CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20222 of 2022

(Arising out of Order-in-Appeal No. 532/2021 dated 16.11.2021 passed by the Commissioner of Customs (Appeals), Bengaluru)

M/s. Central Ware Housing Corporation,
Plot No.107/109/epip Zone,
KIADB Industrial Area,
Whitefield, Bangalore-560 066. ....**Appellant(s)**

Versus

Commissioner of Central Tax,
C.R. Building,
Queens Road,
P.B. No.5400,
Bangalore-560 001. ....**Respondent(s)**

APPEARANCE:

Mr. E. Ramesh, Advocate for the Appellant.
Mr. M. Sreekanth, Asst. Commr. (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20809 /2026

Date of Hearing: 08.01.2026
Date of Decision: 03.07.2026

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding penalty imposed on the Appellant under Section 114 Customs Act, 1962.

2. The brief facts are that alleging that an attempt is made by the exporter for export of 'Red Sanders' under the Shipping Bill dated 04.01.2019 filed by Customs Broker M/s. Transorion Logistics Pvt. Ltd.,

proceedings were initiated and recovered 'Red Sanders' from the container on 11.01.2019. On completion of the investigation, show cause notice was issued on 10.07.2019 to the exporter and others. The show cause notice was also issued to the Appellant on the ground that the Appellant failed to deploy their own trailer /vehicle for transhipment of the export consignment in the name of M/s. Om Siva Exporters as stipulated in the Regulation under Handling of Cargo in Customs Area Regulations, 2009 and through such omission, they had abetted the act of smuggling of Red Sanders logs which are liable for confiscation under Section 111(d), (l), (h), (i) and (k) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 114 of the Customs Act, 1962. Accordingly, proposal for penalty was made against the Appellant. Thereafter Adjudication authority as per the Order-in-Original dated 30.12.2020 confiscated the goods and imposed penalty on various persons who were issued with show cause notice. However as far as the Appellant is concerned, Adjudication authority dropped the proceedings with the following observations:-

> *"I find that in the SCN it is alleged that the custodian of CWC-CFS M/s. Central Warehousing Corporation, Bengaluru, have violated the provisions of HCCA Regulations, 2009 and by their acts of omission they helped in smuggling of Red Sanders logs which are liable for confiscation. In this regard I find that the SCN has not detailed or brought on record the evidences which proves the charges of abetment as required for imposition of penalty under Sec.114 of Customs Act, 1962. There is no evidence on record that they actively participated in the smuggling attempt and positively colluded with the perpetrators of smuggling activity. Therefore, I do not find any reason for imposing penalty under Sec. 114 of Customs Act 1962 and accordingly, I drop the proceedings initiated in SCN dated 10.07.2019 issued vide F. No. DRI/CZU/VIII/48/ENQ-1/INT-02/2019."*

3. Aggrieved by said order, Revenue filed an appeal before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order, imposed penalty of Rs. 25 lakhs on the Appellant under Section 114 of the Customs Act, 1962. The finding of the first Appellate authority is reproduced below:-

> *"As regards the non-imposition of penalty on M/s CWC vide the OIO, it is noted that the Appellant in the Review Cum Authorization has sought imposition of penalty under Section 114 of the Customs Act, 1962. I have gone through the memorandum of cross objections filed by M/s. CWC and the same are on record. There has to be an element of vicarious liability affixed to M/s. CWC and they cannot be completely absolved and when they function in their capacity as Customs Partners, they are expected to make sure that they have the necessary provisions and to ensure compliance with not just the Customs Laws but also Laws relating to the Allied Acts and in this case, the provisions related to CITES. It is apparent that the measures to be taken by CWC to follow these rigours have failed and has resulted in the seizure of Red Sanders Logs of Wood which are prohibited items. Taking note of the fact that M/s. CWC is a Public Sector Unit, under the Government of India, interest of justice would be served by imposing a penalty of Rs 25 Lakhs on M/s. CWC. The imposition of the penalty of Rs 25 Lakhs is with a view to ensuring that M/s. CWC ensure fool proof safeguards and procedures/systems and processes in future and not allow such situations to recur".*

