(2024) 10 CESTAT CK 1199

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No. 52761, 52762 of 2019, 50015, 50016, 50017, 50018 of 2020

Shri Mayank Gupta, Director of M/s Sky Barge Freight Pvt. Ltd. and Ors. @APPELLANT @Hash Commissioner of Customs (Export) @RESPONDENT

Date of Decision : 18-10-2024

Acts Referred:

Customs Act, 1962 — Section 113, 113(d), 113(h)(i), 114, 114AA
Customs Valuation (Determination of Value of Export Goods) Rules, 2007 — Rule 6, 8

Citation : (2024) 10 CESTAT CK 1199

Hon'ble Judges : Dilip Gupta, President (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Ashish Bhatt, Nagendra Yadav, Reena Rawat

Final Decision : Dismissed

Judgement

P.V. SUBBA RAO

1. The order-in-original dated 25.07.2019 passed by the Commissioner of Customs (General), New Delhi is assailed in these six appeals by Revenue and the individuals. In the impugned order, the Commissioner confiscated 1103.1 kg. of Red Sanders attempted to be exported and imposed penalties on 7 individuals. The operative part of this order is as follows:-

(i) I order for confiscation of the seized consignment of 1103.1 kgs. of Red Sanders under section 113 (d) and section 113 (h) (i) of the customs Act, 1962.

(ii) I reject the declared value of the consignment (as mentioned in Para-32 of the SCN) under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determine the assessable value of Red Sanders as Rs. 2,00,00,306/- in terms of Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

(iii) I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs) on Shri Prashant Jha under section 114 and 114AA of the Customs Act, 1962.

(iv) I also impose a penalty of Rs. 75,00,000/- (Rupees Seventy Five Lakhs) on Shri Prashant Kumar Jha under section 114AA of the Act ibid.

(v) I impose penalty of Rs. 15,00,000/- rupees fifteen Lakhs) on Shri Sarvesh Kumar under section 114 and but do not propose any penalty on him under section 114AA of the Customs Act, 1962.

(vi) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five lakhs) on Shri Krishna Chandra Jha under section 114 and but do not propose any penalty under section 114AA of the customs Act, 1962.

(vii) I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs on Shri Ravindra Kumar under section 114 of the Customs Act, 1962.

(viii) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs) on Shri Mayank Gupta under section 114 of the Customs Act, 1962.

(ix) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs) on Shri Nishant Kumar Singh under section 114 of the Customs Act, 1962.

(x) I impose penalty of Rs. 5,000/- (Rupees Five Thousand) on Shri Ankit Kumar under section 114 of the Customs Act, 1962".

2. Customs Appeal No. 50015 of 2020 is filed by the Revenue to assail the non-imposition of penalty on Shri Krishna Chander Jha under section 114AA of the Customs Act, 1962, the Act.

3. Customs Appeal No. 50016 of 2020 is filed by the Revenue to assail the non-imposition of penalty on Shri Ravindra Kumar under section 114AA of the Act.

4. Customs Appeal No. 50017 of 2020 is filed by the Revenue to assail the non-imposition of penalty on Shri Mayank Gupta under section 114AA of the Act.

5. Customs Appeal No. 50018 of 2020 is filed by the Revenue to assail the non-imposition of penalty on Shri Sarvesh Kumar under section 114AA of the Act.

6. Customs Appeal No. 52762 of 2019 is filed by Shri Ravindra Kumar to assail the imposition of penalty on him under section 114 of the Act.

7. Customs Appeal No. 52761 of 2019 is filed by Shri Mayank Gupta to assail the imposition of penalty on him under section 114 of the Act.

8. The proposition in the show cause notice was to impose penalties under both section 114 and section 114AA of the Act. While the Commissioner imposed penalties under both sections on Shri Prashant Jha, he imposed penalties only under section 114 on others and did not impose any penalty under section 114AA of the Act. Revenue's prayer is that penalties should be imposed on others also under section 114AA of the Act. The appeals of Shri Mayank Gupta and Shri Ravindra Kumar seek setting aside the penalties imposed on them under section 114. Other individuals on whom penalties have been imposed have not fled any appeal before us.

