

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

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 52776 of 2019-SM

(Arising out of order-in-original No. 07/ICD-PPG/BBG/Commr/2017 dated 04.01.2018 passed by the Commissioner of Customs, ICD, New Delhi).

Ramvir Singh

M/s Ramvir CHA
House No. 1808, Sector-2
Distt- Palwal, Haryana.

Appellant

VERSUS

Commissioner of Customs

Inland Container Depot
Patparganj, New Delhi.

Respondent

APPEARANCE:

Dr. Ashutosh, Advocate for the appellant

Sh. Ravi Kapoor, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50381/2022

**DATE OF HEARING: 16.11.2021
DATE OF DECISION: 02.05.2022**

ANIL CHOUDHARY:

The issue involved in this appeal is whether penalty of Rs.1 lakh has been rightly imposed on the appellant –CHA under Section 114(i) of the Customs Act.

2. Brief facts of the case are that, one M/s All Craft Exports, a Proprietorship firm of Smt. Asha Narang of Saharanpur, U.P. having IEC No. 3313007601 filed shipping bill No. 9816453 dated 01.02.2014, intending to export 320 Nos. of wooden floor lamps and 70 Nos. of Jaipur Bench valued at USD 9380 (factory stuffed & sealed) to M/s Shining Ocean International (Hongkong) Group

Company Limited, Hong Kong. The shipping bill alongwith check list, invoice, packing list and other documents were filed through the appellant –CHA.

3. Sh. Sanjay Kumar, G-Card Holder of M/s Ramvir, CHA, presented the export documents i.e. Check List of Shipping Bill, Invoice, Packing List, Annexure-C, CENVAT declaration and Carting Sheet; that during examination, it was observed that there were 463 packages, instead of 390 packages as declared by the party in the Shipping Bill, Invoice & Packing List; that it was observed that out of 70 (Seventy) numbers of Jaipur Benches, 50 benches were heavier; that on examination of the heavier benches - hollow space under the benches, covered by nailing them with ply-board, wooden logs having fragrance like Sandal wood were found concealed; that rest of the 20 benches were of light weight nothing was found concealed.

3.1 That two types of wooden floor lamps stuffed with dry grass were found i.e. one made of wooden logs and other made of Hard Paper Board; that round shape ordinary painted wood pieces were nailed around the wooden logs and lamp shade with holder fixed temporarily on its top without any electrical wiring, in such a manner that it looked like a wooden floor lamp; that on detailed examination, the wooden logs appeared to be of Red Sanders Wood whereas the second type of Wooden Floor Lamp was found to be made of normal Hard Paper Board; that there were 15 numbers of small wooden logs round shaped ordinary painted wood pieces wrapped with blue colour polythene and nailed around; that the wooden logs appeared to be of

Red Sanders Wood; that there were 77 numbers of big wooden logs wrapped with brown colour paper & dry grass and packed in white colour plastic sheet. On examination, it was found that big wooden logs were also appeared to be of Red Sanders Wood. The said goods were detained vide Panchnama dated 06.02.2014 for further investigation.

3.2 That as per schedule 2 of ITC (HS), the export of Sandal wood in log form and Red Sanders wood in any form is prohibited for export and are liable for confiscation under section 113 of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Development and Regulation) Rules, 1993 and provision of Indian Forest Act, 1927.

4. That weighment of the detained goods was conducted on 08.02.2014 on electronic weighing machine (installed in the export warehouse) in the presence of Sh. Sanjay Kumar - "G" Card holder of M/s Ramvir CHA, Shri Atul Kumar - Warehouse Executive, Sh. Sanjay Kumar Bhardwaj - Executive, Sh. Ravinder Singh - Deputy Manager of the Custodian. The detail of weighment of the goods found was as per table given below:-

Sl. No.	Description	Gross Weight (in Kgs.)	Net Weight (in Kgs.)
1.	Small Wooden Logs of Red Sanders Wood	146	133
2.	Big Wooden Logs of Red Sanders Wood	3515	3348
3.	Sandal Wood Logs (Concealed in 50 nos. of Jaipur Bench)	731	722
4.	Wooden Floor Lamp made of Red Sanders Wood	1623	1287
	Total	6015	5490

5. That in response to the letter dated 10.02.2014 issued by the investigating officers addressed to the Regional Deputy Director, Wild Life Crime Control Bureau, New Delhi, Ms. Aarti Singh, Wild Life Inspector, Wild Crime Control Bureau visited ICD Piyala on 12.02.2014, inspected and examined the aforesaid goods and submitted Identification Report vide F.No. 2-113/12/WCCB/NR dated 12.02.2014 which is reproduced as under:

“Wooden logs were found to be of Sandal Woods most probably of the species (*Santalum album*) and Red Sanders Wood (*Pterocarpus santalinus*). As per ITC (HS) provisions 2013-2014 the export of wood in general in the form of logs, chips, flakes, powder etc. is prohibited for export. In particular Chapter 44 prohibits the export of Red Sanders and the export of sandal wood logs is also prohibited. As per CITES also the export of Red Sanders cannot be allowed without a CITES export permit as it is listed in Appendix-II of CITES”.

