(2026) 07 CAL CK 0127

In the Calcutta High Court, Original Side

Case No : CUSTA 11 OF 2017, GA/1/2017, GA/2/2017

B.R.B Roy APPELLANT

Vs

Commissioner of Customs (Preventive) Kolkata and Anr. RESPONDENT

Date of Decision : 21-07-2026

Acts Referred:

Customs Act, 1962 — Section 108, 111, 113, 114(i), 124, 130
Customs House Agent Licensing Regulation, 2004 — Clause 13
Penal Code, 1860 — Section 107
General Clauses Act, 1897 — Section 3(1)
Constitution of India — Article 20(3)

Citation : 2026:CHC-OS:316-DB

Hon'ble Judges : Rajarshi Bharadwaj, J.;Chaitali Chatterjee Das, J.

Bench : Division Bench

Advocate : For the Appellant: Mr. Kushagra Shah, Adv.; For the Respondent: Mr. Bhaskar Prasad Banerjee, Adv., Mr. Tapan Bhanja, Adv.

Final Decision : Allowed

Judgement

1. This appeal is filed under section 130 of the Customs Act against the purported order dated April 13,2017passed by the Customs, Excise and Service Tax appellate Tribunal ,East Zonal Bench Kolkata whereby a penalty has been imposed of Rs 5,00,000/- under section 11 (4)(i)of the Customs Act,1962 on the basis that the appellant had allegedly acted negligently in casual manner to hinder the investigation of the concerned revenue authorities and thereby aiding and abetting the real perpetrators behind the alleged smuggling and export of Red sanders .

Admissions and Substantial question of law

2. Upon preliminary perusal of the record and after hearing the submissions of the respective Counsels the substantial question of law was framed by the Learned Co-ordinate Bench at the time of admission is as follows;

a) Whether there is sufficient material before the Tribunal to justify its finding that the appellant was actively involved in the smuggling racket of sandal wood and white powder on the basis of which penalty was levied on the appellant.

Factual matrix

3. The appellant received a show cause notice under Section 124 of the Customs Act 1962 dated 2.11.2007 where it was alleged that on source information received in the Kolkata Zonal Unit of Directorate of Revenue Intelligence that five container loaded of Red sanders wood which is a prohibited item for export, would be smuggled out of India through Haldia Dock ,Haldia .The registration number of trucks carrying the export containers were supplied and it was informed that three containers of red sanders loaded on those trucks had either reached Haldia or on 7.5.2000 would reach there shortly .Further information received that two other containers had already been delivered inside the dock on previous dates by the same truck in the name of same exporter and accordingly the officers of DRI ,Kolkata rushed to Haldia Dock on 7.5.07 and two trucks were found parked inside Haldia dock and in course of inquiry found the name of the petitioner from the statement of Bappa Mishra, Junior officer Cargo of Balmer Lawrie &Co .On further enquiry it was revealed that the goods were belonging to M/S Druk Wongden Export phunteseiling, Bhutan and were meant for export to Singapore. M//s Balmer Lawrie a company of a Government of India Undertaking was engaged for taking the Goods to Haldia Dock Complex .They also acted as a custom agent. The voluntary statement of the appellant was recorded under Section 108 of Custom Act .The appellant gave reply to such show cause notice and the charges were framed against him and order was passed by the office of the Commissioner of Customs (Preventive) holding him acting negligently in a most casual manner while accepting export work of Foreign concern and accordingly imposed penalty of Rs 5, 00,000/- against him under section 114(i) of Customs Act.

4. Being aggrieved thereby an appeal was preferred before the Custom/Excise & Service Tax Appellate Tribunal, kolkata which was dismissed affirming the order passed by the commissioner with the observation that the appellant promised to the D.R.I officers to produce Sri Sanjay through which he procured job but failed to keep promise as Sanjay never appeared before officers of DRI .Furthermore the appellant failed to inform whom earlier consignments were delivered at Singapore /Malaysia though he undertook to inform the same while giving his voluntary statement under section 108 of the Customs Act1962.Thus he was actively involved in the smuggling racket.