9. The facts which led to the issue of show cause notice, SCN dated 05.11.2018 and the consequential impugned order are as follows :-

10. The officers of the Special Intelligence and Investigation Branch, SIIB of the custom house received specific intelligence that prohibited goods were being attempted to be exported mis-declaring them as unaccompanied package through Malaysian Airlines. Acting on this intelligence, officers visited the office of Malaysian Airlines where they found one, Shri Ankit Kumar, trying to hand over the baggage declaration, airway bill and other documents to the Malaysian Airlines. Shri Ankit Kumar was the agent of M/s Sky Barge Freight Pvt. Ltd. He said that one, Shri Krishna Chandra Jha had requested him to hand over those papers at the Malaysian Airlines and he was simply handing over the baggage declaration No. 2593 dated 01.11.2017 and airway bill No. 232 672 4723 to the Malaysian Airlines. Otherwise, he had nothing to do with the consignment or the exporter. He said that he had known Shri Krishna Chandra Jha and, therefore, on his request took the papers from him to give to the Malaysian Airlines. Shri Jha works for M/s Avlokan Exim Pvt. Ltd.

11. The officers examined the goods covered by the baggage declaration and the airway bill and found that the baggage declaration was filed in the name of Shri Vipin Dua Passport No. H3535709 dated 10.02.2009 through M/s Sky Barge Freight Pvt. Ltd. (airway bill) and M/s FSD Cargo Movers (baggage declaration). It had 32 boxes declared as household goods and on examination they were found to contained red sandal wood. Red sanders or red sandal wood is an endangered species of tree found only in a few parts of India in the entire world. It is recognized as an endangered species in the international convention – CITES and can be exported only with a valid export certificate. There was no export certificate and no permission to export red sanders and it was attempted to be exported by mis-declaring it as household goods.

12. Shri Vipin Dua, in whose name the baggage declaration was filed was investigated and it was found that he had nothing to do with the baggage declaration and he was not shifting his residence from India to any country. In fact, he had not been living in India at all. A photocopy of his passport was with the persons who filed the baggage declaration and they misused it.

13. Scrutiny of the airway bill showed that the space in the aircraft to export the goods was booked in the name of M/s Sikki Auto Pvt. Ltd., B-11/29, Mohan Cooperative Industrial Estate, Badarpur, New Delhi. This place was investigated and it was found that there was no such company. But there was a company whose name was M/s Seiki Auto India Pvt. Ltd at the premises which manufactures certain plastic items for automobiles. The premises were searched and nothing related to any wooden material was found there. It is also found that the company had nothing to do with the booking of space and had not authorized or requested anyone to book space in the aircraft or file airway bills in its name.

14. Further investigation revealed that one, Shri Prashant Jha, provided details of

consignee and shipper to Sarvesh Kumar of FSD Cargo Movers to book the air space and file the baggage declaration. Prashant Jha offered a fee of Rs. 58 per kg. to Sarvesh Kumar for the purpose. Shri Sarvesh Kumar was the Customs Broker, but he was not the freight forwarder who could book the space on the aircraft. So, he further provided details to consignee and shipper to Shri Ravindra Kumar of M/s Vin Global who was the freight forwarder. Shri Ravindra Kumar, in turn, provided the documents to Shri Mayank Gupta of M/s Sky Barge Freight another freight forwarder. Shri Mayank Gupta filed the airway bill in the name of fictitious company M/s Sikki Auto Pvt. Ltd. Thus, the airway bill was filed and space was booked in the name of M/s Sikki Auto Pvt. Ltd. while the baggage declaration was filed in the name of Shri Vipin Dua. Thereafter, two letters dated 17 and 18 October 2017 were given by Shri Prashant Jha through Sarvesh Kumar and Ravindra Kumar to Mayank Gupta to change the description of the consignor and consignee. Thus the consignor and consignee's names have been changed to Shri Vipin Dua in the airway bill and the description of the goods were changed to unaccompanied baggage and as personal effects – handicraft item.

15. To sum up, neither Shri Vipin Dua in whose name the baggage declaration was filed with the customs nor M/s Sikki Auto Pvt. Ltd. (which is the fictitious entity) had anything to do with the airway bill or the baggage declaration or the consignment. In this manner, they attempted to smuggle out red sanders.

16. After investigation, the SCN dated 05.11.2018 was issued to 7 persons of which notices were sent at two addresses each in case of Shri Krishna Chandra Jha, Nishant Kumar, Mayank Gupta and Sarvesh Kumar. It was proposed in the SCN to confiscate the seized red sanders and impose penalties under section 114 of the Act and 114AA of the Act on the individuals. In the impugned order, red sanders was confiscated and this confiscation is not assailed by anyone. Penalties were imposed under section 114 of the Act and 114AA of the Act on Shri Prashant Jha and there is no appeal by either side on this penalty. Penalties were imposed only under section 114 of the Act on the rest. Of these, Shri Mayank Gupta and Shri Ravindra Kumar filed appeals before us while Revenue filed appeal assailing the non-imposition of penalty under section 114AA of the Act on Ravindra Kumar, Mayank Gupta, Sarvesh Kumar and Krishna Chandra Jha.

17. The short questions to be decided by us in these appeals are whether the Commissioner erred in not imposing penalties under section 114AA of the Act on the aforesaid individuals as asserted by the Revenue and if the Commissioner erred in imposing penalties under section 114 of the Act on Shri Mayank Gupta and Shri Ravindra Kumar as asserted by these two individuals.

18. Learned authorized representative for the Revenue made the following submissions :-

(a) It is not in dispute that there was an attempt to export red sanders – a prohibited good-under the guise of unaccompanied baggage and baggage declaration was filed in the name of Shri Vipin Dua for the purpose;

(b) It is also not in dispute that Shri Vipin Dua had no knowledge of the baggage declaration being filed and that he had not asked anyone to file a baggage declaration and that he was not even a resident of India. A copy of his passport was misused to file the baggage declaration by Sarvesh Kumar, the Customs Broker.

(c) The airway bill was filed on the behalf of Prashant Jha in the name of M/s Sikki Auto Pvt. Ltd. which did not exist. Prashant Jha paid a fee of Rs. 58/- per kg. to Sarvesh Kumar to get the airway bill filed.

(d) Sarvesh Kumar engaged Ravindra Kumar of Vin Global, a freight forwarder, to book the space in the aircraft and file the airway bill and paid Rs. 48/- per kg. to him.

(e) Ravindra Kumar, in turn, hired Mayank Gupta of Sky Barge Freight to file the airway bill.

(f) Later, by two letters dated 17 and 18 October 2017, the details of the consignee and the description of the goods were changed. The goods were then described as unaccompanied baggage and the names of the consignor and consignee were changed to Shri Vipin Dua.

(g) Shri Krishna Chandra Jha collected the baggage declaration and the airway bill and gave them to Ankit Kumar to hand over to the Malaysian Airlines. Shri Ankit Kumar was intercepted by the officers while doing so and on examination the consignment was found to be red sanders.

(h) Neither Shri Vipin Dua nor M/s Sikki Auto Pvt. Ltd. in whose name the baggage declaration and the airway bill were respectively filed had anything to do with the consignee.

(i) Section 114AA of the Act mandates penalty for use of false or incorrect material with knowledge. All the noticees played an important role in use of false documents without verifying their authenticity. Therefore, penalties should have been imposed under section 114AA on Shri Mayank Gupta, Shri Sarvesh Kumar, Shri Ravindra Kumar and Shri Krishna Chandra Jha.

(j) The impugned order needs to be modified only to this extent.

(k) The appeals filed by Shri Mayank Gupta and Shri Ravindra Kumar deserve to be dismissed.

19. Submissions on behalf of Shri Mayank Gupta : Learned counsel for Shri Mayank Gupta made the following submissions :-

(a) Shri Mayank Gupta was not aware of the alleged mis-declarations and had no doubt about the transactions. He filed the airway bill in good faith. He was a freight forwarder acting for another freight forwarder namely Shri Ravindra Kumar who is engaged in booking space with the airline for the shipment. Therefore, he was under no obligation to obtain the KYC documents of the exporters.

(b) Shri Mayank Gupta was not even a Customs Broker and, therefore, had no doubt whatsoever regarding the genuineness of the transaction.

(c) There is no allegation, much less any evidence in the entire case that Mayank Gupta gained monetarily from the attempted fraud. Penalty under section 114 is imposable only on such person who, in relation any goods does or omits to do any act which act or omission would render such goods liable for confiscation under section 113 of the Act or abets doing or omission of such act. In this case, Mayank Gupta neither did nor committed an act or omission which led to confiscation of the goods.

(d) There is nothing on record to show that Mayank Gupta had committed any acts which rendered the goods liable to confiscation.

In view of the above, the penalty imposed on Mayank Gupta under section 114 of the Act may be set aside.

Submissions on behalf of Shri Ravindra Kumar :

20. Learned counsel for Shri Ravindra Kumar made the following submissions :-

(a) On being approached by Shri Sarvesh Kumar of M/s FSD Cargo Movers, the Customs Broker, the appellant provided certain documents with description as “decorative product” to be exported by one M/s Seiki Auto Pvt. Ltd. for booking space. He obtained the KYC of FSD Cargo Movers but not that of the declared exporter M/s Seiki Auto Pvt. Ltd.

(b) As a freight forwarder Shri Mayank Gupta booked the space and issued the airway bill having No. 232 6727 4723. Later, some unknown persons tampered with the airway bill and changed the description of goods from decorative items to personal effects and the name of the exporter from M/s Sikki Auto Pvt. Ltd. to Vipin Dua.

(c) Therefore, there is no evidence that Shri Mayank Gupta had done anything which rendered the goods attempted to be illegally exported be confiscated under section 113 of the Act nor did he abet the doing or omission of such an act. At no point of time was he aware of the alleged mis-declaration.

(d) For these reasons the penalties on Shri Mayank Gupta under section 114 of the Act may be set aside.

21. We have considered the submissions from both sides and perused the records.

22. We now proceed to decide the appeals with respect to each of the appellant/ respondents.

23. Mayank Gupta : Revenue’s Appeal C/50017 of 2020 against Shri Mayank Gupta seeks imposition of penalty under section 114AA of the Act. The role of

Shri Mayank Gupta was recorded by the Commissioner is as follows :-

"Shri Mayank Gupta, Director of M/s Sky Barge Freight Pvt. was third and final forwarder in sequence of arranging space in Airlines and shipping lines for the fake exporter without obtaining KYC of the main (fake) exporter from M/s Vin Global Logistics and M/s FSD Cargo Movers in respect of all the concerned AWB used for export of Red Sanders. Shri Mayank Gupta, vide his statement date 09.11.17 stated that being freight forwarder they used to arrange space in airlines and shipping lines for the exporter/importers and other sub-agents for their cargo; that his company had issued the six AWB's as mentioned in the Panchnama dated 09.11.2017 (6 in nos.) in the name of M/s Sikki Auto India Pvt. Ltd., B-11/29, Mohan Co-Operative Industrial Estate, Badarpur, New Delhi – 110004. Shri Mayank Gupta, vide his another statement 28.03.2018 stated that he was shown copies of two letters dated 17 and 18th October 2017 respectively wherein of M/s SIKKI Auto India Pvt. Ltd., B-11/29, Mohan Cooperative Industrial Estate, Badarpur, New Delhi – 110 044 requested for change of description in Master Air Way Bill No. 23267274712. On being asked about the same, he stated that those letters were provided to him by M/s Vin Global Logistics and not the exporter as stated in his earlier statement and he had been obtaining the KYC of the sub-agent and not the exporter; that in the case where any exporter directly approached him, then he used to obtain his KYC. After this case, he started the practice of obtaining the exporters KYC irrespective of whether the exporter approached him directly or through any agent and he did not know any person by the name of Shri Prashant Jha. On the basis of above facts, I find that Shri Mayank Gupta was also played the role of abetting smuggling".

