

\$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CUS.A.C. 15/2013

RAJNEESH SHARMA Petitioner

Through: Ms.Shikha Sapra, Advocate

versus

COMMISSIONER OF CUSTOMS Respondent

Through: Mr.Kamal Nijhawan, Advocate

34

+ CUS.A.C. 17/2013 ✓

SUNIL JAIN Petitioner

Through: Ms.Shikha Sapra, Advocate

versus

COMMISSIONER OF CUSTOMS Respondent

Through: Mr.Kamal Nijhawan, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

%

08.07.2013

CM No.9753/2013 in CUS A.C.15/2013 and
CM No.9972/2013 in CUS A.C 17/2013 (for exemption)

Exemption allowed, subject to all just exceptions.

2

CM No.9754/2013 in CUS A.C.15/2013 and
CM No.9973/2013 in CUS A.C 17/2013 (for condonation of delay)

These are the applications for condonation of delay of 44 days and 41 days respectively in re-filing of the appeals.

We may note that the appeals were filed within time and there were office objections which took time to rectify and comply. Delay of 44 days and 41 days respectively in re-filing the appeal is condoned.

The applications stand disposed of.

CUS A. C. 15/2013 and CM No.9752/2013
CUS A.C. 17/2013 and CM No.9971/2013

1. Having heard learned counsel for the parties, we frame the following substantial question of law:

“Whether the Tribunal was justified in dismissing the appeals filed by Rajneesh Sharma and Sunil Jain against personal penalty imposed on them on the ground that M/s Shree Polymers Private Limited had failed to deposit Rs.1 Crore in terms of order dated 4.7.2012 passed by the Delhi High Court in Customs Appeal No. 14/2012, M/s Shree Polymers Private Limited vs. Commissioner of Customs?”

2. Customs, Excise and Service Tax Appellate Tribunal vide order dated 12.4.2012 disposed of applications for waiver of pre-deposit filed by the two appellants and the Company M/s Shree Polymers Private Limited. Operative portion of the order of the Tribunal reads as under:

“ We further note that in such cases of clandestine activities, the true and correct financial position of the importers does not come on record. No balance sheet stands produced before us. The fact of closure of factory by itself when huge duty demand is there, cannot be adopted as a sole ground for grant of unconditional stay in the absence of disclosure of other activities of the appellants. As such, taking into account the over facts and circumstance of the case, we direct the appellant (M/s Shree Polymers Pvt. Ltd.) to deposit 50% of the duty confirmed against them. The deposit of Rs.75 lakhs already made by the appellant would be taken into consideration towards deposit of 50%. Subject to said deposit, pre deposit of balance amount of duty and entire amount of penalties imposed upon all the applicants shall stand waived and its recovery stayed during the pendency of the appeal. The said deposits are to be made by the appellants within a period of 8 weeks from today.”

3. This order was made subject matter of challenge in Customs Appeal No.14/2012, M/s Shree Polymers vs. Commissioner of Customs and the order of the Tribunal was modified with the following directions:

“ We have considered the submissions. The Tribunal was informed that the appellant is facing financial difficulties and its factory was closed for the last 5 years. At the same time the appellant has not supported its plea of financial hardship by producing any return or document. In these circumstances, we are of the opinion that a sum of Rs.1 crore ought to be paid by the appellant as a condition precedent for hearing of the appeal. The Tribunal's direction is accordingly modified. The appellant shall deposit Rs.1 crore in addition to Rs.75,00,000/- lying with the respondent in equal six

monthly instalments. The respondent after ensuring that the entire sum of Rs.crore is deposited shall dispose of the appeal in terms of the above directions.”

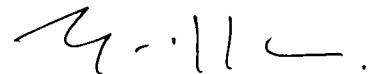
4. There has been non-compliance of the order dated 4.7.2012 and the pre-deposit was not made inspite of the latitude and time granted. Consequently, the Tribunal vide order dated 13.12.2012 dismissed the appeals filed by Rajneesh Sharma, Sunil Jain as well as M/s. Shree Polymers Private Limited. The contention of the appellants Rajneesh Sharma and Sunil Jain is that their applications for pre-deposit were not disposed of by the earlier order dated 12.4.2012 and they were not asked to deposit any amount though personal penalties of Rs.60 lakhs and Rs.20 lakhs respectively were imposed on Rajneesh Sharma and Sunil Jain.
5. We have quoted paragraph 10 of the order dated 12.4.2012 which required⁴ the company M/s Shree Polymers Private Limited to deposit 50% of the duty demanded after adjustment of Rs.75 Lakhs already deposited. 50% of the duty came to Rs.2.3 Crores. In appeal No. 14/2012, this pre deposit amount was reduced to Rs.1 Crores vide order dated 4.7.2012. This order has not been complied with. Dismissal of the appeal filed by M/s Shree Polymers Private Limited vide order dated 13.12.2012 is, therefore, completely justified and in accordance with law. However, as far as appeals filed by Rajneesh Sharma and Sunil Jain are concerned, we find that no direction had been given to them to deposit the personal penalties vide order dated 12.4.2012. Their application, it appears, therefore, remained pending

(5)

and were not disposed of.

6. In these circumstances, we answer the aforesaid question of law in favour of the appellants and against the respondents with a direction that the Tribunal will dispose of waiver of pre deposit applications and, thereafter, proceed in accordance with law. We have not expressed any opinion on the merits of the applications for waiver of pre-deposit.

7. The appellants, Rajneesh Sharma and Sunil Jain, will appear in person or through their representative before the Tribunal on 8th August, 2013, when a date of hearing will be given. No costs.



SANJIV KHANNA, J



SANJEEV SACHDEVA, J

JULY 08, 2013

SV