The above order is now challenged before this court.

Submissions made on behalf of the appellant

5. The argument advanced on behalf of the Appellant by the Learned Advocate mostly challenges the absence of any finding of involvement of the appellant in the commission of offence or about his knowledge who was at the relevant point

of time was working as a Manager ,Balmer Lawrie & Co. Ltd ,hence a Government employee . They were Custom House agent and in the business of Cargo handling ,and freight forwarding and also operate container Freight Stations .The appellant had business relation with one Jamphel Clearing & Logistics ,Bhutan and one of their employee –Sanjay Singh used to coordinate with respect to transport of consignments to Singapore . As CHA they used to check the documentation and arrange for empty container and arrange to ship the containers and issue bill of loading upon negotiated charges .The containers from Bhutan are sealed by customs officers after examining the same both at Bhutan and in India and hence the Appellant did not have any reasonable doubt as to the nature of goods especially when the supporting papers were in order .Appellant cooperated with the investigation and assured to provide details of Sanjay Singh however in spite of such assurances given by his employer (Jamphel) Sanjay did not turn up and join the investigation and even Jamphel could not produce him . It is submitted by the Learned Counsel that the order in original records that Sanjay participated in personal hearing and in spite of the noting the same it was held that the appellant failed to produce Sanjay as assured and made him liable for compensation for no fault on his part. It is further argued that the appellant has not contravened any law or regulations rather he took steps to ascertain the whereabouts of Sanjay whom DRI officers could not trace out. The Learned advocate argued the parameters required for charging a person with abatement, the criteria's mentioned in Section 107 IPC ought to have been fulfilled .He put reliance upon the case of Sri Ram vs State of Uttar Pradesh1, R.M Mehrotra vs Enforcement Directorate2.

Accordingly prayed for setting aside such order imposing penalty.

Submission made on behalf of the Commissioners of Custom

6. Per Contra on behalf of the respondent Custom Authority it is argued by the Learned Counsel that upon specific information and after physical examination of the consignment loaded in truck, the same appeared to be Red sanders, which is a prohibited item and the Talcom Powder was also mis declared. Royal Bhutan confirmed that Mr. Rajesh arranged the export order from the Bhutanese company and arranged transportation of the export consignment. Rajesh was found to come to Balmer Lawrie to collect the bills of loading and making payment .The Appellant in his statement before the Customs Officer stated that Sanjay Singh played a crucial role in arranging transportation of the subject consignments and also promised to bring Sanjay before the investigating agency but Sanjay never turned up as per his assurance .It was further revealed that Sanjay provided job to the CHA .The racket of unscrupulous persons involved in deep conspiracy to organize smuggling of red sanders wood a rare species and wanted to hoodwink the customs by declaring the consignment as Quartile Chips and Talcom powder. Thus all the mobile numbers with which they communicated with CHA/Appellant and Bhutanese exporter were procured by giving false information addresses /false names so that the perpetrators could not be

brought to light.

7. The further stand taken by the Learned advocate that the appellant failed to inform to whom the earlier consignment was delivered to Singapore /Malyasia though the appellant undertook to inform the same , giving his statement under section 108 of the Customs Act .It is further submitted that it was observed by both the forum that Mr. Rajesh is the main person and Sanjay was his stuff but because of negligence on the part of the appellant the perpetrators were about to succeed in smuggling out the prohibited red sanders wood under seizure. In terms of Section 114 (i) of the Customs Act Any person who in relation of any goods does or omits to do any act or omission would render such goods liable to confiscation under Section 113, or abates the doing or omission such act shall be held responsible and thus the adjudicatory authority has rightly considered all the materials on record and ultimately rightly imposed penalty upon the appellant and confirmed by the Learned Tribunal. Hence prayed for dismissal of the appeal.