24. It is the case of the Revenue that it is apparent from the findings recorded by the adjudicating authority that Mayank Gupta was the freight forwarder who finally issued the airway bill in the name of a non-existing firm for non-available goods i.e., decorative products. He was the third and final forwarder involved in arranging space in airlines for export without obtaining the KYC of the main exporter. In fact, he issued the airway bill in the name of non-existed M/s Sikki Auto Pvt. Ltd. giving the address of M/s Seiki Auto Pvt. Ltd. The authorized representative of M/s Seiki categorically stated that the name and address of the airway bills was false and that it had not made any export to Vietnam, during 2017-2018. Therefore, Mayank Gupta used and caused to be used forged documents related to export of prohibited goods knowingly and intentionally making him liable for penalty under section 114AA of the Act. This section reads as follows :-

"SECTION 114AA : Penalty for use of false and incorrect material – If a person knowingly or intentionally makers, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods".

25. According to the Revenue, the Commissioner erred not imposing the penalty

under section 114AA of the Act upon Shri Mayank Gupta.

26. In his appeal No. C/52761 of 2019, Mayank Gupta submitted that he had no knowledge of fraud being committed and that he had issued the airway bill on request from another freight forwarder Shri Ravindra Kumar and, therefore, he was not liable to any penalty under section 114 of the Act at all.

27. Section 114 : Penalty for attempt to export goods improperly, etc.

- Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater".

28. What is evident from above is if goods are rendered liable for confiscation under section 113 of the Act the persons who did or omitted to do any act which rendered such goods liable for confiscation is liable to penalty under this section. The confiscation of the goods attempted to be exported under section 113 of the Act is not in dispute. In fact none of the operators in the entire chain even claimed ownership with the goods.

29. What needs to be examined is what rendered the goods liable to confiscation. The goods were mis-declared in the baggage declaration which is an entry made under the Customs Act and the goods were prohibited for export. Both these factors rendered the goods liable for confiscation. The baggage declaration itself was filed in the name of Shri Vipin Dua who had nothing to do with the consignment.

30. However, this consignment could not have been exported unless an airway bill was also filed which is the requirement of the airlines. The airway bill was filed in the name of M/s Sikki Auto Pvt. Ltd. – the fictitious company (M/s Seiki Auto a company which exists at the address and nothing to do with the consignment). Since the name of the consignor/consignee and the description of the goods in the airway bill and the baggage declaration were different, two letters were filed and the name of the consignor and consignee and the description of the goods in the airway bill were changed to match the description in the baggage declaration. Thus, the airway bill was filed initially in the name of

a fictitious company M/s Sikki Auto and thereafter it was changed in the name of Vipin Dua who also had nothing to do with the consignment. The admitted fraud would not have been possible, but for these mis-declarations in both the baggage declaration and the airway bill. Several persons were involved in this scheme and Shri Mayank Gupta's role in the entire operation is that of filing the airway bills themselves. Without the airway bill being filed by Shri Mayank Gupta in the name of a fictitious company the entire fraud would not have been possible.

31. In view of the above, we find that there is no error in the Commissioner imposing penalty on Shri Mayank Gupta under section 114 of the Act. It also needs to be noted that section 114 does not require the intent of an individual to be established. The act or omission which rendered the goods liable for confiscation under section 113 of the Act is sufficient.

32. As for the Revenue's appeal seeking imposition of penalty under section 114AA of the Act, this section renders a person liable to penalty only if he knowingly or intentionally makes, signs, or uses any declaration statement or document which is false or incorrect in any material particular in the transaction of any business for the purpose of this act. The document for the purpose of the Act in this case was the baggage declaration which was not filed by Shri Mayank Gupta. The airway bill is not a document filed under the Act but is a document required by the airlines. It is the counterpart of bill of lading filed for transport by ships. Although the airway bill is an essential document to take the goods out of the country it is not the document filed under the Act. In view of the above, we find that the Commissioner was correct in not imposing a penalty on Shri Mayank Gupta under section 114AA of the Act.

