

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

CUSTOMS APPEAL No. 41494 OF 2013

(Arising out of Order-in-Appeal No.43/2013 (TTN) dated 10.05.2013 passed by Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli 620 001)

M/s. Artisan's Welfare Society

.... Appellant

180/2, Auroville Main Road,
Edayanchavadi, Vanur Taluk,
Vilupuram 605 101.

Versus

The Commissioner of Customs,

...Respondent

Custom House, New Harbour Estate,
Tuticorin 628 004.

APPEARANCE :

Mr. S. Murugappan, Advocate
For the Appellant

Mr. R. Rajaraman, Assistant commissioner (A.R.)
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 12.07.2023
DATE OF DECISION : 20.07.2023**

FINAL ORDER No.40590/2023

ORDER : Per Mr. VASA SESHAGIRI RAO

Brief facts are that the appellant filed shipping bill dt. 09.12.2011 through the CHA for export of 'cupboards, pillar tops, table, book shelf, and wooden pillars'. The value of goods was declared as USD 6420 CIF and the same were sought to be exported

to M/s.Southeast Packaging & Printing Development Co Ltd., China by filing free shipping bills without claiming any export incentives. Based on specific intelligence, the officers of SIIB, Custom House, Tuticorin inspected the goods. During the examination conducted along with Forest Range Officer, it was noticed that wooden pillars were made out of red sanders. Representative samples were taken from the lot and sent for analytical test for confirmation. On the reasonable belief that wooden pillars are made out of red sanders wood and are attempted to be smuggled out of the country in contravention of the provisions of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade Policy 2009-14 and ITC (HS) Schedule 2, the 438 numbers of wooden pillars along with 4 nos. of cupboards and 2 nos. of bookshelves were detained under a mahazar dt. 16.12.2011 and deposited with Raja Agencies, CFS, Tuticorin for safe custody. After due process of law, the original authority absolutely confiscated the red sanders valued at Rs.33,90,000/- under Section 113 (d) of the Customs Act, 1962. The appellant was given an option to redeem the other goods viz. Cupboards, Pillar tops, Table, Book shelf valued at Rs.10,800/- on payment of redemption fine of Rs.15,000/- under Section 125 of Customs Act, 1962. A Penalty of Rs.30,00,000/- was imposed on the appellant (exporter) and a separate penalty of Rs.2 lakhs was imposed on the CHA under Section 114 (i) and 114AA of Customs Act, 1962. Aggrieved by the order passed by the original authority, the appellant preferred appeal before the Commissioner (Appeals) who vide order impugned herein upheld the same. Hence this appeal.

2. Ld. Counsel Sri S. Murugappan appeared and argued for the appellant. It is submitted that the appellant is a registered society which is registered under the Societies Registration Act, 1960. The society is established for the welfare of local artisans for marketing handmade goods and handicrafts. They are merchant exporter for goods for which mostly visiting foreigners to Auroville place order on them. After examination, it was noticed that the reddish brown wooden pillars painted black and wrapped with kraft paper was made out of red sanders. It is submitted by the Ld. Counsel that statements were recorded from the appellant-society viz. Sri V. Ramesh who is the Treasurer of the Society and Sri M. Siradudheen who was the person from whom the appellant had purchased the wooden pillars. There is nothing incriminating brought out in the statements. It can be seen from the perusal of statement of Sri V. Ramesh made on 13.02.2012 that the pillars were purchased in and around Karaikudi where these pillars were dismantled from old houses; that he initially thought that these were made up of country wood and the carpenter who worked in their society stated that these items were made of country wood only. Therefore, the appellant decided to export the pillars to his customer in China; that at the time of purchase itself, these pillars were painted black and he did not make any alteration and these pillars were to be exported as such. It is argued by the Ld. Counsel that it is an admitted position that the pillars in question were purchased in and around Karaikudi where these pillars were dismantled from old house in that area. The show cause notice does not attribute any knowledge on the appellant as to the species of the wood. Show cause notice also does not allege that the appellant with

such knowledge has deliberately attempted to export the goods. Further, there is no contradiction in the statement of Sri V. Ramesh and Sri M. Sirasudheen and they have stated that the pillars were purchased from dismantled houses in and around Karaikudi. Further, the Ld. Counsel submitted that appellant is not challenging the confiscation of the goods. The contest in the appeal is confined only on the imposition of penalty on the appellant.

3. Para-40 of the impugned order was adverted to by the Ld. Counsel to argue that the original authority has held that Sri M. Sirasudheen, who is the person who arranged for purchase of pillars, had no knowledge that the pillars were made of red sanders wood. While so, there was no reason to uphold the penalty on the appellant treating the appellant differently. The adjudicating authority has concluded without any iota of evidence that appellant deliberately attempted to export the goods which were rendered liable for confiscation. The appellant had no knowledge that the goods were made of red sanders and only after verification by the officers came to know that the pillars are made of red sanders.

4. Further, the export of red sanders is not prohibited and it requires a license for export. There is no evidence to show that the appellant had consciously involved in the act of attempt to export red sanders. Ld. Counsel submitted that the original authority has imposed penalty of Rs.30 lakhs on the appellant. The said penalty is a combined penalty imposed under Section 114 (i) and 114 AA of the Customs Act, 1962. There cannot be such imposition of combined penalty and the original authority ought to have given

separate reasoning for imposing penalty under different provisions of the Customs Act. Further, Ld. Counsel pleaded that penalty imposed is exorbitant and disproportionate. There is no proposal in the SCN to reject the transaction value adopted by the appellant. Since the value is accepted, there was no ground to adopt the value arbitrarily so as to impose penalty. It is pleaded that the penalty may be set aside.

5. Ld. A.R Sri R. Rajaraman appeared for the Department and argued that the findings in the impugned order were well supported. It is submitted that merely because Sri M. Sirasudheen was exonerated, it cannot be concluded that the appellant had no role in the attempt to smuggle red sanders. The incident would not have come to light but for the inspection conducted by the officers of the department that too on the basis of specific intelligence. It is submitted that the penalties imposed are legal and proper.

6. Heard both sides.

7. On perusal of the records in the appeal, it is clear that there was an attempt to export Red Sander Wood in the form of pillar tops which were painted black in contravention of the prohibition imposed under the provisions of the Customs Act and the Foreign Trade (Development Regulation) Act, 1992. The exporter's contention that these goods are only restricted and not prohibited is not acceptable in view of the statutory provisions of the Foreign Trade (Development Regulation) Act, 1992 as extracted below:-

"c) Schedule 2 of ITC (HS) gives the item wise export policy. Sl. No. 154 of the Schedule details the export policy with regard to red sanders wood in any form. The export policy provides that the export of red sanders is 'prohibited'. The nature of the restriction is described as 'not permitted to be exported'.

Sl. No.	Tariff Item HS Code	Unit	Item Description	Export Policy	Nature of Restriction
154	44039918 44079990	m3	(a) Red Sanders wood in any form, whether raw, processed or unprocessed, except at (b) below	Prohibited	Not permitted to be exported
155	32030090 38051010 92021000 92029000 92030010 92030090 92041000 92042000 92060000 92081000 92082000 92099200 92099300 92099900	Kg.	(b) Value added products of Red Sanders wood such as Extracts, Dyes, Musical Instruments and parts of Musical Instruments, made from Red Sanders wood, procured from legal sources	Restricted	Exports permitted under licence subject to the following documentation. Applications for export licences should be accompanied by attested copies of certificate of origin issued by the Principal Chief Conservator of Forest of the State from where the stocks were procured, giving details of the date of requirement from legal sources and quantities procured. A certificate of the current position of stocks so procured and available with the applicant given after physical verification of the stocks, by the authority nominated for the purpose by the principal Chief Conservator of Forests, should also accompany application for export licence. The applications shall be considered on merits for issue of export licence, which shall be subject to any other conditions such as MEP, Quantity ceilings requirement under CITES, etc. as may be prescribed from time to time.

d) As per Section 2(33) of the Customs Act, 1962, prohibited goods means "any goods the import or export of which is subject to any prohibition under this Act, 1962 or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with".

8. A close reading of the statement of Mr. M. Sirasudheen reveals that he has sold only six number of wooden pillars @ Rs.21,000/- per MT. But, the total number of wooden pillars seized from the export consignment was 498. Mr. Ramesh who was looking after the entire affairs of M/s. Artisan's Welfare Society have accepted that he purchased the wooden pillars from Mr. M. Sirasudheen and other traders in and around

Karaikudi where these pillars were reportedly dis-mantled from the old houses and that he thought that there pillars were made of country wood and the carpenter who worked in their society had said that these items were made of country wood. He has named only one trader viz., Mr. M. Sirasudheen from whom he had purchased a miniscule number of prohibited goods but he failed to name other traders who supplied major quantity of these goods. A scrutiny of the shipping bill and the invoice connected with this consignment indicate that the entire value of the export consignment is an account of the wooden pillars. It is also interesting to note that in the packing list, he has indicated the list of items exported as given below:-

Description of goods	Qty.	Unit Price	Amount in USD
Teakwood Cupboard	9	151.11	1360
Pillar Tops	270	2.91	785.7
Teakwood Table	2	95.15	190.3
Teakwood Book Self	4	130.21	520.85
Wooden Pillars	137	22.4	3068.29
Teakwood Chairs	5	98.97	494.86
Total	427		6420.00

Thus, he has declared the type of wood which was used in making the cupboard, table, book shelf or chair but not the wooden pillars. Mr. Ramesh has also failed to verify the antecedents of the purchaser and these goods were consigned to a packaging and printing company in China.

9. The Ld. Advocate has argued that the penalties under Section 114(i) and 114 AA does not apply to the facts and this is not the case where no goods are exported but only

documents are created and the penalty imposed is exorbitant and disproportionate. We find that the original authority has not imposed penalties under Section 114 (i) and also 114 AA of the Customs Act, 1962. The relevant provisions are extracted below:-

“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;”

“SECTION [114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, 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.]”

10. We find that the Ld. adjudicating authority has ordered the confiscation of 6.78 MTS of red sanders valued at Rs.33,90,000/- under Section 113(d) of the Customs Act, 1962 which were attempted to be exported out of India in contravention of the provisions of the Customs Act, 1962 read with the Foreign Trade (Development Regulation) Act, 1992. That there is no dispute that Mr. Ramesh, Treasurer of M/s. Artisan's Welfare Society has rendered the goods under export liable for confiscation by his various acts of omission and commission. In any case, the exporter is not challenging the confiscation of the impugned goods. As such he is liable for penal action under Section 114(i) of the Customs Act, 1962. However, regarding penal action under Section 114 AA of the

Customs Act, 1962 investigation could not prove that the exporter knowingly or intentionally have made any false declaration statement or produced documents. All along he has been pleading that he is ignorant and is not aware that these goods are prohibited for export.

11. Considering the overall facts, that have emerged in this case, we are of the opinion that the penalty imposed is disproportionate and excessive as the confiscated goods were valued at Rs.33,90,000/- only. In order to meet the ends of justice in this case, we feel it appropriate that the penalty imposed is reduced to Rs.5,00,000/- under Section 114(i) of the Customs Act. Thus, the appeal is partially allowed.

(Pronounced in court on 20.07.2023)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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