

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 50639 OF 2021

[Arising out of the Order-in-Appeal No. D-I/EXP/NCH/667/2020-21 dated 06/10/2020 passed by Commissioner of Customs (Appeals), New Customs House, New Delhi.]

Shri Krishna Chandra Agrawal,Appellant
R/o 61, Seva Kunj, Brindavan,
Distt. Mathura,
Uttar Pradesh – 281 121.

Versus

Deputy Commissioner of Customs (SIIB)Respondent
Office of the
Commissioner of Customs (Export),
New Customs House, IGI Airport,
New Delhi.

APPEARANCE:

Shri Durgesh Sharma, Advocate for the appellant.
Shri Girijesh Kumar, Authorized Representative for the
Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 58609/2024

DATE OF HEARING : 19.08.2024
DATE OF DECISION: 24.09.2024

P.V. SUBBA RAO

The order-in-appeal¹ dated 06.10.2020 passed by the Commissioner of Customs (Appeals), New Delhi is assailed by Shri Krishna Chandra Agarwal², proprietor of Krishna Export Trading, Mathura in this appeal. In the impugned order, the

1. Impugned order
2. Appellant

Commissioner (Appeals) upheld the order-in-original³ passed by the Deputy Commissioner and dismissed the appeal filed by the appellant.

2. The facts which lead to the issue of the impugned order are as follows.

3. An airway bill dated 02.08.2012 was filed in the Air Cargo Exports through Fedex courier and it was destined to Hongkong. Suspecting that the consignment was containing some goods prohibited for export, the officers detained the consignment by issuing a Detention Memo dated 03.08.2012 and requested the Wildlife Crime Control Bureau⁴ to submit a report about the wood that was being exported. In its report dated 12.10.2012, WCCB reported that the declaration in the Airway Bill (AWB) that it was pine wood was incorrect and it appears to be Red Sanders, the export of which is prohibited under the Foreign Trade Policy. The customs officers seized the consignment under section 110 of the Customs Act, 1962⁵ under a panchnama dated 16.11.2012 and handed over the consignment to the custodian of the air cargo complex for safe custody.

4. After recording statements and completing the investigations, a show cause notice⁶ dated 30.04.2013 was

3. OIO
4. WCCB
5. Act
6. SCN

issued to the appellant and to the courier M/s. Fedex. The appellant did not submit any reply but appeared for personal hearing on 19.07.2018 and claimed that the consignment was booked in the name of his firm by his employee Brij lal without his authorization.

5. The Deputy Commissioner passed the OIO confiscating the prohibited red sanders which was attempted to be exported under section 113 of the Customs Act and imposed penalties of Rs. 2,43,000/- on the appellant and Rs. 80,000/- on Fedex under section 114 of the Customs Act. This order was upheld by the impugned order.

Submissions on behalf of the appellant

6. The following submissions were made on behalf of the appellant:

- i) The appellant's employee Brijlal had booked the consignment without his knowledge and therefore, the appellant was not responsible.
- ii) The courier Fedex had accepted the shipment without declaration of the quality of goods in question and therefore, Fedex is responsible.
- iii) The confiscated goods were not red sanders at all and therefore, the appellant requested that the sample may be got tested but this was not done.
- iv) The so called red sanders was wood of poor quality and it cannot be of value exceeding Rs. 11,700/-

- v) The appellant had been exporting for the past 10 to 15 years and never attempted to export prohibited goods and therefore, maximum penalty should not be imposed.
- vi) The red sanders were held to be of the value of Rs. 81,000/-and penalty equal to three times this value was imposed on the appellant and penalty equal to this value was imposed on Fedex. If these are added, it will be four times the value of the confiscated goods whereas Section 114 of the Customs Act provides for maximum penalty of only upto 3 times the value of the goods.
- vii) The appellant can only be responsible for his acts and not for the acts of Brijlal and the employee of Fedex without his consent and knowledge and authorisation.
- viii) He had not signed the Airway bills as can be seen from the copies enclosed.
- ix) The appeal may be allowed and the penalty of Rs. 2,43,000 imposed on the appellant may be set aside.

Submissions on behalf of the Revenue

7. Learned authorised representative for the Revenue made the following submissions:

- i) The Airway Bill was filed through Fedex to export goods which were intercepted.
- ii) The Airway bill was filed in the name of the appellant.

- iii) On examination, the goods were found to be red sanders- an endangered species of tree whose wood is prohibited for export from India.
- iv) The WCCB has reported after examining that it was red sanders.
- v) The appellant's submission is that since he had not personally gone to file the Airway Bill and it was filed and signed by his employee Brijlal, he is not responsible which cannot be accepted. The appellant is fully responsible for the actions of his employees.
- vi) The appeal may be dismissed and the impugned order may be upheld.

8. We have considered the submissions advanced by the learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records.

9. The appellant's case, in brief, is that although the Airway Bill was filed in the name of his firm through its courier agency Fedex, he is not responsible because it was filed by his employee Brijlal without his authorisation. Brijlal and the employee of the Fedex who accepted the consignment must be held responsible. The penalty imposed on him must be set aside.

10. It is a well established legal principle that for any action of the employee, the employer is responsible. It is not the case

that Brijlal filed the Airway Bill on his own account or in the name of somebody else.

11. The submission of the appellant that he had not authorised Brijlal to file this Airway bill cannot be accepted. An employee works on the directions of his employer and no employer issues written authorisations to his employee to file every paper or document. It is presumed that the employee worked at the behest of his employer unless the contrary is proved. There is nothing on record to show that Brijlal acted on his own, except the unsubstantiated assertion by the appellant.

12. It also needs to be noted that the Airway Bill was filed in the name of the appellant on 03.08.2012 and it was intercepted and was seized on 16.11.2012. In his statement made on 31.01.2013, the appellant said that Brijlal had left the job about two months before and that he did not know his address. It is unthinkable that if the employee attempts to smuggle goods in the name of his employer without his consent in August 2012, the employer would continue to keep him employed until November 2012.

13. Even in the appeal before us, the appellant disputed the nature of the goods attempted to be exported through the Airway bill and their value. If they were not his goods but were exported by Brijlal on his own using the appellant's name, the

appellant would not know anything about the goods, let alone their value.

14. From the facts of the case, we have no manner of doubt that the airway bill was filed in the name of the appellant by his employee on his directions and when the consignment was caught, the appellant attempted to shift the blame to his employee. This submission cannot be accepted.

15. The appellant also contested the quantum of penalty on the ground that if the penalty imposed on him and the penalty imposed on Fedex are added, they would exceed the limit laid down under section 114 of the Customs Act. This submission is erroneous. Section 114 of the Customs Act lays down the penalty imposable on each person and not the sum of penalties imposed on all persons.

16. In view of the above, we find no reason to interfere with the impugned order. The impugned order is upheld and the appeal is dismissed.

(Order pronounced in open court on 24/09/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)