4. Aggrieved by said order, present appeal is filed by the appellant before the Tribunal.

5. When the appeal came up for hearing, Learned Counsel for the Appellant submits that the penalty confirmed by first Appellate authority is prima facie unsustainable, since there is no allegation that the appellant had reason to believe that the goods are liable for confiscation and only allegation is regarding violation of the Regulation under Handling of Cargo in Customs Area Regulations, 2009. The omission

under the said regulation is not sufficient to impose penalty under Section 114 of the Customs Act, 1962 especially without specifying the provision as under which sub-section of the Section 114 of the Customs Act, 1962. Further submits that in the absence of any proceedings initiated by Customs authority under the above said Regulation, present issue regarding penalty is prima facie unsustainable. Learned Counsel further submits that the Appellant being a Customs Cargo Service Provider (CCSP) is responsible for the secure transit of the goods from their place to the Port Area. The Regulation doesn't explicitly specify what secured transit would mean, i.e., whether physical accompaniment of the container by the Service Provider or any other means has not been defined in the said sub-clause in terms of secured transit. In this connection, it is submitted that wherever the law is ambiguous leaving it wide open for interpretation, clarification is issued by the department through Circulars. In this regard, Learned Counsel draws our attention to the Public Notice No. 29/2017 dated 04.09.2017 and Public Notice No. 34/2017 dated 09.11.2017 on the subject "Implementation of Electronic Sealing for Containers by exporters under self-sealing procedure". The said Public Notices were issued on the strength of various Circulars issued by the CBIC in this regard and deal with implementation of electronic sealing for the secure movement of containerised cargo by way of installing Radio Frequency Identification (RFID) Seals. The CBIC Circular No. 41/2017-Cus dated 30.10.2017 issued in this regard states that "*This measure is expected to reduce transaction costs of exporters since they do not have to incur MoT charges in respect of such supervision as well as improve their timeliness of their exports. Such facilitation is proposed to be backed by application of technology in the form of exporters using RFID e-seals since it has the potential to improve visibility and enhance cargo security during transportation to Ports & ICDs as well as during holding time. It is submitted that the Appellant has in place the Trailor Tracking System provided by a Customs Authorised Service Provider in order to ensure secure transportation of the self-sealed export cargo to the Port*".

6. Learned Counsel further submits that from the above two Public Notices and Circulars it is clear that the Circulars have only dealt with the term "Secure Transit" provided under the Regulation 6(1)(k) of the Handling of Cargo in Customs Areas Regulations, 2009. The guidelines provided under these Notices and Circulars have been scrupulously followed in case of self-sealing containers. In respect of all other cases, the containers are sealed with Customs One Time Seal after the examination of the cargo by the proper officers of Customs and allowed to exit the CFS by noting the exit time. The receipt of the container at the entry port is ascertained in the form of EIR (Equipment Interchange Report /Encoded Information Reading in the case of RFID tagged containers). In this case the transit of the container within the prescribed time was ensured by ascertaining the EIR report collected from the Port Authorities and the same is evident from the Appellant's reply to the SCN dated 23.11.2019. Learned Counsel further submits that to ensure secure transit and offloading of container in the port, we have collected the EIR (Encoded Information Reading) issued by the port confirming the safe receipt of container at the Port. In case of anomalies the same is verified with the concerned terminal operators and any abnormal delay above the prescribed duration is brought to the knowledge of Customs. In this case, the container was allowed to leave CWC, CFS on 07.01.2019, 1305 hrs, reached AKPPL (the port) on 08.01.2019; 1022 hrs. Since the transit took place within the prescribed time, we could not report any anomalies.

7. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that once the Appellant had abetted the illegal export of goods by failing to comply with the provisions of Handling of Cargo in Customs Area Regulations, 2009, first Appellate authority has rightly imposed penalty.

8. Heard both sides and perused the records.

9. We find that there is no allegation regarding violation of any of the provision other than the provisions of Regulation 6(1)(k) of the Handling of Cargo in Customs Area Regulations, 2009. Further we find

that while issuing the order, Adjudication authority rightly held that *"As per Regulation 6(1)(k) of Handling of Cargo in Customs Areas Regulations, 2009, the Customs Cargo Service Provider, M/s Central Warehousing Corporation, CFS Bangalore, are responsible for secure transport of goods between one Customs Area to another Customs area and are required to execute a bond for transport of export goods from one Customs area to another Customs area in terms of Regulation 5(4) ibid. Shri J. Navukkarasu, the then Manager of M/s. Central Warehousing Corporation, Bangalore, the Customs Cargo Service Provider, vide his voluntary statement dated 18.06.2019 had admitted that they had not provided transport for movement of the export container of M/s. Om Shiva Exports, Bangalore from M/s. CWC, CFS Bangalore to Adani Kattupalli Port."*. Thus, we find that only after proper consideration of the issue in detail, Adjudication Authority dropped the proposal for imposing penalty as per the Show Cause Notice (SCN). Facts being so, we find that the penalty imposed by first Appellate authority on the appeal filed by Revenue in the absence of any admissible evidence regarding knowledge of the appellant that the goods are liable for the confiscation is prima facie unsustainable. Therefore, the penalty imposed under Section 114 of Customs Act, 1962 on the appellant in the impugned order is unsustainable.

10. Accordingly, penalty imposed on the appellant under section 114 of Customs Act, 1962 as per the impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in Open Court on 03.07.2026.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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