IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75641 of 2021

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AKR/78/2021 dated 25.01.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Samudera Shipping Line (India) Pvt. Ltd. : Appellant
402, 4th Floor, Rustomjee Aspiree,
Express Eastern Highway, Sion,
Mumbai – 400 022

VERSUS

Commissioner of Customs (Port) : Respondent
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Biswarup Mukherjee, Advocate
Shri Ramanuj Roy Choudhury, Advocate
For the Appellant

Shri Tariq Sulaiman, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77806 / 2024

DATE OF HEARING / DECISION: 10.12.2024

ORDER: [PER SHRI R. MURALIDHAR]

The facts of the case are that the appellant is acting as a steamer agent carrying out import and export activities on behalf of various clients. On the ground that the appellant had not followed proper procedures and had exported goods for which the Let Export Order (LEO) had been cancelled, it was alleged by the Revenue that the appellant had contravened the provisions of the Customs Act, 1962.

2. After due process, a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 114 of the Customs Act, 1962 was imposed on them vide the Order-in-Original No. Kol/Cus/JC/90/Export/2019 dated 27.09.2019.

2.1. Being aggrieved, the appellant had filed an appeal before the Ld. Commissioner (Appeals) who has dismissed the same vide the impugned order.

3. Being aggrieved, the appellant is before the Tribunal.

4. The Ld. Counsel appearing on behalf of the appellant submits that the exporter had asked them to cancel the first set of documents and wanted to export the same through another shipping line; the appellant, took up this work and subsequently informed them that after 21 days, the same ship would be able to carry the container exported by the exporter. Once again, one more set of documents were prepared. It is pointed out that just before the same was to be loaded, the exporter-CHA informed the appellant that they were planning to cancel the exports; the appellant did not get any further information from the exporter-CHA. He submits that on the other hand, after finding that the website of the Customs showed the details of the container No. TTNU8432288 as "ready for shipment", the appellant presumed that there was no bar for loading the consignment in the concerned ship and accordingly, they loaded the same.

4.1. The Ld. Counsel for the appellant has further taken us through the Order-in-Original dated 27.09.2019 wherein, at paragraph 15, the ld. adjudicating authority has stated that "*export* *remittance has been received at the bank against the above export*" and has allowed regularization of the said shipping bill. He submits that this shows that the actual export had taken place and even the foreign remittance has been received and thus, contends that no specific case has been made out against the appellant.

4.2. Therefore, it is prayed that the present appeal be allowed.

5. The Ld. Authorized Representative of the Revenue submits that though the LEO was cancelled by the Customs authorities, still the appellant had loaded the consignment on the ship, because of which they are liable to be penalized under Section 114 of the Customs Act, 1962. Accordingly, he justifies the penalty imposed on the appellant.

6. Heard both sides and perused the appeal papers.

7. We find that in the Order-in-Original dated 27.09.2019, the ld. adjudicating authority has held that the export remittance had been received against the exported consignment. Further, as per the website details provided by the appellant, it is seen that at Serial Number 22, for the container in question (viz. Container No. TTNU8432288), it is mentioned as "*ready for shipment*". The appellant has shown their bona fides about initial cancellation of the documents and also issuance of no-objection certificate to the exporter-CHA. Subsequently, only after finding the website details with the "*ready for shipment*" remark, they have loaded the consignment.

7.1. It has also been contended by the appellant that it is not the case of the Department that the export had not taken place or that the remittance had not been received. We find that without the clearance of the Customs Officials, even if the appellant had loaded the consignment without proper documents, the final export could not have taken place, unless the LEO is signed by the concerned officials. The fact that the consignment was finally exported shows that at some point or the other, the Customs Officials would have signed the LEO allowing the consignment to be exported out of India. It is also not disputed that the remittance has not been received by the exporter.

8. In such a case, we do not find that the appellant has contravened any of the provisions of the Customs Act, 1962, as alleged.

9. Consequently, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd