Customs Authorities have no jurisdiction to initiate the proceedings for violation w.r.t. Foreign Trade/ Exchange

The CESTAT, Ahmedabad in ***M/s. Janki Dass Rice Mills v. C.C.-Mundra [Customs Appeal No. 10801 of 2021 & Ors. dated July 7, 2022]*** set aside the order passed by the Commissioner (Appeals) confirming the confiscation of goods and imposing penalty for alleged violations of the provisions of the Foreign Trade Policy (**"FTP"**). Held that, the exporter cannot be responsible for the instructions given by the importer regarding the change in the port after the title of the goods gets transferred to the buyer after crossing territorial waters of India.

Facts:

M/s. Janki Dass Rice Mills ("**the Appellant**") is an exporter and had exported rice under disputed shipping bills which were originally booked for Iran. An investigation done by the Revenue Department ("**the Respondent**"), revealed that the consignments were delivered to the UAE. Hence, according to the Respondent it leads to the violation of the provisions of paragraph 2.40 and 2.53 of the FTP.

Thereafter, the Appellant received a Show-Cause Notice ("**SCN"**) dated February 14, 2019, followed by the Order-in-Original (**"the OIO"**) holding that the goods were liable for confiscation under Sections 113 (i) and 113 (d) of the Customs Act, 1962 ("**the Customs Act**"). Further, the Respondent imposed the penalties under Section 114 and Section 114AA of the Customs Act read with Section 11(1) of the Foreign Trade (Development & Regulation) Act 1992 ("**the Foreign Trade Act**"), Rule 11 and 14(2) of the Foreign Trade (Regulation) Rules 1993 ("**the Foreign Trade Regulation Rules**") read with provisions of Section 50 of the Customs Act.

Subsequently, an appeal was preferred by the Appellant which was dismissed vide Order-in-Appeal ("**the Impugned Order**").

Being aggrieved by the Impugned Order, this appeal has been filed.

The Appellant contended that the allegations were based on the statement of people and employees and letters from shipping lines, stating that goods were discharged at Jabel Ali Port in the UAE. During the investigation, the Appellant had always maintained that the goods, though offloaded at Jabel Ali, ultimately reached Iran. The proof of receipt of the goods by the original consignee as well as the remittance as received from the very same consignee was also submitted by the Appellant before the Respondent.

The Appellant further submitted that, once the goods were shipped and the bill of lading was issued, the goods become the property of the purchaser of the goods and the title in the goods become vested with such purchaser i.e. the foreign buyer. The purchaser who held the title to the goods was then free to deal with the goods. Therefore, the change in the port of discharge of the goods after the goods were out of charge and handed over to the shipping company and loaded on the vessel was the prerogative of the consignee/ foreign buyer and thus the Indian Exporter cannot be held liable for any such act, at the behest of the foreign buyer.

Issue:

Whether the Respondent was correct in confirming the confiscation of goods under Sections 113(i) and 113(d) of the Customs Act and imposing penalty?

Held:

The CESTAT, Ahmedabad in ***Customs Appeal No. 10801 of 2021 & Ors. dated July 7, 2022,*** held as under:

- Observed that, all the documents in respect of disputed consignments were in the name of Iranian buyers. There is nothing on record to show that the documents were amended at any stage to permit the import of goods from the UAE. The Respondent

never produced any documentary evidence to show that the export documents produced by the Appellant were false and fabricated.

- Further observed that all the export documents were in the name of Iranian buyers and there was no scope for clearance of the goods in UAE. Furthermore, the Respondent never disputed the consignments in Indian rupees from Iran. In the present matter, the Appellant also produced documentary evidence related to re-exported/transhipments from Dubai to Iran.
- Noted that, the Custom Housing Agent ("**CHA**") had filed shipping bills as per the documents provided by the exporter. The Appellant was working on the instructions of the exporter. As a result, the Appellant's true intentions cannot be questioned. The act of filing the export documents for customs clearance shows that the Appellant have no men's rea and has filed the documents.
- Stated that, in case of alleged violation of the provisions of Foreign Trade Act and Foreign Trade Regulation Rules or relating to foreign exchange, the Customs authorities did not have jurisdiction to issue the SCN for such violations.
- Set aside the Impugned order.
- Held that, in any event of the matter, the goods were ultimately delivered to the buyers at Iran, and there is no justification for imposing penalty upon the Appellant.

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