

2014 (3) ECS (250) (Tri -Ahd.)

In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench, Ahmedabad

MR. YAKUB ISHAQ GANDHAR

Vs.

C.C., JAMNAGAR

Date of Hearing/Decision:27.06.2014

Appeal No.C/255/2012-SM

(Arising out of: OIO No.04/Commr/2012, dt.31.07.2012 Passed by
Commissioner of Customs, Jamnagar)

Appearance:

Shri R. Subramanya, Adv.

For the Appellant

Shri Manoj Kutty, Superintendent (AR)

For the Respondent

CORAM:

Hon'ble Mr. H.K. Thakur, Member (Technical)

Order No. A/11160/2014, dt.27.06.2014

" From his own statement, it is apparent that appellant was well aware of the fact the Red Sanders wood was loaded on to the Vessel MSV Ramban at Veraval which was subsequently towed to Gulf countries and also that he was aware of the fact that taking out Red Sanders wood from a port in India to a place outside India was not permitted. He was also aware that such wood was not to be declared to the Customs. The statements of the appellant recorded by the investigation were never retracted but have also been corroborated by the other statements. In the case of smuggling and clandestine activities under the Customs Act it is difficult to expect that other documentary evidences will be created by the persons involved and in such cases only corroborative statements have to be relied upon. In view of the above observations, appellant does not have a case and penalty was correctly imposed by the adjudicating authority. Accordingly, appeal filed by the appellant is required to be dismissed and penalty upheld."(Para 4.1)

Per: H.K. Thakur:

1. This appeal has been filed by the appellant against a penalty of Rs.1.5 lakhs imposed by the appellant against OIO No. 04/Commr/2012, dt.31.07.2012 / Section 114 (i) of Customs Act, 1962. As a result of Stay Order No.S/2552/WZB/AHD/2012, dt.14.12.12, the appellant was ordered to pre-deposit an amount of Rs.15,000/- which was

complied.

2. Shri R. Subramanya (Advocate) appearing on behalf of the appellant argued that appellant was the Tindal of Vessel MSV Ramban which was manufactured in India and found abroad. It was his case that appellant was not aware of the contrabond nature of goods and that there is no independent evidence, except some statements, to corroborate that Red Sanders wood was kept in MSV Ramban. That allegations against the appellant are only based on the statements of Shri Kishore M. Bhanushali owner of MSV Ramban and Shri Asgar Hussain S. Subhania of Sikka.
3. Shri Manoj Kutty (AR) appearing on behalf of the Revenue made the Bench go through the statement of the appellant recorded on 21.02.2011 and 22.02.2011 as per Para 15 of the show cause notice dt.01.07.2011. He also relied upon the statement dt.20.01.2011 of Shri Yakub Amod Undha of Sikka and the Panchnama dt.20.01.2011 recorded in Para 16 of the show cause notice dt.01.07.2011. Ld.A.R. strongly argued that the appellant was well aware of the contrabond nature of Red Sanders wood and has also not retracted his statements. That penalty was correctly imposed upon the appellant.
4. Heard both sides and perused the case records. The issue involved in the present case is whether penalty under Section 114(i) of the Customs Act, 1962 is imposable upon the appellant. The role played by the appellant in the present proceedings, is contained in Paras 15 and 15.1 of the show cause notice dt.01.07.2011 and is reproduced below:-

"15. A statement of Yakub Ishaq Gandhar resident of near Id e Milas Chowk, Village Sikka, Dist. Jamnagar, Tindal of vessel MSV Ramban having Regn.No.VRL 16224 was recorded on 21.02.2011 and 22.02.2011 (RUD-20 &21) wherein he interalia stated that the owner of the vessel was Shri Kishore M. Bhanushali and he was working for him since 1992; MSV Ramban had been manufactured at Veraval port in March 2010 and registered at Veraval (Registration No.VRL 16224); that he had set sail on vessel MSV Ramban VRL 16224 as its Tindal in the first week of September 2010 from Veraval Port for Dubai; That he had started from Veraval port with his vessel MSV Ramban in an empty condition for Dubai but this being a new vessel it was towed upto Porbander by MSV Krishna Vihar VRL 2418 which was also owned by Shri Kishorebhai; that after waiting at Porbander port for three days his owner's other vessel MSV Krishna Sudama towed his vessel MSV Ramban to Dubai; That during his first voyage from Veraval to Dubai via Porbander at that time he had loaded logs of wood which