Analysis

8. The factual matrix unveils that Balmer Lawrie a government of India undertaking company acted as Custom house agent and the appellant was an employee of said Balmer Lawrie .Two trucks were found standing at the main gate of Haldia Dockyard and on query both the trucks were taken inside the dock yard and on the next morning when the containers were opened it was found that there was red coloured wooden logs inside the container and on deep inquiry it was found that both the trucks came from Bhutan .Samples were drawn from the seized logs and after testing confirmed the same as red sanders which is a prohibited item for export. That apart white powder was also found in the containers were also mis declared as Talcom powder under CTH 2526 whereas it is actually fall under Chapter 33 of the Customs Tariff Act .Both the drivers were arrested. It was alleged that the consignment were checked by both the officers of Royal Bhutan Customs and Indian Customs before sealing the containers .The report received from Bhutan disclose that the name of the exporter as Druk Wongden Export against the Bank of Bhutan wire payment. It is evident from the voluntary statement made by Bappa Mishra, the Junior Officer (cargo) of Balmer Lawrie & Co. that they arranged two containers pursuant to the instruction of Sri Sanjay an employee, working with M/S Jamphel Clearing & Logistic, Phuentsholing ,Bhutan and according to his statement he knew Sanjay through the appellant B.R.B Roy who instructed him to arrange container ex-Bhutan to Singapore .It can be found further that Sanjay usually called him and tell his requirement of containers for export and also forwarded documents .So from his averment the role of the Appellant can be found only to the extent that Bappa came to know of Sanjay from the Appellant. Mr B. R. B Roy during his statement admitted that the Sanjay being an employee of M/S Jamphel used to visit their office to provide document and he approached him for export forwarding business as an employee of Jamphel and they had arranged number

of containers for Sanjay out of which 12 number already sailed and they received the payment against their bills. He further stated that after the incident he communicated with Sanjay over mobile phone and he assured of co-operating the investigation. The order in original manifest that during investigation conducted through DRI, Siliguri regional unit it was confirmed that after examination the containers were sealed in presence of the Indian Custom Officials and the report of overseas enquiry , which was initiated to trace out the consignee and how the payment was made was yet to be received .The Custom Tribunal found from the record that one middleman Rajesh and his staff Sanjay and Mr. Ashoke arranged the export order and from the report of Royal Bhutan Customs Mr. Rajesh played a vital role in the attempted export of the subject container .It was clear observation that Balmer Lawrie being a government of India undertaking was engaged by the perpetrator for transportation of the export consignments to further safeguard passage of their illegal cargo .So the unscrupulous persons hatched the conspiracy to smuggle prohibited item by replacing the goods of Bhutan export consignment during transit from Bhutan to the gateway port and accordingly utilised an exporter from Bhutan through a reputed Government of India Undertaking as Custom House agent for export of the consignment.

9. So on close scrutiny of the entire factual matrix and the observations made by the two forums no role of the appellant can be found which can prima facie satisfied that the appellant abated the conspiracy. In terms of clause 13 of the custom house agent licensing regulation 2004 the obligation of customs house agent are described and sub clause (l) reads as; ensure that all documents, such as Bills of entry and shipping bills delivered in the Custom station by him show the name of the importer or exporter, as the case may be and the name of the Custom House agent, prominently at the top of such documents. Sub clause (o) reads as ;Verify antecedent, correctness of Importer Exporter Code (IEC)Number ,identity of his client and functioning of his client at the declared address by using reliable independent authentic documents data or information .

So nowhere the duty to inspect the goods in the container was rests on the Custom House Agent and in the present case the consignment was inspected from the side wherefrom the goods were sealed by custom officials after examining the same both at Bhutan and in India and the appellant had hardly any role to play excepting the regular business deal of arranging containers in usual course. The allegation is that he failed to keep his promise as Sanjay failed to turn up which can no way rope the appellant for abating a crime. The specialised authority could have produced said Sanjay by taking appropriate legal steps. The show cause notice failed to show any role played by the appellant in the entire episode.