5.1 That on the basis of Identification Report of Wild Life Inspector, the detained goods were converted into seizure under Section 110 of the Customs Act, 1962, vide Seizure Memo dated 12.02.2014. The seized goods were handed over to Custodian M/s GRFL, ICD Piyala, Ballabgarh for safe custody.

5.2 That further, for critical analysis of the type of wood, the representative samples of the woods were forwarded to Forest Research Institute, New Forest, Dehradun-248006. Ms. Sangeeta Gupta, Scientist, Wood Anatomy Discipline, Botany Division, Forest Research Institute, Dehradun, vide her letter No. 70/2014-WA/9-0-4(14) dated 30th May 2014 submitted the identification report confirming the samples to be of *Pterocarpus santalinus* (Red sanders) & *Santalum album* (Sandal Wood).

5.3 That the Assistant Director (CI), Directorate of Revenue Intelligence, D-Block, I.P. Bhawan, 7th Floor, I.P. Estate, New Delhi-110002 vide letter No. DRI/HQ-GI/338/XVII/Misc -13/2014 dated 14.11.2014 provided the value of seized Red Sander Wood at Rs. 10 Lakh per Metric Ton.

6. That during the course of investigation, statements of following persons was recorded under Section 108 of Customs Act, 1962.

6.1 Statement of Sh. Sanjay, G-Card Holder of M/s Ramvir CHA, was recorded on 06.02.2014, wherein he inter-alia stated that they had filed Shipping Bill No. 9816453 dated 01.02.2014 and presented to the Custom Department for clearance of the export goods; that original copy of invoice & packing list were given to him by the driver of vehicle No. HR-47-N-8885 (who brought the consignment from the exporter in container No. YMLU-8777032); that the name of the driver was Ramdavan and his mobile NO. was 9940855299; that the export documents were received on their e-mail ID on basis of which they had filed the Shipping Bill; that he did not know regarding Sandal Wood & Red Sanders Wood concealed in the said shipment.

6.2 Statement of Sh. Ramvir - CHA was recorded on 07.02.2014 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that he was "F" Card holder and proprietor of the CHA firm; that his residential address was Village-Piyala Asavati, Faridabad and office was located at A-8/C, Room No. 26, Viswakarma Colony,

Tughlakabad; that Shipping Bill No. 9816453 dated 01.02.2014 was filed by his firm online on receipt of the Invoice and Packing List from Md. Hasan Khan, Proprietor of M/s Allied Shipping & Logistic through his Email ID info@alliedshipping.in; that for compliance of KYC he had taken the documents from Md. Hasan Khan viz. (i) Authority letter and KYC Form affixed with the photo, (ii) Self attested copy of IEC and (iii) Self attested copy of PAN card; that service of transportation and container booking etc. were done by Md. Hasan Khan and they had to do only related to Customs clearance.

6.3 Md. Hasan Khan, S/o Late Subhan Khan, Proprietor of M/s Allied Shipping & Logistic in his statement dated 10.02.2014 inter alia stated that his permanent address was Back of Masjid Motijharan, Sambalpur, Orissa; that he was staying in Delhi since last 10 years and worked with M/s United Cargo Agency, M/s Vikas Cargo Agency, M/s Paramount Shipping & Logistic, M/s Speed Shipping & Logistic upto April, 2013 and from May 2013 he started his own work in the name of M/s Allied Shipping & Logistic and got this firm registered with Service Tax also; that he went to Saharanpur in the month of November, 2013 for sales promotion and met with many exporters; that he also met Sh. Aman and Sh. Shubham (Rahul) of M/s Indus Exports, Street Town Hall, Ambala Road, Saharanpur, U.P., Telephone No. 0132-2645958; that he received several calls from above-said persons requesting for Freight and Transport rate/ quotations; that he again met above said persons on 28th January, 2014 at the residence of Sh. Aman; that they told him that M/s All Crafts Export was a new company through which they wanted to do export and they also

wanted to export goods to Hongkong; that he had never seen or met Ms. Asha Narang, Proprietor of All Crafts Exports, Saharanpur; that they had given the documents viz (i) self-attested copy of IEC, (ii) Original AD Code letter, (iii) self-attested copy of PAN card, (iv) KYC Form, shipping line original on 28.01.2014 at their residence i.e. near Fire Brigade Office, Back of ICICI Bank, Street Town Hall, Ambala Road, Saharanpur; that other documents like Invoice and Packing List were receiver by Email ID allcraftexports@gmail.com from them; that Mobile No. of Sh. Aman were 09997146419, 09897665051 and Mobile No. of Sh. Shubham (Rahul) was 09058988313.