33. Shri Ravindra Kumar : The role of Shri Ravindra Kumar is that of obtaining the documents from Sarvesh Kumar and giving them to Mayank Gupta to get the airway bill issued in the name of fictitious company M/s Sikki Auto. Later, he obtained letters from Sarvesh Kumar and sent them to Mayank Gupta to get the names of the consignor/consignee and the nature of goods changed in the airway bill so as to align them with the fake baggage declaration filed in the name of Shri Vipin Dua. Thus, he played a critical role in the entire conspiracy to attempt to smuggle red sanders using the baggage declaration and the airway bill. In his appeal No. C/52762 of 2019, learned counsel for Shri Ravindra Kumar asserted that he did not fail in his duty of due diligence verification and obtaining the KYC. He also asserted that there is no evidence that Shri Ravindra Kumar had obtained any monetary benefit from the admitted fraud.

34. For these reasons, learned counsel argued that Shri Ravindra Kumar had not done anything which rendered the goods liable for confiscation under section 113 of the Act or abetted doing or omission of such an act. He was unaware of mis-declaration at any point of time. For these reasons, the penalty imposed on him under section 114 of the Act needs to be set aside.

35. On the other hand, learned authorized representative for Revenue submits

that there is no error by Commissioner imposing penalty under section 114 of the Act on Shri Ravindra Kumar. However, Commissioner had erred in not also imposing penalty under section 114AA of the Act.

36. As discussed above, there is no dispute that red sanders were attempted to be exported using fake baggage declarations filed in the name of Shri Vipin Dua without his knowledge and fake airway bills filed in the name of fictitious company M/s Sikki Auto. Later, in order to align the two documents, letters were given to change the consignor, consignee and description of goods in the airway bill. Shri Ravindra Kumar was a key player in arranging the fake airway bills through Shri Mayank Gupta at the behest of Shri Sarvesh Kumar. We have no manner of doubt that but for these actions of Ravindra Kumar the attempted export of red sanders would not have been possible. Therefore, the Commissioner was correct in imposing penalty under section 114 of the Act on Shri Ravindra Kumar.

37. As far as the penalty under section 114 AA of the Act is concerned, this can be imposed only if the knowledge of the person is established and the mis-declaration was in respect of a document filed for the purposes of the Act. In this case, the document filed for the purpose of Act is the baggage declaration. The role of Shri Ravindra Kumar was in getting the airway bill filed which was the document related to the airlines. Therefore, we do not find that any penalty was imposable on section 114AA of the Act. The Commissioner was correct in not imposing penalty on him under this section.

38. Shri Sarvesh Kumar : Revenue filed Appeal No. C/50018 of 2020 to assail the non-imposition of penalty under section 114AA of the Act on Shri Sarvesh Kumar. The role of Shri Sarvesh Kumar, as discussed in the impugned order is as follows :-

"I find that Shri Sarvesh Kumar received the manual documents from Shri Prashant Kumar Jha without obtaining kYC of the main exporter on cash basis. He further forwarded the manual documents to another freight forwarder M/s Vin Global Logistics and further to M/s Sky Barge Freight Pvt. Ltd. to facilitate the export of prohibited goods i.e. Red Sanders issued in the name of non-existing company M/s Sikki Auto India Pvt. Ltd. He forwarded forged documents (related to export) and shipping instructions which was in the name of a fictitious company for effecting export of prohibited goods (Red Sander) and never revealed true credentials of Shri Prashant Kumar Jha with whom he had business dealings. He was well aware of the fact that Shri Prashant Kumar Jha was involved in some illegal activities; still he acted as per the directions of Shri Prashant Kumar Jha for monetary consideration. In his statement dated 09.11.2017 he admitted that he acted as per directions of Shri Prashant Jha. Hence Shri Servesh Kumar was managing the work of forwarding on behalf of Shri Prashant Jha and helped in camouflaging the identity of the actual exporter. Shri Servesh Kumar has already admitted his mistake during the written submission made at the time of personal hearing. As he was involved in abatement of the fraudulent exporter. I hold him liable for penalty under section 114".

39. The Commissioner imposed a penalty on Shri Sarvesh Kumar under section 114 of the Act, but refrained from imposing any penalty on him under section 114AA of the Act. It is the case of the department that penalty under section 114AA of the Act should also have been imposed on Shri Sarvesh Kumar also.

