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

\+ **CUSTOM A. 1/2018**

Date of decision: 24th April, 2018

ASHOK GUPTA ..... Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with Mrs. Madhumita Bhattachargee and Mr. Atanusaikia, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT & GENERAL) ..... Respondent

Through: Mr. Sanjeev Narula, Sr. Standing Counsel for Customs.

CUSTOM A. 2/2018

SANJAY SACHDEVA & ANR. ..... Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with Mrs. Madhumita Bhattachargee and Mr. Atanusaikia, Advocates.

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COMMISSIONER OF CUSTOMS (IMPORT & GENERAL) ..... Respondent

Through: Mr. Sanjeev Narula, Sr. Standing Counsel with Mr. Abhishek Ghai, Advocate for Customs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA J. (ORAL)

At the outset, counsel for the appellants states that the afore-stated appeals may be treated as appeals preferred by Ashok Gupta, Sanjay Sachdeva and Anuradha Diwan against order-in-original dated 5th May, 2014. The appellants state that they would be filing a separate appeal impugning the order of the Custom, Excise and Service Tax Appellate Tribunal ('CESTAT', for short) dated 18th August, 2017 in appeal arising out of the order-in-original dated 16th May, 2014.

2. The statement is taken on record and the afore-stated appeals would be treated as appeals filed against the order of the CESTAT in appeal arising from the order-in-original dated 5th May, 2014. Liberty as prayed for is granted.

3. Order-in-original dated 5th May, 2014 holds that wireless transmitting/receiving apparatus, satellite communication equipment etc. were imported against forged import licences which were not issued by the Wireless Planning and Coordination (WPC) Wing of Ministry of Communication and Information Technology, Government of India in terms of Notification No. 71-Cus dated 25th September, 1953 issued under Sea Customs Act, 1878, amended by Notification No. 48-Cus dated 20th May, 1967 issued under Section 11 of the Customs Act, 1962. These WPC licences were forged in the names of M/s Aricent Technologies (Holdings) Limited, which is a 100% Export Oriented Unit (EOU), M/s Hughes Network systems India Limited, M/s Hughes Communication India Private Limited, M/s Hughes Escort Communication Limited and M/s Huchison Essar

South Limited Vodafone, etc. These imported wireless transmitting/receiving and satellite communication equipments etc. were thereafter supplied to various T.V. channels and other communication companies namely M/s Sakshi T.V., G. Next Media Private Limited (PTC), Brahamputra Teleproduction etc.

4. Order-in-original dated 5th May, 2014, which has been affirmed by the impugned order passed by the CESTAT imposes penalty of Rs.5,00,000/- each under Sections 112 and 114AA of the Customs Act, 1962 on Ashok Gupta and Sanjay Sachdeva. The order imposes penalty of Rs.2,00,000/- each under Section 112 and 114AA of the Customs Act, 1962 on Anuradha Diwan.

5. Ashok Gupta is the Chairman and Director of M/s Alliance Strategies Limited which was looked after by Sanjay Sachdeva who was the whole time Director and CEO of the company. The consultancy and integration business of the company were undertaken and handled by Jaspal Singh Chaudhary (Manager, Liaison), Anuradha Diwan (Assistant Manager-Regulatory) and others who were answerable to Sanjay Sachdeva. Order-in-origin holds that the WPC licences were forged and fabricated by or at the instance of the appellants.

6. The substantial questions of law raised in the two appeals read as under:-

> "i) Whether the fact that only because statements recorded under section 108 of the Customs Act, 1962 are admissible in evidence, ipso facto immune the

> investigating authority or its officers from examination / cross-examination by the noticees?
>
> ii) Whether statements recorded under section 108 of the Customs Act form the sole basis of imposition of penalty when the department concerned does not return documents resumed by it which are relevant for defence evidence and rebuttal, more so when the admitted position is that original forged WPC Licenses were not found?
>
> iii) Whether search under section 105 of the Customs Act 1962 which demands that search be mad e by Assistant Commissioner of Customs or Deputy Commissioner of Customs, is not vitiated the same being void because the search in the instant case was carried out by Dy. Dir DRI (HQS) instead of Assistant Commissioner of Customs or Deputy Commissioner of Customs?
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> iv) Whether the Adjudicating Authority is empowered to impose penalty on the ground of forgery under the Customs Act 1962 which is the exclusive domain of Criminal Courts?"

7. Primarily, the challenge raised in these appeals pertain to factual findings that the WPC licences were forged. It is submitted that the WPC licenses required for import were genuine and were not forged or fabricated. Our attention was drawn to the order dated 13th August, 2014, passed by the Ld. Single Judge of this Court in Writ Petition (Civil) No. 4494/2014, ***M/s Alliance Strategies Limited versus Commissioner of Customs (I&G) and Another.*** It was submitted that there being non-compliance of the directions made in Writ Petition (Civil) No. 4494/2014 prejudice was caused as the appellants

were unable to defend and prosecute the proceedings on the question of forgery.