7. Statement of Md. Hasan Khan, Prop. of M/s Allied Shipping & Logistic was recorded on 10.02.2014 who inter alia stated that he belongs to Sambalpur, Orissa and staying in Delhi for the last ten years after working with three four logistic freight forwarding companies. He started his own venture in the name of M/s Allied Shipping & Logistic from May, 2013. He registered with Service Tax Department. He visited Saharanpur in the month of November, 2013 for sales promotion and met many exporters including Sh. Aman and Sh. Shubham (Rahul) of M/s Indus Exports, Saharanpur. That he received several calls from these persons requesting for freight and transport rate/ quotation. He again met with these two persons on 28.01.2014. These persons told him that M/s All Crafts Export was a new company through which they wanted to export goods to Hong Kong. He had never met with Ms. Asha Narang, Prop. of M/s All Crafts Export. That these persons have given him the documents namely (i) self-attested copy of IEC , (ii) Original AD code letter, (iii)

self attested copy of PAN card, (iv) KYC form, shipping line original on 28.01.2014 at their residence in Saharanpur. The other documents like invoice and packing list were received by e-mail from id - allcraftexports@gmail.com. He also gave the mobile numbers of Sh. Aman and Mr. Shubham.

8. In follow up action the officers searched the residence of Sh. Aman Sethi S/o Ashok Sethi, who is husband of Ms. Asha Narang, on 14.02.2014. At the time of search Sh. Sanjay Kumar, 'G' Card holder of the appellant, Md. Hasan Khan and Sh. Ramdhavan (Driver of the Truck) were also present with the officers. Md. Hasan identified the residential premises of Sh. Aman Sethi and Sh. Ramdhavan identified the person who managed the loading of the goods in the container at Saharanpur.

9. At the premises of Sh. Aman the officer found that a portion of the building was used as residence and rest of the building is used as workshop. Sh. Aman Sethi was not found and his father attended such proceedings. Some records were resumed under panchnama.

10. Statement of Sh. Ashok Kumar Sethi was recorded who inter alia stated that M/s All Craft Exports was proprietorship concern of Ms. Asha Narang W/o Sh. Ashok Narang aged about 50 years. She was the mother-in-law of his elder son Sh. Aman Sethi and resides at Kishanpur, Saharanpur. The said firm was dealing in handicraft goods. He knew Md. Hasan Khan and met him when he came at his residential premises to meet his son Sh. Aman Sethi in connection

with some business. He also knew Sh. Ramdhavan- Driver of vehicle No. HR47M-8885 who had come alongwith the said vehicle and Container No.YMLU8777032 to Saharanpur on 04.02.2014 for loading of goods to be exported by M/s All Craft Exports. The officer tried to contact him (Sh. Aman Sethi) on his M. Phone but his phone was found switched off. He further assured to send his Son Sh. Aman Sethi and Ms. Asha Narang to Customs office to join the investigation.

11. In the course of search at the residence of Ms. Asha Narang, the officers resumed some documents under panchnama. At the time of search Ms. Asha Narang was not present and the search was conducted in the presence of Sh. Sunder Lal, landlord of the premises.

12. Statement of the Driver of the truck - Sh. Ramdhavan was recorded on 28.02.2014 who was working in M/s ARD Transport Company, Concor Building, New Delhi. He inter alia stated that on 03.02.2014 he loaded the empty container No.YMLU8777032 on vehicle No. HR47M8885. He reached Saharanpur on 04.02.2014. He contacted Sh. Aman Sethi who told him that the vehicle cannot reach the factory premises, and thus loading will be done enroute and accordingly he was directed to sit in the vehicle while the loading is completed. Thereafter, a closed body truck came containing cartons and benches and stuffing done in the container. That the container was stuffed and its door was closed and sealed with line seal in his presence by Sh. Aman Sethi and his father. They retained one copy of bulity and another copy was given to him after putting their

signature. They also gave him invoice and packing list. Thereafter he left Saharanpur and reached at ICD Piyala, Ballabgarh. The sealed container alongwith invoice and packing list was handed over at ICD Piyala ON 06.02.2014.

