(2021) 05 CESTAT CK 0025

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 61073 Of 2019

M/s. OTA Falloons Forwarders Pvt Ltd. APPELLANT

Vs

Commissioner Of Customs, Ludhiana RESPONDENT

Date of Decision : 27-05-2021

Acts Referred:
Customs Act, 1962 — Section 114(1)

Citation : (2021) 05 CESTAT CK 0025

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Om Prakash, Bhasha Ram

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein the penalty of Rs.one lakh has been imposed on them under section 114(1) of

Customs Act, 1962.

2. The facts of the case are that the appellant is Customs House Agent filed shipping bill on behalf of the manufacturer for export of scaffolding items

at CFS, Dappar. The goods were examined @ 5% as per norms found to be in order. The container was sealed and transported to the port of export

at Nava Sheva, Bombay. An intelligence was gathered that the container is having Red Sander, therefore, the container was opened and fully

examined. On this basis, an investigation was conducted by DRI, the statements of exporter, the appellant, the officer involved in clearance of the

consignment were recorded. The exporter stated that they have not exported the consignment and one Shri Ankit Sharma of the exporter has filed the

papers with CHA who filed shipping bill for clearance of the consignment. There is no role of the exporter. Statement of CHA was recorded that they filed documents after verification. The statement of the officer was also recorded who has examined the container as per norms of 5% of the

container, wherein, it was found as declared. No action has been taken against the officer and the exporter. A show cause notice was issued to the

appellant to impose penalty under section 114(1) of the Customs Act, 1962.The matter was adjudicated and penalty of Rs.one lakh was imposed on

the appellant. Against this said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that the shipping papers submitted by Shri Ankit Sharma, representative of the exporter and after verifying the

documents which were found in order, they have filed shipping bill. The said consignment was examined and later on, the same was transported to

port Nava Sheva at Bombay. The appellant has no role after filing the papers. In that circumstance, without any evidence on records, the penalty

cannot be imposed on the appellant.

4. On the other hand, Ld.AR opposed the contention of the Ld. Counsel and submits that the appellant has failed to verify whether Shri Ankit Sharma

is genuine person or not? while filing papers, therefore, the appellant is clearly violated the law, hence involved in the export of Red Sander.

5. Heard the parties and considered the submissions.

6. On verification of records placed before me and the arguments advanced by both sides, I find that in this case, the documents filed by Shri Ankit

Sharma, the representative of the exporter, the documents were found in order and the goods examined by the examiner. In that circumstance, after

examination of the goods and shipping bill, the role of the appellant comes to an end. There is no evidence placed on record with regard to any

investigation done with the transporter while transportation of the goods from CFS, Dappar to port of export. As the appellant has no role to play

regarding change of goods or export of Red Sandal. Investigation to this effect is silent. In that circumstance, the benefit of doubt goes in favour of the

appellant. Therefore, I hold that no penalty can be imposed on the appellant without bringing any evidence on record.

7. Accordingly, the impugned order quo imposing penalty on the appellant is set aside. In the result, the appeal is allowed with consequential relief, if

any.

(dictated and pronounced in the open court)