8. M/s Aricent Technologies (Holdings) Limited) and other such companies in order to import wireless transmitting/receiving and satellite communication equipments etc. used to place their requirements with M/s Alliance Strategies Limited, who would then on behalf of these companies apply and obtain WPC licences issued by the Department of Telecommunication. M/s Alliance Strategies Limited had charged Rs. 10,000/- for the service rendered, with an addition charge of Rs. 500/- as processing fee payable to the Department of Telecommunication.

9. It is an accepted and admitted position that searches under Section 105 of the Customs Act, 1962 were conducted at the business premises of M/s Alliance Strategies Limited and residences of Ashok Gupta, Sanjay Sachdeva and Jaspal Chaudhary on 6th September, 2011 by Directorate of Revenue Intelligence and various documents and files pertaining to WPC licences were seized. Duplicate and fabricated rubber stamp of Department of Telecommunications and D. Singaravelu, Assistant Wireless Advisor, Department of Telecommunication were recovered. Laptop used for typing the forged WPC import licences was seized. Statements of the three appellants under Section 108 of the Customs Act, 1962 were also recorded. In the said statements, Sanjay Sachdeva and Anuradha Diwan had admitted that some of the WPC licences were forged and fabricated. Jaspal Singh Chaudhary Manager (Liaison) of M/s

Alliance Strategies Limited in his statement had stated that on directions of Ashok Gupta and Sanjay Shachdeva he had forged many WPC licences in the name of M/s Aliance Strategies Limited, M/s Aricent Technologies (Holdings) Limited, M/s Hughes Network Systems India Limited and others. He had typed forged licences on the laptop, which were sometimes also typed by Anuradha Diwan. Sanjay Sachdeva, etc. signed and stamped the forged licences in place of the Assitant Wireless Advisor, Department of Telecommunication as well as Department of Telecommunication. He had also accepted and affirmed that some of documents seized during the search operation on 6th September, 2011 were forged documents.

10. There was a belated attempt by Sanjay Sachdeva and Anuradha Diwan to retract the aforesaid statements vide their reply dated 22nd July, 2013. This in our opinion, would not matter in the present case as there is ample evidence on record to show that the WPC licences were fabricated. The order-in-original dated 5th May, 2014 has elaborately discussed the evidence and material, in the form of response and details furnished by the Department of Telecommunications. The rubber stamps on the genuine licences were distinct and different from the rubber stamps found on the forged licences. Use of the "forged licences" is undisputed.

11. Reliance placed on the order dated 13th August, 2014 passed in the Writ Petition (Civil) No. 4494/2014 filed by M/s Alliance Strategies Limited would not in any manner help and assist the appellants. M/s Alliance Strategies Limited in the afore-stated writ

petition had asked for release of documents, which were not relied upon in the show cause notice. Another prayer made in the writ petition was to direct the respondents to provide photocopy of 8 files pertaining to 8 WPC licences. This order records that the respondents had unequivocally stated that the company would depute an authorized representative to collect non-relied upon documents after giving one day's prior intimation. To this extent, the order observed that the controversy did not survive. The respondents had contended that the company could not be given copies of eight files pertaining to the licences as the said files were to be returned to the Department of Telecommunications. Referring to the assertions made in the counter affidavit, the Ld. Single Judge had observed that the 8 files pertained to the company and not to a third party and were relevant for the purpose of defending the allegations made against the company. It would only be fair if the documents were made available to the company. Direction was issued to the respondents to furnish copy of the relevant files.

12. It is pertinent to mention that the company, i.e. M/s Alliance Strategies Limited, thereafter did not file any contempt or another application stating that the documents or photocopy of eight files were not furnished. Neither this plea was raised before the CESTAT. Even copy of the order dated 13th August, 2014 passed by the Ld. Single Judge of this High Court in Writ Petition (Civil) No. 4494/2014 was not filed before the CESTAT. It may be relevant to state here that the order-in-original impugned in the present appeal was passed on 5th

May, 2014, which is prior to the order dated 13th August, 2014 passed in Writ Petition (C) No. 4494/2014.

13. In view of the aforesaid position, we do not find any ground or reason to frame any substantial question of law in the present appeals. Findings of the CESTAT affirming the order-in-original are factual, do not require re-examination or reappraisal, as the findings in the order dated 5th May, 2014 are clear and categoric. The said findings are reasonable and based upon cogent evidence and material, which were found, requisitioned and analysised. The factual findings on forgery are not perverse or illogical.

14. At this stage, counsel for the appellants has submitted that the appellants are facing criminal prosecution. We clarify that we have not made any observations and commented on the criminal prosecution.

15. No substantial question of law arises. Appeals are accordingly dismissed. No order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

APRIL 24, 2018 MR/NA