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

Date of Decision:- 27.11.2018

+ CRL.REV.P. 684/2002 & CRL.M.As.18436/2015, 18580/2015

R.K.ANAND

..... Petitioner

Through Mr.Deepak Gandhi with Mr.Arhum
Sayeed, Advs.

versus

ADDT. COMMISSIONER OF CUSTOMS

..... Respondent

Through Mr.Satish Aggarwala, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner seeks setting aside of the order dated 19.08.2002 passed by the learned Additional Sessions Judge, upholding the conviction of the petitioner u/s 132 and 135(1)(a) of the Customs Act by the learned Additional Chief Metropolitan Magistrate by his order dated 09.04.2002.

2. The relevant facts emerging from the record are that by an order dated 09.04.2002 passed by the learned Additional Chief Metropolitan Magistrate, the petitioner was convicted of offences under sections 132 and 135(1)(a) of the Customs Act for evading customs duties payable on the import of certain household items. The petitioner was not only sentenced to undergo rigorous imprisonment for a period of 6 months but was mulcted with a fine of Rs. 50,000/-

on each count, in default of which he was directed to undergo one and a half months of simple imprisonment for each of the offences.

3. Aggrieved by the aforesaid order of conviction, the petitioner preferred an appeal before the learned Additional Sessions Judge, which was dismissed vide order dated 19.08.2002. Against the said order of dismissal, the petitioner preferred the present petition before this Court.

4. Mr.Deepak Gandhi, learned counsel for the petitioner submits that the petitioner does not assail the impugned order insofar as he was convicted under the Customs Act, but only seeks suspension of the substantive sentence awarded to him. He submits that a fine of Rs.1 lakh already stands paid and the petitioner has already undergone two months of rigorous imprisonment after the six months' sentence was awarded to him.

5. Mr.Deepak Gandhi further submits that as on date, the petitioner is over 70 years of age and the role attributable to him was in any case not more than that of the co-accused, Ms.Rosy Chawla in whose case this Court vide order dated 26.02.2009 in CrI.Rev.P. No.652/2002, has already waived the remaining sentence imposed upon her after she had undergone imprisonment of about one week.

6. Mr.Satish Agarwal, learned standing counsel for the respondent does not dispute the aforesaid position and also concedes that there is no minimum sentence prescribed under the Customs Act for the goods in respect of which the petitioner was convicted. He fairly also does not oppose that the petitioner is entitled to be given the same treatment as has been granted to the co-accused Ms.Rosy Chawla, but

requests that some additional fine be imposed on the petitioner.

7. I have heard the learned counsel for the parties and perused the record. Upon examining the order dated 09.04.2002 passed by the learned Additional Metropolitan Magistrate as also the order dated 19.08.2002 passed by the learned Additional Sessions Judge, it becomes evident that the petitioner, while working as the authorized representative of the co-accused Ms. Rosy Chawla, had smuggled certain goods having a total value of Rs.8,30,000/- (approx.) into the country by omitting to declare/misdeclaring the same before the Customs Authorities. While the smuggled items in question belonged to Ms. Rosy Chawla, the only role admittedly attributable to the petitioner is that on the instructions of the said Ms. Rosy Chawla, he helped clear the customs formalities in respect thereof in India. In doing so, the petitioner misdeclared the smuggled goods and stated on the relevant form that they were brought to India only on account of Ms. Rosy Chawla's transfer of residence. However, during investigation, the said goods were discovered to be brand new purchases. It is, thus, apparent that the culpability of the petitioner is on the same if not lower footing as that of the co-accused Ms. Rosy Chawla.

8. In the light of the above and after carefully perusing the order dated 09.04.2002 passed by the learned Additional Metropolitan Magistrate, order dated 19.08.2002 passed by the learned Additional Sessions Judge and order dated 26.02.2009 passed by this Court in Crl.Rev.P. No.652/2002, I am of the considered opinion that the petitioner is entitled to the same benefit as granted to the co-accused,

Ms. Rosy Chawla.

9. Accordingly, in view of the peculiar facts of the present case and for parity of reasons, while affirming the order of conviction, subject to the petitioner depositing an additional fine of Rs.25,000/-, the sentence awarded to him is reduced to the period already undergone and accordingly, his remaining sentence is waived. The respondent will release the passport of the petitioner as and when he approaches them alongwith the proof of deposit of additional fine as imposed hereinabove.

10. The petition alongwith pending applications is disposed of in the above terms.

(REKHA PALLI)
JUDGE

NOVEMBER 27, 2018

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