$~

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

15.

\+ **<u>W.P.(C) 299/2016 & CM 1226/2016 (stay)</u>**

PAN PARAG INDIA LTD & ANR. ..... Petitioners

Through Mr Pankaj Bhatia, Advocate.

versus

COMMISSIONER OF CUSTOMS (EXPORT) DELHI & ANR. ..... Respondents

Through Mr Satish Kumar, Senior Standing counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **17.02.2016**

1. The challenge in this writ petition is to an order dated 18th December, 2015 passed by the Assistant Commissioner of Customs (Export) ['AC'] in Adjudication Case No. C.No. VIII/ICD/6/TKD/ADJ/Commr/23/2013/27596 whereby the Petitioner's request for cross-examination of Mr Laxminath Mehrotra and Mr Ashutosh Mehrotra, whose statements were relied upon by the Customs Department as part of the show cause notice (SCN) issued to the Petitioner on 22nd March 2013, was rejected.

2. This Court had while disposing of Writ Petition (Civil) 8946/2015

(***Pan Parag India Pvt Ltd v. Commissioner Of Customs Export Delhi***) by an order dated 17th November 2015 set aside Order-in-Original dated 8th June 2015 and directed the Adjudicating Authority (AA) "to supply copies of all the relied upon documents within a week to the petitioner. Within four weeks thereafter, a reply to the show cause notice be furnished to the adjudicating authority by the petitioner. No further extension of time would be granted. Thereafter, the adjudicating authority shall fix a date for personal hearing and then pass an order in accordance with law within four weeks thereafter."

3. Admittedly, the AA in this case is the Commissioner of Customs, ICD Tughlakabad in terms of the order dated 28th January 2014 passed by the Central Board of Excise and Customs, whereas the impugned order was passed by the AC.

4. There is nothing in the order dated 17th November 2015 passed by this Court to indicate that the AA should not entertain any request by the petitioner for cross-examination of any of the persons whose statements have been relied upon while issuing the SCN to the Petitioner. Yet in the impugned order the only reason given by the AC for rejecting the request is that "there is no such direction in the above referred order of Hon'ble High Court of Delhi and also the same was also never sought

by you at the time of adjudication proceedings held earlier in the said matter."

5. On the face of it, the above reason given is plainly untenable apart from the fact that the AC who passed the above order is not the AA himself. It is pointed out by learned counsel for the Respondents that the order passed by the AC was approved by the Commissioner and, therefore, it could not be said that it was without jurisdiction. The Court is unable to accept the above submission. Once the adjudicating proceedings are conducted by the Commissioner, it is he alone who was to pass orders in relation to any aspect of the adjudication and that cannot be delegated to any subordinate authority.

6. The Court in any event finds that there was no justification for denying the request for cross-examination of the aforementioned two persons whose statements have been relied upon by the Customs Department.

7. Accordingly, the Court quashes the order dated 18th December, 2015 and directs the AA to permit the Petitioner to cross-examine the aforementioned two persons within a time schedule to be fixed by the AA. The matter will now be placed before the AA for issuing the

necessary directions on 10th March, 2016 on which date the Petitioner through its authorized representative will appear. The Petitioner will cooperate in the proceedings and will not seek any unnecessary adjournments. The time limit fixed by this Court in the order dated 17th November, 2015 for completion of the adjudication proceedings is extended by a period of eight weeks after the conclusion of the cross-examination of the witnesses in terms of this order.

8. The writ petition and the application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 17, 2016
pkv