

Akanksha Enterprises Vs. C.C.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-22-2006

Judge : M Ravindran

Appellant : Akanksha Enterprises

Respondent : C.C.

Judgement :

1. This appeal is directed against the order-in-appeal dated 11.04.2005 that upholds the order in original wherein a penalty has been imposed on the appellants.

2. The relevant facts that arise for consideration are that the appellant is a CHA and is registered with the Customs authorities as a CHA. One of the consignments sought to be exported by one M/s Around Impex was found to be overvalued and hence the authorities started investigation. The conclusion of the investigation resulted in show cause notice being issued to the M/s Around Impex for confiscation of the goods and imposition of penalty. The current appellant being a CHA was also issued a show cause notice for imposition of penalty under Section 113(h)(i)(ii) and 114 of the Customs Act 1962. The adjudicating authority imposed penalty of Rs. 50000/- on the current appellants. On an appeal the appellate authority also concurred with the views of the adjudicating authority. Hence this appeal.

3. Considered the submissions made at length by both sides and perused the records. I find from the records that the appellant has been penalized under Section 114 of the Customs Act, 1962 for confiscation of the goods under Section 113 of the Customs Act, 1962. In order to appreciate the correct position of the law the provisions of Section 113 has to be looked in to which read as: SECTION 113. Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation: (a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods; (b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under Clause (c) of Section 7 for the export of such goods; (c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods; (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force; (e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation; (f) any goods which are loaded or attempted to be loaded in contravention of the provisions of Section 33 or Section 34; (g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer; (h) any goods which are not included or area in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77; (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77; (ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under Section 75;] (j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under Section 74; (k) any goods cleared

for exportation which are not loaded for exportation on account of any willful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer; [(1) any specified goods in relation to which any provision of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.] 4. From the plain reading of the provisions of the section it would be clear that the penalty can be imposed only if there is mis-declaration of value and description of the goods that are sought to be exported.

In this case, the appellant is only a CHA and he is not required to make any declaration of the value nor is he required, under the law to file description of goods. His role is limited to facilitate the proper filing of the documents as received from the exporter. He is not required to go in to the authenticity of the value of the goods etc.

His job is confined to the submissions of the papers as given by the exporter and to identify the exporter to the authorities which he did so when the goods were examined by the authorities. The Exporter was physically present when the authorities examined the goods. To my mind, in this case the CHA has acted in a responsible way by producing the exporter who had filed the documents for export of goods. No motive could be attributed to the appellants in this for imposition of penalty under Section 114 of the Customs Act, 1962, as there are no specific allegations as to the commission and omissions of the appellant with knowledge. *Vetri Impex v. CC, Tuticorin* as reported at had an identical issue before them. The tribunal in that case held as under: Penalty - Customs - Customs House Agent - No finding in impugned order that appellant did anything, or omitted to do anything, in connivance of, or with the knowledge of illegal acts of exporter - Penalty not imposable - Section 114 of Customs Act, 1962.

The issue in this case is squarely covered by the decision of the Division Bench's order.

7. In view of the facts and circumstances as mentioned above, the impugned order is liable to be set aside. I do so and allow the appeal.