13. Statement of Sh. Rattan Goel, prop. of M/s ARD Transport Company was recorded, he stated that he booked the vehicle No. HR47M-8885 for transport of goods from M/s All Craft Exports, Saharanpur, on direction of Md. Hasan Khan and issued bulthy No. 336 dated 03.02.2014 and freight was Rs.30,000/-. He had deputed his Driver Sh. Ramdhavan to pick up the container from Dadri for Saharanpur. On 10.02.2014, Md. Hasan Khan has told him that the payment against the transportation of the said consignment may be taken from Sh. Aman Sethi. He was not aware if any prohibited or restricted goods like Sandal wood or red sanders wood were stuffed by M/s All Craft Exports. As per information, sealed container was factory stuffed and the said container was handed over by Sh. Ramdhavan at ICD, Piyala on 06.02.2014.

14. Statement of Sh. Shubham Narang S/o Sh. Ashok Narang was recorded on 27.05.2014 wherein he inter alia stated that Ms. Asha Narang, Prop. of M/s All Craft Exports was looking after the purchase and despatch of wooden handicraft from open market. He further stated that he has prepared the documents i.e. invoice No. AC01 dated 30.01.2014 and packing list for export consignment containing modern floor lamp - 320 pcs., Jaipur Bench - 70 pcs., valued at USD 9380. He knew Md. Hasan Khan as introduced by his

brother-in-law. Thereafter, he was in contact with Md. Hasan Khan for export of goods to Hong Kong. That he destroyed the sim card of M. No. 9058988383, which was being used by him till February, 2014. He has purchased the goods under export from one Sh. Sanjay Singh of Khata Khari, Saharanpur which were stuffed in container No. YMLU-8777032.

15. Statement of Sh. Sanjay Singh S/o Sh. Prabhakar Singh was also recorded on 27.05.2014, wherein he inter alia stated that he accompanied Sh. Sbhuhham Narang to the Customs Department as he was promised Rs.5,000/- for falsely deposing that the goods under export pertained to him.

16. Statement of Ms. Asha Narang, Prop. of M/s All Craft Exports was recorded on 23.12.2014 wherein she inter alia stated that she has studied upto class 12th and has been residing with her husband at Dwarkapuri, Saharanpur since the beginning of year, 2014. She has no connection with M/s Indus Exports, she has no other firm other than M/s All Craft Exports, which was opened as her son who has completed his studies, to start his own business. She does not know M/s Shining Centre International (Hong Kong) Group Company Ltd., and how order of wooden floor lamp and Jaipur Bench was placed on her firm. She admitted that she has provided KYC documents, AD Code letter, copy of PAN card and other export documents duly signed by her, but she does not know Md. Hasan Khan. Although, she signed the documents, but not aware of the contents or the source of procurement of the goods under export. On

being shown the panchnama dated 12.02.2014, with regard to inspection and seizure of the goods under export, she stated that she cannot say anything. Further, on being shown the statement of Sh. Ashok Kumar Sethi alongwith the panchnama drawn at his residence on 14.02.2014 with respect to recovery of documents of M/s All Craft Exports, she stated that she does not know anything about the documents.

17. In response to several summons issued to Sh. Aman Sethi for appearing and joining investigation, he did not appear. However, his wife Smt. Nancy Sethi by letter dated 24.03.2014 informed that her husband is not in position to attend the office for recording his statement, he has been advised bed rest and is suffering from allergy. Similar intimation was also sent by letter dated 20.04.2014.

18. Summons were also issued in the month of March, April and June to Sh. Ashok Kumar Sethi for appearance and tendering statement but he failed to appear and his wife by letter dated 15.04.2014 informed that Sh. Sethi has gone on pilgrimage. In response to summons issued to Sh. Shubham in May and June, 2014 and also on Sh. Sanjay Singh both failed to appear for further investigation.

19. Thereafter, the Revenue issued show cause notice dated 27.06.2014. Revenue also obtained call detail records during investigation in respect of M. No. 9997146419 and 9897665051 (used by Mr. Aman Sethi) and M. No. 9999970173 (used by Mr. Ramvir Singh, CHA) were scrutinised.

20. In the course of search at the residential premises of Sh. Aman on 14.02.2014, and rubber stamp of Customs, ICD Moradabad was also found, indicating that Sh. Aman Sethi and his father Sh. Ashok Sethi and Mr. Shubham were involved, had colluded, and involved in forgery. Further, Bill of lading for consignment of 2800 kg. of handicraft of wooden art, from M/s Arav Exports to M/s Shining Ocean International (Hong Kong) Group Company Limited was also resumed, which indicated that Mr. Aman was well aware about the consignor and thus evidently have colluded in export of prohibited sandal wood/ red sanders.

21. From the scrutiny of call detail records, it appeared that there were frequent calls between Mr. Aman Sethi and Md. Hasan Khan during the period December, 2013 till 15.02.2014. Thus, Md. Hasan Khan would have apprised the development regarding detention of export goods. It is also evident that Mr. Aman Sethi was in regular contact with Ms. Asha Narang or Mr. Shubham on their mobile number. It appeared that appellant - CHA was in touch with the freight forwarder, and not in touch with the other persons.

22. Thus, it appeared to Revenue that Mr. Aman is son-in-law of Ms. Asha Narang and brother in law of Mr. Shubham, have actively colluded in forgery and attempted export of prohibited goods. It appeared that Mr. Aman was the master mind in the whole transaction. It further appeared that the appellant CHA was not in direct contact with the said exporters, and they have accepted the filing of export documents through Md. Hasan Khan, the freight

forwarder. Accordingly, as per show cause notice dated 03.02.2015 issued against Ms. Asha Narang of M/s All Craft Exports and others it was proposed to confiscate 4678 Kg. red sander valued at Rs. 28,60,800/- in log form, 722 kgs. of sandal wood valued at Rs.12,99,600/- seized under panchnama dated 12.02.2014 under Section 113(d) and (e) of the Act, with further proposal to confiscate 189 pcs. of wooden floor lamps and 70 pcs. of Jaipur Bench, totally valued at Rs.47,68,000/- with further proposal to impose penalty under Section 114(i) and 114AA of the Customs Act. Penalty was also proposed on Sh. Sbhuham Narang, Md. Hasan Khan, Prop. of M/s Allied Shipping & Logistics, Sh. Ramvir Singh - CHA.

23. The show cause notice was adjudicated on contest wherein this appellant also contested and filed their written submissions. So far this appellant is concerned, the Adjudicating Authority observed that the appellant have been negligent in performing their duty as a CHA, as they have accepted the work order through the freight forwarder, Md. Hasan Khan and they received all the documents like KYC etc. through him only. The appellant CHA had no contact with the exporter. As the appellant was accepting the work for the first time for the said client, he should have been vigilant and taken reasonable care to receive the documents directly from the exporter. Accordingly, the Adjudicating Authority held that this appellant was liable for penalty under Section 114(i) and imposed penalty of Rs. 1 lakh penalty under Section 114AA was dropped observing that the same is not warranted. Penalty was also imposed on the co-noticees with absolute confiscation of the seized goods.

24. Assailing the impugned order on behalf of the appellant, Sh. Ashutosh, Ld. Counsel for the appellant urges that the appellant in his role as a CHA have obtained all the necessary documents, as has been noticed hereinabove for verification of the genuineness of the said exporter. It is further urged that the CHA is not empowered to inspect the goods and hence no need to verify the goods being exported. More so, as in the facts of the present case, the goods were factory stuffed and sealed by the officers of the Department. As the goods were factory stuffed and sealed, there was no occasion for the appellant to have doubt as regards the genuineness of the declaration made by the exporter, as the same were certified by the Department officer. Further, none of the documents received by the appellant CHA with regard to identity and genuineness of the exporter, were found to be untrue or false, including the import export code (IEC). Further, there is no allegation on this appellant, have received any extra ordinary remuneration in handling the said consignment other than normal remuneration. Thus, for want of consideration the allegation of collusion is not made out against this appellant. Further, there is no allegation in the show cause notice that this appellant having knowledge of the nature of goods attempted to be exported, filed the shipping bill. Further IEC code is a proof of locus standi of an exporter – importer. Thus, there is no case of lack of diligence to ascertain the correctness of the documents received on the part of the appellant – CHA. As the appellant has received the work through a freight forwarder Md. Hasan Khan and they received the complete set of documents, he had no reason to

doubt of any malpractice and/ or attempted of export of prohibited goods. Accordingly, he urges that no case of abetment is made out against the appellant. Accordingly, he prays for allowing the appeal with consequential benefits.

25. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

26. Having considered the rival contentions, I find that the appellant has received full set of documents through the freight forwarder and there was no reason for him to doubt the genuineness of the exporter. Further, as the goods were factory stuffed and sealed, the appellant - CHA has no reason to doubt any malpractice on the part of the exporter. Thus, I find that under the facts and circumstances, no case of abetment in attempted export of prohibited goods, against the appellant is made out.

27. Accordingly, I set aside the impugned order and allow the appeal.

(Pronounced on 02.05.2022).

(Anil Choudhary)
Member (Judicial)