEGW/2012-13 dated 14.09.2012 issued by Superintendent of Central Excise Range J, Howrah North Division II, Kolkata – II and declared as Royal Chimney. At the time of examination, the Customs seals were found to be intact. The Director of the exporting firm, Abhishek Jhunjunwala informed the authorities that they had never personally met the overseas buyer and were in contact through a middleman Sanjay Singh and that services of Steamer Agent, Freight Forwarder CHA, transporter etc. were all organized and engaged by Sanjay Singh. Even the modality of payment and handing over of the original B/L were organized through Sanjay Singh. Even the container as well as the bottle seal was also organized by Sanjay Singh. The Director of the exporting firm admits that while the goods moved out of their works under ARE-1 on 14.09.2012, they were in receipt of an e-mail dated 15.09.2012 from Sanjay Singh to hold back the shipment and

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**1. The Act.**

accordingly he advised the concerned on 15.09.2012 to hold the cargo and to act according to further instructions from Sanjay Singh.

3. The proprietor of National Agency Subir Kumar Roychowdhury however has stated that they had received the clearing job from one Dharmendra Rai, an employee of AGS World Transport (I) Pvt. Ltd., Freight Forwarder and that he had got the export documents for filing of the shipping bill from the exporter. That they were in contact with the exporter, by way of a telephonic call besides Sanjay Singh, whose telephone number was provided to them by Dharmendra Rai, employee of the freight forwarder. Sanjay Singh also introduced them to one S. Mukherjee said to be the employee of the exporting firm who in turn handed over the required documents for purpose of export and the Authorization Letter in their name. The appellant claims that they had never met Sanjay Singh, nor knew of his address/antecedents. The proprietor of the CHA firm, also stated that though initially they had filed the shipping bill for 1050 boxes at the rate of 24 pieces per box of Glass Chimneys but later on as advised by the exporter that only 700 boxes could be loaded, the invoice and packing list were changed and a fresh shipping bill was filed. They admit that they were not aware of the name, address, phone number, driving license number of the driver of the truck concerned and as also they were neither present at the time of the stuffing of the container nor of any particulars of the truck used for carting of the said container.

4. The learned Counsel for the appellant pleads that as a CHA they have been carrying on the business relating to import and export at any Customs Station and were led into the clearance of the said consignment of Royal Chimneys with enquiries and discussions emanating with the freight forwarder

and that they obtained the requisite documents for export from one Lattu Babu an employee of Ashoke Enamel and Glass Works Pvt. Ltd. It is their case, that being satisfied with the antecedents of the said company, they in due discharge of their obligation under Regulation 13 of Customs House Agent Licensing Regulations, 2004<sup>2</sup>, had advised the exporter to comply with the provision of the Customs Act, 1962. Thereafter they prepared the Shipping Bill pertaining to 1050 boxes of Glass Chimney, in the name of the said exporter and the shipping bill number was generated in the EDI system on 13.09.2012. However, on 14.09.2012 Lattu Babu supplied another set of documents and instructed their Supervisor over the telephone to prepare the shipping bill for 700 boxes of Glass Chimney instead of 1050 boxes whereupon a fresh Shipping Bill was generated with a new shipping bill number. Subsequently, they received an e-mail from the container agent Orient Overseas Container Line (again said to be engaged by the exporter) for the carting order for entry of the container/cargo in the docks. This was valid up to 19.09.2012, however, it is their contention that on 15.09.2012, an e-mail was received from said Sanjay Singh, to put the cargo on hold and await further instructions. Later on 18.09.2012 through an employee of AGS World Wide Transport Pvt. Ltd. - Dharmendrs Rai, they were informed of the arrival of the cargo at the docks gate, requesting them to make necessary arrangements for the entry of the said vehicle in the docks.

5. As for the handing over of the blank signed and sealed requisition

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## **2. The Regulations**

permit form to the driver, it was done through Sajal Sardar the employee of the CHA who met the driver of the vehicle driver after contacting him over the mobile number and handed the said blank documents only after checking the vehicle number, container number and seal number put on the container from the ARE-1. It was also ascertained by the said Sajal Sardar that the cargo containing the said consignment was despatched from the factory premises of the exporter on 14.09.2012 only. There thus remains unexplained time lag in the shipment of the cargo, in its arrival at the port premises, which should have caused concern to the CHA.

6. Thereafter, the driver of the vehicle submitted the said form duly filled in alongwith all other papers like driving licence etc., other statutory documents pertaining to the vehicle with the permit section of the port authorities, for verification and issuance of DDM permit. The port authorities post verification of all statutory documents and being satisfied for it being in order issued the DDM permission/permit. Unless proper verification of the statutory documents pertaining to the vehicle, the driver and other details thereof are made, the port authorities do not issue the DDM permit, nor allow the driver or the vehicle driven by him to enter into the dock.

7. Further, it is not only the appellant, but it has also been admitted by their key personnel like Uttam Roy (Supervisor of National Agency), that he did not know of any responsible person of the exporting firm and that their CHA firm was never engaged by the said exporter earlier. However, they did not take any steps to verify the genuineness of the exporting firm by visiting the office premises or even talking to any responsible person.

8. Further, being a CHA it is all the more prime responsibility of the appellant that they ensure that the said middlemen had introduced them to the rightful person and not merely shoot in dark for certain business

interests. The appellant cannot however escape of their responsibility and the special burden cast on them as a CHA, besides being certainly guilty of carelessness, negligence and omissions and commissions that have facilitated the entry of the offending goods (red sander wood logs) into the port area, for purpose of export to a third country.

9. In view of the aforesaid, and our findings supra. We are of the view that the appellant has rendered himself liable to penal consequences. As the Show Cause Notice fails to bring to fore any express and active collusion in the attempted exports of Red Sander Wood logs on the part of the appellants and but for our findings supra, noting the various acts of omissions and commissions on the part of the appellants, we are of the view that imposition of a penalty of Rs. 50,000/- under Section 114(i) of the Customs Act, 1962 would meet the ends of justice.

10. The appeal filed is disposed off in the aforesaid terms.

(Pronounced in the open court on 01.09.2023.....)

**Sd/-**

**(R. Muralidhar)**

**Member (Judicial)**

**Sd/-**

**(Rajeev Tandon)**

**Member (Technical)**

**K.M.**