$~21.

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

\+ **CUSAA No. 108/2018**

Date of decision: 17th April, 2018

PRASHUN JAIN ..... Appellant

Through: Mr. Rupesh Kumar and Mr. Pravesh Bahuguna, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT & GENERAL), NEW DELHI .... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel & Mr. Suresh Chaudhary, Advocate.

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

SANJIV KHANNA, J. (ORAL):

Prashun Jain-appellant in this appeal under Section 130 of the Customs Act, 1962 (Act, for short) impugns the order dated 7th August, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Delhi (Tribunal, for short) in Customs Appeal No. C/51369/2014.

2. The impugned order substantially sets aside observations and findings made in the order-in-original dated 31st October, 2013 by

deleting penalty of Rs.67,17,015/- under Section 112 of the Act and reduces the penalty imposed under Section 114AA of the Act from Rs.67,17,015/- to Rs.5,00,000/-. The appellate order also sets aside the direction that the appellant was liable to pay customs duty of Rs.67,17,015/-.

3. While reducing the penalty under Section 114AA of the Act, the Tribunal had held as under:-

> "9. However, the available evidence including the statement of the transporter and presence of gate pass with the appellant, his prior knowledge of contents, alongwith other evidences gathered, shall indicate that the appellant is not totally blemishless. Considering that the appellant is a 'F' card holder, he is aware of the provisions of the customs law. He had acted in a manner in the present case that will attract penal provisions of Section 114AA. The said section stipulates that if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this act shall be liable to a penalty not exceeding five times, the value of goods. We note that the said provisions are wide enough to cover the acts of the appellant as brought out during the investigation. Considering that the evidences of such involvement in the past clearances are not available to a sustainable level and involvement in the present consignment had been established based on available evidence, we find that a penalty of Rs. 5 lakhs under Section 114AA

> will meet the ends of justice. Other than this penalty, we find that the appellant cannot be put to any liability for duty or penalty, under Section 28 and 112 of the Act."

4. The appellant largely relied upon the findings of the Tribunal in the earlier portion of the order and has prayed for setting aside of penalty of Rs.5,00,000/- under Section 114AA of the Act.

5. Facts of the case are rather startling and do exposit clear involvement of the appellant.

6. Bill of Entry No. 168385 dated 16th November, 2010 in the name of M/s Rajdhani Crafts, Jaipur was assessed and the goods herald frame (spare parts of weaving machine) valued at Rs.5,66,862/- attracting nil customs duty were assessed and cleared.

7. After clearance, while the goods were lying outside the clearance gate, the appellant had appeared and had shown his F card to take delivery of the consignment. As there was information regarding mis-declaration and clandestine import, the consignment was kept under surveillance and intercepted. The appellant, on being questioned, had revealed and stated that Mr.Biplav Kumar, who was working for M/s Rajender P. Kapoor had completed clearance formalities and thereafter had left the gate pass with the appellant to be handed over to the customs officers for taking the consignment. The gate pass was seized and the appellant had put his signatures on the

same. The appellant, in his statement had accepted mis-declaration, stating that the consignment contained Micro SD Cards.

8. On inspection, the consignment was found to contain Micro SD Cards of 2 GB and RAM of 1 GB valued at Rs.67,29,000/-. It was also learnt that M/s Rajdhani Crafts, Jaipur had not imported the said consignment. These names and details were wrongly and fraudulently used.

9. The appellant does not dispute and accepts that he wanted to take delivery of the consignment and was present outside the clearance gate with the gate pass. It is also not disputed that the consignment was mis-declared and was not imported by M/s Rajdhani Crafts, Jaipur. Contents and value of the consignment is not challenged.

10. On the question of involvement of the appellant in ground (IX) to the present appeal, the appellant has accepted that he got involved with the subject goods, which he claims was with a view to providing helping hand to Mr.Biplav Kumar. The appellant also has accepted that he had also made a request for transportation of the goods and that he had prior knowledge and information about the mis-declaration of the goods and the actual contents. For convenience, ground (ix) of the present appeal is reproduced below:

> "THAT the learned Tribunal ought to have appreciated that the appellant had been falsely implicated in the present case even though he was neither concerned nor connected with the subject goods. The appellant got involved with

the subject goods only by extending helping hand to one of his known person Shri Biplav Kumar who is employee of another CHA M/s Rajinder P. Kapur who had, after clearing the subject from upon fulfilling customs formalities, handed over the copy of gate pass to the appellant with a request to give it for transpiration. Shri Biplav Kumar had informed him about the contents of the goods. It was in this context that the appellant was having the gate pass and was having prior knowledge about the contents of the consignment. The fact that the appellant himself voluntary approached the customs authorities upon interception of the subject consignment which was accepted by the learned Tribunal, clearly justifies the bonafides of the appellant and, therefore, imposition of penalty under Section 114AA of the Act is not justified in the facts of the present case."

11. Section 114AA of the Act is as under:-

> "**SECTION 114AA. Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

Penalty under Section 114 of the Act could be imposed if a person knowingly or intentionally uses or causes to be made, signed or used any declaration/statement/ document, which was false and incorrect in material particulars. The appellant had used the false and incorrect gate pass and had caused to be used the said false declaration, statement and document. We do not, therefore, accept the contention of the appellant that Section 114AA of the Act cannot be invoked. The findings of the Tribunal on the question of involvement of the appellant are factual. We do not think that the said findings require interference on the ground that they are perverse. No substantial question of law arises for consideration. Appeal has no merit and is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

APRIL 17, 2018
b/VKR