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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 8914/2014 & CM No.20412/2014**

THE ADDITIONAL COMMISSIONER OF CUSTOMS ..... Petitioner
Through: Mr Satish Kumar, Senior Standing counsel.

versus

SHRI ASHOK KUMAR ..... Respondent
Through: Mr Abdhesh Chaudhary and Mr Sanjit Kumar, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **28.04.2016**

1. The challenge by the Customs Department in this petition is to a final order dated 9th June, 2014 passed by the Customs & Central Excise Settlement Commission, ('CCESC') Principal Bench, New Delhi.

2. The brief facts are that the Respondent arrived by flight from Singapore on 24th April, 2013 and at the time of passing through Green Channel at the Indira Gandhi International Airport he was intercepted by the Customs officials. On enquiry, he informed that he was not carrying anything that required declaration before the Customs Department. It was noted that he had not written any value on the Customs portion of disembarkation slip. On screening his baggage on the X-Ray machine some suspicious dark images were noticed. On opening the baggage it was found that he was, *inter*

alia, carrying 16 Sony Digital HD Video Camera Recorders made in Japan along with accessories and two Black Magic Cinema Cameras. The Respondent failed to produce the purchase bills. He revealed the price of Video Camera Recorder as Rs.1,00,000/- per piece but was unable to disclose the price of the Black Magic Cinema Camera. He claimed that these were given to him free with the other 16 pieces of Sony Cameras.

3. Upon inquiry made with the local dealers, the Customs Department ascertained that the MRP of the Video Camera was Rs.3,25,000/- per piece and, therefore, the total value of the 16 pieces of Sony Digital HD Video Cameras was arrived at Rs.36,40,000/-. The value of the two Black Magic Cinema Cameras worked out to Rs.4,61,000/-.

4. The goods were seized under Section 110 of the Customs Act, 1962 ('Act'). A voluntary statement was tendered by the Respondent under Section 108 of the Act on 24th April, 2013 admitting to bringing the above dutiable goods from Singapore. He was arrested under Section 104 of the Act and subsequently released on bail. A provisional release order was passed on 30th September, 2013 for release of the goods in his favour subject to the Respondent paying the customs duty of Rs.10,63,432 on the assessment value of Rs.28,49,880, furnishing a bank guarantee for Rs.5,30,000 and an indemnity bond for the 100% value. He was also to give an undertaking that he would not contest the recovery, identity, nature and value of goods in future in the course of adjudication or prosecution or any judicial or quasi-judicial proceedings. It is stated that the goods were provisionally released to the Respondent, on fulfilment of the above

conditions, on 4th October, 2013.

5. A Show Cause Notice (SCN) was issued to the Respondent by the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi on 18th October, 2013, *inter alia,* proposing confiscation of the imported goods, levy of Customs Duty in the sum of Rs.10,63,432/- and penalty under Section 112/114AA of the Act.

6. On that stage, the Respondent filed an application on 7th November, 2013 before the CCESC under Section 127(5) of the Act praying that the duty liability of the subject goods be determined at Rs.10,63,432 and be appropriated from the amount already deposited, immunity be granted from confiscation and the redemption fine and penalty be waived.

7. According to the Customs Department, the CCESC decided to proceed with the application which fact was intimated to it by letter dated 22nd November, 2013. Thereafter, by the final order dated 9th June, 2014 the CCESC disposed of the application, *inter alia,* determining the customs duty at the amount already paid by the Respondent, reducing the penalty and fine to Rs. 25,000 each, and, subject to the payment of the aforementioned amounts, ordering the release of the bond, discharge of the bank guarantee and granting immunity to the Respondent from prosecution.

8. The main grievance voiced by the Customs Department through its counsel Mr Satish Kumar is that the CCESC ought not to have entertained the application at all since the essential condition stipulated in Section 127B

of the Act was not fulfilled. It is urged, on the strength of the decision of the High Court of Karnataka in ***Commissioner of Customs v. A. Mahesh Raj 2006 (1) TMI 134 (Kar)*** and the decision of this Court in the ***Additional Commissioner of Customs v. Shri Ram Niwas Verma 2015 (9) TMI 197 (Del)*** that since this was a case where no declaration had been made by the Respondent of the dutiable goods, it did not fall under the categories of 'mis-classification, under-valuation or inapplicability of exemption notification or otherwise' as mentioned in Section 127B(1) of the Act.

9. In the counter affidavit filed in response to the present petition, reliance is placed by the Respondent on the decision of the Division Bench of this Court in ***Commissioner of Customs v. Ashok Kumar Jain 2013 (292) ELT 32 (Delhi)*** where in similar circumstances this Court declined to interfere with the order of the CCESC. Reference is also made to a judgment dated 6th January, 2015 in W.P.(C) No.8991/2014 ***(The Additional Commissioner of Customs v. Shri Viney Jain)*** where the passenger had declared the value of the goods imported as "baggage" and had left the description and value of goods in the disembarkation card blank. There again the Court approved the order of the CCESC in deciding to entertain the application seeking settlement.

10. It is not in dispute that the present case is not covered by any of the provisos to Section 127B (1) of the Act. In other words, it does not fall under any of the excluded categories of cases. It may be noted at this stage that the decision in ***Additional Commissioner of Customs v. Shri Ram Niwas Verma*** (*supra*) was a case where imported goods were covered under

the third Proviso to Section 127B(1) and, therefore, the said decision is distinguishable on facts. The learned Single Judge of the Karnataka High Court has in ***Commissioner of Customs v. A. Mahesh Raj*** (*supra*), proceeded on the basis that if it was a case of mis-declaration and not a case of misclassification, Section 127B itself is not applicable.

11. This Court is unable to agree with the above analysis of Section 127B of the Act by the Karnataka High Court. On the other hand, the Court is inclined to follow the decision of the Division Bench of this Court in ***Commissioner of Customs v. Ashok Kumar Jain*** (*supra*) Sections 127A and 127B have been analysed as under:

> "11. For the foregoing reasons, this Court is of the opinion that on a careful reading of Section 127(A) and 127(B) the Revenue's contention that since the applicant had not filed bill of entry or that the case was one relating to baggage and therefore did not involve short levy or non-levy is without force. The provisions that confer jurisdiction on the Settlement Commission cannot, in the opinion of the Court, be construed as narrowly as it sought to be urged by the Revenue. If parliamentary intention is to exclude adjudication by Customs Authorities in respect of baggage claim, from the purview of the Commission's jurisdiction, surely such intention would have been more clearly manifested like in the case of 3 proviso of Section 127 (B)(i)."

12. The Court sees no reason why in the circumstances of the present case the Respondent's admission that he had brought dutiable goods into the country while leaving blank the relevant column in the disembarkation card ought not to be considered as an attempt at evading payment of customs duty. As observed by this Court in ***Commissioner of Customs v. Ashok***

Kumar Jain (*supra*) the provisions that confer jurisdiction on the CCESC should not be construed narrowly to exclude such type of cases from the purview of Section 127B. If that was the legislative intent, then there ought to have been a specific provision to that effect.

13. In the circumstances, the Court sees no reason to interfere with the impugned final order dated 9th June, 2014 passed by the CCESC. The writ petition and the pending application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 28, 2016
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