belonged to Shri Asghar a resident of his village - Sikka; that all these logs of wood which were more than 100 in number i.e. about 120 each approximately weighing 25 kgs, totally weighing 3000 kgs were brought to Veraval port from Sikka using two Tata Ace which were loaded in the vessel MSV Ramban by himself and with the help of his other seamen; that he had delivered these wooden logs to Sharjah where a person appearing like a south Indian "Malabari" had come to collect them; at that time the said person made him talk to Asghar Hussain on his mobile phone; who instructed him to hand over all the wooden logs to the "Malabari" person; that he knew Asghar Hussain being a resident of his village Sikka; that 15 days earlier to leaving for Veraval from his village Sikka, Asghar Hussain had told him about the wooden logs to be carried in his vessel; that Asghar was aware that he was about to sail to Dubai from Veraval in the new vessel MSV Ramban; that Asghar had told him that the wooden logs were meant for making furniture of the cabin of a launch, and was to be delivered at Sharjah where it would be collected by his person; that at the time of his departure for Dubai, Asghar Hussain personally came with two Tata Ace vehicles loaded with wooden logs to Veraval port from where the same were loaded in his vessel; that he had received Rs.5000/- from Shri Asghar for the wooden logs.

- 15.1 That he accepted the fact that taking out any material or wood from a port in India to Sharjah was not permitted and he admitted that he had done this wrongful activity; that the wooden logs transported from Veraval and delivered by him to Sharjah on instructions from Asghar were neither declared to the Customs nor any documents were submitted in this regard before the Customs; That he logs were not shown in the cargo manifest for the vessel i.e. EGM declared before the Customs authorities; that he had not taken permission from his owner Shri Kishore bhai Bhanushali or informed him about the consignment of wooden logs transported by him; that he was to deliver this consignment of logs to Shri Syed Khatal, carpenter - an Araba Sharjah but at the time of delivery a "Malbari" came to receive the logs and on being confirmed by Asghar it was taken away by him; that he admitted that taking any wooden logs in such a large quantity without declaring the same before Customs was a crime/offence under the Customs Act and this was known to him and such crime/offence had been committed by him; that when he came with his vessel to Hamaria Port near Dubai four days

back it was informed by Shri Abidbhai, representative of the owner that the logs carried by him were Red Sanders wood; that the wooden logs so carried by him were not known to anyone except him and Asghar; that even the tindel of MSV Krishna Sudama was not aware of the same; that the person accompanying Asghar at the time of delivery of the logs at Veraval was Jafar Noormammad Undra who was a resident of Sikka.”

- 4.1 From his own statement, it is apparent that appellant was well aware of the fact the Red Sanders wood was loaded on to the Vessel MSV Ramban at Veraval which was subsequently towed to Gulf countries and also that he was aware of the fact that taking out Red Sanders wood from a port in India to a place outside India was not permitted. He was also aware that such wood was not to be declared to the Customs. The statements of the appellant recorded by the investigation were never retracted but have also been corroborated by the other statements. In the case of smuggling and clandestine activities under the Customs Act it is difficult to expect that other documentary evidences will be created by the persons involved and in such cases only corroborative statements have to be relied upon. In view of the above observations, appellant does not have a case and penalty was correctly imposed by the adjudicating authority. Accordingly, appeal filed by the appellant is required to be dismissed and penalty upheld.
5. Appeal filed by the appellant is dismissed.
(Operative portion of the order pronounced in Court)