O-285

CUSTA/5/2018

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

KRISHNENDU DUTTA
VERSUS
THE COMMISSIOENR OF CUSTOMS (PORT) & ANR.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 9th May, 2024.

Appearance:
Ms. Micky Chowdhury, Adv.
Mr. B. N. Pal, Adv.
Mr. Protyush Chatterjee, Adv.
... for the appellant.

Mr. Tapan Bhanja, Adv.
...for the respondent.

1. This appeal has been filed in person by Sri Krishnendu Dutta. Today, Mr. Pratyush Chatterjee, learned Advocate has appeared and states that he has filed vakalatnama in the office/department.

2. Heard Smt. Micky Chowdhury, learned counsel for the appellant and Sri Tapan Bhanja, learned junior standing counsel for the customs authorities.

3. Undisputed the appellant has obtained IEC code in the year 2010. The appellant is the proprietor of M/s. Krish Exports which is engaged in

export of goods. Six shipping bills declaring 'leather jackets, waste coat, shoe, skirt, pant etc.' for export were filed in the name of M/s. Krish Exports. Before the goods could leave, the Director of Revenue (Intelligence) made investigation. On examination of the goods it was found to be old and used items of negligible or no commercial value. The goods were found to be not matching with the documents. Mis-declaration on the part of the appellant with a view to claim huge amount of duty draw back was found established.

4. In the documents the appellant has given his bank account number so as to get duty draw back in it. After considering the relevant facts, circumstances and evidences on record, Customs, Excise and Service Tax Appellate Tribunal, Kolkata in Excise Appeal No.75517/2014 [M/s. Krish Exports Vs. CC (Port), Kolkata] recorded the following findings -

> *"5. After hearing both sides and on perusal of the material available on record, we find that out of the total twelve shipping bills which were investigated by DRI in the present case, six shipping bills were filed by M/s Krish Exports, the Appellants in the present case. In the documents, the export goods were declared to be leather jacket, waist coat, shoes, skirt, pant etc., but, on examination of the goods, it was found to be old and used items of negligible or no commercial value. The goods were further found not to match with the documents. Hence, mis-declaration on the part of the Appellants with a view to claim huge amount of drawback fraudulently stands established. The adjudicating authority has ordered confiscation of the export goods in terms of Section 113(1) of the Customs Act, 1962*

which is fully justified in our view in the present case. The redemption fine imposed under Section 125 amounting to Rs. 50 lacs for redemption of certain goods also is fair and appropriate in our view and merits no interference.

6. The argument advanced by the Appellants mainly is that, their IEC Code no. has been mis-used by other persons for filing the export documents without their knowledge and authorization. Accordingly, they have sought to dis-associate themselves from the fraudulent export consignment.

7. From the record of the case, we find that the investigating Officers have interrogated Shri Krishnendu Dutta, Proprietor of M/s Krish Exports, and recorded his statements more than once. However, in the statement, Shri Krishnendu Dutta has admitted to have given this IEC details to his acquaintance Shri Kuntal Dutta for using the same by Shri Manish Singh of M/s Tara India qua export. He has further admitted the fact that he had done the above act for monetary consideration. It is further on record that bank account number of M/s Krish Exports, as stated by Shri Krishnendu Dutta in his statement, was the same account number declared in the export documents of M/s Krish Exports. If the DRI authorities have not intercepted the goods prior to export, the fraudulent drawback amounts would have been received in the account of M/s Krish Exports. The investigations undertaken by DRI have established that Shri Manish Singh of M/s Tara India was the kingpin in the export fraud.

8. In view of the above discussions, we are of the view that the penalties imposed on M/s Krish Exports under Section 114 as well as 114AA of the Customs Act, 1962 are justified and merit no interference.

> *9. In view of the above, the impugned order is upheld in relation to the findings against M/s Krish Exports and the appeal filed by the Appellants is dismissed."*

5. We find that the findings recorded by the Tribunal are findings of fact based on consideration of relevant evidences on record which attract the levy of penalty under sections 114 and 114A of the Customs Act, 1962.

6. In view of the aforesaid, we find that no substantial question of law is involved in this appeal.

7. The matter is concluded on the findings of fact and record. Consequently, the appeal (CUSTA/5/2018) is dismissed at the admission stage.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As/S.Das