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

CUSTA/12/2025
IA NO: GA/1/2025
M/s. BOSE ENTERPRISE
VS
COMMISSIONER OF CUSTOMS (PORT), KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
A N D
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 14th July, 2025

Mr. Shaunak Ghosh, Adv.
Mr. Ashok Bhowmik, Adv.
Ms. Shsreyashi Maity, Adv.
…for appellant
Ms. Manasi Mukherjee, Adv.(VC)
Mr. Bijitesh Mukherjee, Adv.
…for respondent.

The Court : This appeal has been filed by a Customs House agent under section 130 of the Customs Act, 1962, challenging the final Order dated 23rd September, 2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (Tribunal) in Customs Appeal no.75060 of 2017.

The appellant has raised the following substantial questions of law for consideration :

i) Whether the learned Tribunal all along proceeded in the matter putting the petitioner in the same footing with the other appellant which is wrongful and incorrect inasmuch as the case of the petitioner and the case of the other appellant are not the same and cannot be treated on the same footing ?

ii) Whether the learned Tribunal at the time of passing the impugned order misdirected itself in holding that the petitioner, the appellant therein, could not make out a convincing case for non-imposing penalty upon the petitioner ?

iii) Whether during the proceeding initiated under CBLR/CHLR, an enquiry officer was nominated by the Commissioner of Customs (A & A) vide letter No. F.No.S45-12/2005-Estt(CHA) Pt dated 31/12/2014 to look into the charges leveled against the petitioner for alleged violation of provisions contained in CHALR, 2013 and to file a report under section 22 of the CHALR 2004 (now regulation 20 of the Customs Broker Licensing Regulations, 2013) ?

iv) Whether the Learned Tribunal failed to appreciate that penalty was imposed upon the petitioner under section 114(i) of the Customs Act, 1962 for violation of the provision of CBLR 2013 cannot be sustained in law and/or in the facts and circumstances and for any violation of CBLR, 2013, no penalty can be imposed upon the petitioner under section 114(i) of the Act ?

We have heard Mr. Shaunak Ghosh, learned Counsel for the appellant and Ms. Manasi Mukherjee, learned standing Counsel for the respondent/Department.

The appellant filed the appeal before the learned Tribunal against the Order-in-Original dated 8th April, 2016 passed with reference to the show-cause notice issued under section 124 of the Act in connection with an attempted export of Red Sanders detected in Customs Transit Declaration (CTD) consignment (Nepal Export) and by the said order the Adjudicating authority imposed penalty of Rs.50 Lacs each on the appellant and another namely, Arup Mukherjee, proprietor of M/s. Shiva Trading Company. Based on intelligence gathered, the DRI officers of Calcutta Zonal Unit, intercepted a consignment of export of an attempted smuggling of Red Sander wood logs in the guise of Nepalese can handicrafts by CTD dated 30.3.2014. Upon examination of the consignment, the goods were seized which consisted of 210 Red Sander wood logs against 56 packages of Nepalese cane handicraft as declared. Dilip Kumar Sarkar of the appellant informed the Investigating Officers that he was unaware of the stuffing of the container but had heard from the lorry driver that the stuffing was done somewhere in Darbhanga. The details of the transporter were also mentioned. Upon further investigation the F. Card holder and owner of the appellant Sudipta Bose, informed the authorities that they had taken up the dock clearance for export of the consignment through Shri Srikanta Adhikary, who was well-known to him for several years in the course of business. However, in the adjudication order it has been recorded that the appellant did not pay to Shri Adhikary and would rather determine his clearing charges depending on the nature of job and communicate the same to Shri Adhikary, as it was the latter who negotiated with the party (exporter) in money matters. It has been noted that the proprietor of the appellant had admitted before the authorities of deputing Dilip Kumar Sarkar on behalf of his firm to carry out the export clearance and that he had no contact with the firm at Nepal and the job was entrusted to him by Shri Adhikary for professional services of customs clearance. It has been further noted that the appellant did not possess any letter of authorization issued in the name of the firm by the Nepal based exporter nor were they aware of the profile of the exporter and they did not know the exporting firm personally and took a stand that the KYC norms did not apply to foreign clients. It was accepted that KYC documents were not obtained from the Nepalese importer nor that of the Logistics firm nor they knew about the antecedents of the parties. In these circumstances, show-cause notice under section 124 was issued. The appellant submitted reply and the Order-in-Original was passed imposing penalty of Rs.50 Lacs.

Aggrieved by such order the appellant preferred appeal before the learned Tribunal which has been dismissed by the learned Tribunal. On facts there is no dispute that the appellant completely failed in ascertaining the whereabouts by way of KYC of the persons associated from whom they had sourced the business nor were they in possession of any letter of authorization or profile assessment and verification report of their ultimate client. The company at Nepal for whom they undertook the said transit clearance of Nepal based cargo meant for export to Korea. The appellant contended that the show-cause notice does not make out any adjudication of abetment against the appellant and therefore no penalty can be imposed under section 114(i) of the Act. This argument was rejected by the learned Tribunal after noting the facts and observing that it is not only abetment which result in fixation of penal liabilities on the person concerned but the law also provides for imposing penalty for doing or failure to do any act which act or omission renders such goods liable for confiscation under section 113. Therefore, the learned Tribunal was right in making such an obsrervation as section 114(i) primarily holds a person liable for penalty action for such act of omission or commission and abetment is only secondary to the act of omission or commission.

It was rightly observed by the learned Tribunal that it was the primary responsibility of the Customs House agent to obtain and fulfill the KYC norms as required in law and was not expected to act on oral information and therefore the appellant absolve himself of his role as an intermediary in the attempted export of Red Sander wood logs. Despite such a finding, the learned Tribunal has taken a lenient view and has reduced the penalty from Rs.50 Lacs to Rs.4 Lacs.

Thus, we find no questions of law, much less substantial questions of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application IA No: GA/1/2025 also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SN/PKD.
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