> In the decision of R.M Meherotra (supra) it was observed and held that,….." neither the FEMA nor the FERA contain the definition of Abatement therefore reliance must be placed on section 3(1) of General Clauses Act ,1897 where it declares that the phrase abate with its grammatical variations and cognate expression shall have the same meaning as in the

> Penal Code ,1860 (IPC) .Section 107 of the IPC states that abatement of a thing can happen in three ways:through instigation ,through intentional aid or through conspiracy.Various decisions of the Supreme Court including Ramesh Kumar vs State of Chattishgarh (2001)9SCC 618 ,State of Haryana vs Jaswinder Singh (2000)9SCC 387 and Mohan Chand vs State (2003) 109 Cr.LJ 10 lend support to the proposition that the mental state of the accused must be conditioned by one of the following states; intention ,knowledge or wilful omission .The accused must have been intentionally aided or incited or knowingly conspired or wilfully omitted to do the act alleged .Negligence on the part of the petitioners does not imply any of these mental states and therefore,the impugned notice in so far as it alleges that the petitioner have abated the offence ,is not sound law.

In the decision of Sri Ram, (supra) which relates to appeal against order of conviction for commission of murder the question arose for consideration whether the abatement against one of the accused to facilitate the murder of the victim was established .It was observed by the Hon'ble Supreme Court that section 107 of the Penal Code which defines abatement provides to that extent material that 'a person abates the doing of a thing who intentionally aids by any act or illegal omission ,the doing of that thing." Explanation 2 to the section says that "whoever either prior to or at the time of the commission of an act does anything in order to facilitate the commission of that act,and thereby facilitates the commission thereof ,is said to aid the doing of that act.' Thus in order to constitute abatement ,the abettor must be shown to have intentionally aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of section 107 .

10. In the present case the involvement of the appellant found by both the forum ultimately confined to the extent of negligence on his part in keeping his assurance to produce said Sanjay Singh. The appellant on the contrary found gave a reply to the show cause issued against him, appeared before the authority and gave his statement in accordance with Section 108 of the Customs Act and admitted how he got acquainted with said Sanjay Singh for their business purpose .He delivered the contact number which was known to him as obtained in course of their business transaction. In the decision of Ramesh Chandra Meheta vs State of West Bengal3it was held that at the stage of a Section 108 inquiry the deponent is not an accused in the technical sense rendering the shield of Article 20(3) unavailable. So there was no intentional delay or avoidance on the part of the appellant to comply whenever directed in the process of enquiry and lastly nowhere his involvement with the conspiracy could be found. The Balmer Lawrie being CHA any one of the employee of the concern including the appellant could not have actively participated in any smuggling racket since they had no scope to verify the contents of the containers sealed by the Indian Custom Authorities. The seized goods were imported in containers sealed in presence of the Royal Bhutan Customs and Indian Customs authorities and had been opened by the customs at Haldia port during examination .

11. The Learned Tribunal proceeded on the erroneous assumption that the both B.R.B Ray and Sanjay Singh actively participated in the smuggling racket and hence the levy of penalty was justified without appreciating the role attributed by the appellant who can never be on the same footing with Sanjay Singh.

12. Therefore having traversed the factual matrix and the law laid down in this regard and in absence of any material suggesting involvement of the appellant which is decided to be only negligent without any basis we are of firm opinion that the impugned order is bad in law and cannot be sustainable in the eye of law qua the appellant.

Conclusion

13. Accordingly the substantial questions of law are answered in the affirmative in favour of the appellant.

14. The impugned order of the Learned Tribunal dated April13, 2017 affirming the order in original so far the appellant is concerned is found to be legally unsustainable .The order imposing penalty of Rs. 5,00,000/-by the Commissioner of Customs (preventive) upon the appellant is hereby set aside.

15. All connected pending applications stands disposed of.

16. No order as to costs.

17. Urgent certified copy of this judgement, if applied for, be issued to the parties on usual terms.

FOOTNOTES

1. (1975)3 SCC 495
2. (2008) SCC Online Del 1571
3. AIR 1970 SC 940