40. We find in the chain of activities the role of Shri Sarvesh Kumar of FSD Cargo Movers was that of the customs broker who had obtained the details from Shri Prashant Jha and handed them over to Shri Ravindra Kumar. Goods were rendered for liable for confiscation under section 113 of the Act for mis-declaration in the baggage declaration filed under the Customs Act. Shri Sarvesh Kumar, as the customs broker, is directly responsible for ensuring that baggage declarations are filed correctly. The baggage declaration in this case was filed in the name of Shri Vipin Dua without his knowledge and the baggage declaration is certainly a document filed under the Customs Act for the purpose of transacting business under that act. We, therefore, have no hesitation in holding Shri Sarvesh Kumar was liable for penalty under section 114AA of the Act for the mis-declarations in the baggage declaration. In our considered view, Commissioner erred in not imposing the penalty under section 114AA of the Act on Shri Sarvesh Kumar. The value of the goods admitted to be exported was Rs. 2,00,00,306/-. Section 114AA of the Act provides for imposition of the penalty not exceeding five times the value of the goods for mis-declaration. No minimum penalty is stipulated under this section. Considering the role of Shri Sarvesh Kumar, we find it appropriate to impose penalty of Rs. 75,00,000/- on Shri Sarvesh Kumar under section 114AA of the Act.

41. Shri Krishna Chandra Jha : Revenue's Appeal No.C/50015 of 2020 assails non-imposition of penalty on Krishna Chandra Jha under section 114AA of the Act. Shri Krishna Chandra Jha was the last person in the chain of conspiracy before Ankit Kumar. He had obtained the fake baggage declaration and the airway bills which, together, could have resulted smuggling in the red sanders but for the investigation by the officers. Instead of personally going to the airlines to hand over the papers, he used Shri Ankit Kumar to submit the papers to the airlines during which process the documents were intercepted. The Commissioner imposed penalties of Rs. 25,00,000/- on Shri Krishna Chandra Jha under section 114 of the Act but had not imposed any penalty under section 114AA of the Act.

42. In our view, the role of Shri Krishna Chandra Jha is clear and so is his knowledge. Knowledge or guilty state of mind can only be inferred from the facts surrounding the event. Undisputedly, the baggage declaration was fake and so was the airway bill and the declarations in the airway bill were later changed to align them with the baggage declaration. Both these documents were used by Shri Krishna Chandra Jha to facilitate the export and he used Shri Ankit Kumar for the last step of handing over the documents to the airlines. We have no

manner of doubt that Shri Krishna Chandra Jha was not only a co-player but had full knowledge of the entire fraud being perpetuated. Since the baggage declaration was filed in the Custom House, any mis-declaration in it with knowledge attracts penalty under section 114AA of the Act. We, therefore, find that the Commissioner erred in not imposing the penalty under section 114AA of the Act on Shri Krishna Chandra Jha. Considering his role, we find it appropriate to impose a penalty of Rs. 50,00,000/- under section 114AA of the Act on Shri Krishna Chandra Jha.

43. In view of the above, the appeals are disposed of, as below :-

(i) Appeal No. : C/52671 of 2019 filed by Shri Mayank Gupta is dismissed.

(ii) Appeal No. : C/50017 of 2020 filed by Revenue seeking imposition of penalty on Shri Mayank Gupta under section 114AA of the Act is dismissed.

(iii) Appeal No. : C/52762 of 2019 filed by Shri Ravindra Kumar is dismissed.

(iv) Appeal No. : C/50016 of 2020 filed by Revenue seeking imposition of penalty under section 114AA of the Act on Shri Ravindra Kumar is dismissed.

(v) Appeal No. : C/50018 of 2020 filed by the Revenue seeking imposition of penalty under section 114AA of the Act on Shri Sarvesh Kumar is allowed and the impugned order is modified imposing penalty of Rs. 75,00,000/- on Shri Sarvesh Kumar under section 114AA of the Act.

(vi) Appeal No. : C/50015 of 2020 filed by Revenue seeking imposition of penalty under section 114AA of the Act on Shri Krishna Chandra Jha is allowed and the impugned order is modified imposing the penalty of Rs. 50,00,000/- on Shri Krishna Chandra Jha under section 114AA of the Act.

44. All appeals are disposed of as above.

(Order pronounced in open court on 18/10/2024.)