$~3

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

\+ **CUSAA 62/2017 & CM APPL. Nos. 41557-58/2017**

COMMISSIONER OF CUSTOMS (IMPORT & GENERAL) NEW DELHI ..... Appellant

Through : Mr. Harpreet Singh, SSC with Ms.Bhavya Dubey, Advocate.

versus

TRINETRA IMPEX PVT. LTD. ..... Respondent

Through : None.

**CORAM:**
**HON'BLE MR. JUSTICE SANJIV KHANNA**
**HON'BLE MS. JUSTICE PRATHIBA M. SINGH**

**O R D E R**

**% 11.12.2017**

**CM APPL. 41558/2017 (Condonation of delay)**

For the reasons stated, the delay of 50 days in re-filing this appeal is condoned. This application, accordingly, stands disposed of.

**CUSAA 62/2017 & CM APPL. No. 41557/2017**

This appeal by the Commissioner of Customs impugns the order dated 1st February, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Customs Appeal No. 53025/2015.

2. The impugned order upholds the order passed by the Commissioner of Customs (General) forfeiting the security deposit of Rs.50,000/- (Rupees Fifty Thousands) imposed on Trinetra Impex Private Limited, respondent company holders of Custom House Agent licence issued under Section 9(1) of the Customs House Agent Licensing Regulation, 2004.

3. The appellant is aggrieved and submits that the licence of the respondent company should have been revoked and punishment of forfeiture of security deposit of Rs.50,000/- is not proportionate and is not commensurate with the allegations.

4. The importer M/s Anurag Trading Company, Kanpur had used forged documents purportedly issued by the Ordinance Equipment Factory, Kanpur. Director of the respondent company had admitted that the exemption certificate was not signed by the General Manager of the Ordinance Equipment Factory, Kanpur and as per notification, the said certificate should be issued by an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Defence.

5. The findings recorded both by the Commissioner of Customs (General) in the order dated 12th May, 2015 and the order passed by the Appellate Tribunal is primarily factual. The Commissioner of Customs, after examining the factual matrix had concluded though the respondent had failed to discharge its duties and responsibilities properly, yet a harsher punishment was not justified. The respondent's director had professed that they had been dealing with M/s. Anurag Trading Company, Kanpur since 2003, they had merely processed the documents and forwarded the same to the customs authority. It was the obligation of the customs authorities to examine applicability and satisfaction of the condition of the exemption notification and genuineness of the documents submitted by the importer. While examining the documents, it did not strike them and there was no reason for them to suspect that the exemption certificate was not signed by the competent authority or that it was forged. Thus, they were unaware and not involved in forgery of the documents. They were also duped and were

victims.

6. By our order dated 17th November, 2017, the appellant was asked to clarify when departmental action was taken against the officers of the department, who accepted the certificate. Custom officers had also accepted the documents without suspecting foul play and notwithstanding that the document was not signed by the approved officer.

7. Today, during the course of hearing, learned counsel for the appellant has handed over a copy of the letter written by the Assistant Commissioner (Legal) stating that no action appears to have been taken against the officers of the department, though statements of 11 officers were recorded. The reason was that nothing could be found to establish *malafide* intention of the officers and their connivance.

8. The Central Bureau of Investigation ('CBI') had also investigated the issue of bogus exemption certificate. They have not charge-sheeted the respondent. As per the charge-sheet, placed on record, FIR under Section 120B of the Indian Penal Code read with Sections 420/467/468/471 of the Indian Penal Code has been filed against Mr. Shyam Mehrotra, Proprietor of M/s Anurag Trading Company, Kanpur and Mr. Anand Mehrotra, Manager and Authorized Signatory of M/s Anurag Trading Company, Kanpur and the proprietorship concern. CBI after investigating role and involvement of the respondent and found that the CHA (*the respondent*) had received a copy of the bill of exchange with zero customs duty duly signed by the then Custom officer. The CBI has also stated in the charge sheet that the respondent CHA had retained photocopies of the said bill of exchange for its office records and had forwarded the original copies of the same along with his bill to the importer for getting payments - thus clearly implying that the CHA had

performed its part of the duties and no role in the forging of the bill of exchange. The respondent's direct involvement with the importer i.e. the beneficiary was not established.

9. Keeping in view the aforesaid factual matrix, we do not think that the order of the Tribunal on the question of proportionality or on facts, raises substantial question of law and requires interference by this court under Sections 129/130 of the Customs Act, 1962. The appeal is accordingly dismissed *in limine* without any orders as to costs.

**SANJIV KHANNA, J.**

**PRATHIBA M. SINGH, J.**

**DECEMBER 11, 2017**

j