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

Date of decision: 13.07.2018

\+ **CUSAA 152/2018**

JASPAL SINGH CHAUDHARY ..... Appellant

Through: Mr. Rajesh Srivastava, Mr. Abhishek Yadav, Mr. Saurabh Balwani and Mr. Saurabh Yadav, Advocates.

versus

COMMISSIONER OF CUSTOM (I&G) ..... Respondent

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

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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CM APPL. 27174/2018 *(for condonation of delay)*

For the reasons mentioned in the application, the delay of 67 days in re-filing the present appeal is hereby condoned.

Application stands disposed of.

CM APPL. 27175/2018 *(for exemption)*

2. Allowed, subject to all just exceptions.

CUSAA 152/2018

3. Issue notice.

4. Mr. Asbhishek Ghai, Advocate accepts notice.

5. The limited ground and the question of law urged in this appeal is:-

> "Whether given the concurrent findings and the circumstances established, the imposition of a higher penalty on the appellant was justified?"

6. The facts are virtually not in dispute; the appellant was working for one M/s Alliance Strategies Limited as a Liaison Manager. The said concern was issued notice for clearing goods on the basis of false documents. This culminated in an adjudication order issued by the Commissioner of Customs (I&G).

7. The findings recorded by the Commissioner are as follows:-

> "37.7 *Thus in view of above, it is clear that M/s Alliance Strategies Limited; Shri Ashok Gupta, Chairman; Sh. Sanjay Sachdeva, CEO; Sh. Amit Mahajan, Ex-Manager Business Development; Sh. Jaspal Singh Chaudhary, Manager and Ms. Anuradha Diwan of M/s Alliance Strategies Ltd., New Delhi had entered into a conspiracy to forge the WPC Import licences for monetary consideration and projecting the efficiency of M/s Alliance Strategies Ltd. in providing services to their clients by supplying the WPC Import licences purported to had been issued by DoT within a short span of time compared to their competitors in the trade. The forged WPC import licences were entirely prepared by them through forgery and were typed by Shri Jaspal Singh Chaudhary and Ms. Anuradha Diwan on the behest/directions of Shri Ashok Gupta, Chairman and*

Sanjay Sachdeva, CEO of M/s ASL. Shri Sanjay Sachdeva and Shri Jaspal Singh Chaudhary in their respective statements tendered under Section 108 of the Customs Act, 1962 had admitted that such forged WPC import licences were signed by Shri Jaspal Singh Chaudhary on the behest/directions of Shri Ashok Gupta and Shri Sanjay Sachdeva. The examination of the laptop used by Sh. Jaspal Singh Chaudhary and Ms. Anuradha Diwan also resulted in retrieval of documents which contained the WPC Import licences purported to be issued by DoT. Sh. Sanjay Sachdeva, was looking after the day-to-day affairs of the notice no.3 and two rubber stamps were also recovered from his cabin which were used for forging the WPC Import licences on his directions. The WPC Import licences were also forged on the directions of Sh. Ashok Gupta who was Chairman of M/s ASL. Sh. Amit Mahajan, who was looking after the Customs clearance of the imported goods was aware of the requirement of WPC Import licences for the import of "Apparatus for Wireless Telegraphy" and was also aware about the forgery made by notice no.3. Noticee no.3 was the actual beneficiary of the above illegal activities. M/s Alliance, S/Shri Ashok Gupta, Chairman, Sanjay Sachdeva, CEO, Sh. Amit Mahajan (Ex-Manager Business Development), Sh. Jaspal Singh Chaudhary and Ms. Anuradha Diwan of M/s Alliance Strategies Ltd., New Delhi had committed an offence by forging the WPC Import licences which had rendered the goods imported by M/s HCIL and M/s HNSI under the aforesaid Bills of Entry liable to confiscation under Section 111(d) of the Customs Act, 1962 and they are therefore, liable for penal action under Section 112 (a), 112 (b) and 114AA of the Customs Act."

8. In view of these findings, the Commissioner ordered confiscation of the goods valued over ₹3.13 Crores but with an option to redeem them for ₹60 lacs; individual penalty orders were made under Section 112 of the Customs Act, 1962 against M/s Hughes Communication India Ltd.; ₹1.50 Crores under Section 114AA of the Customs Act, 1962 upon M/s Alliance Strategies Ltd., New Delhi; and a sum of ₹20 lacs each under the said two provisions upon Mr. Ashok Gupta, Chairman of M/s Alliance Strategies Ltd. and of ₹20 lacs each under the said two provisions upon Mr. Sanjay Sachdeva, CEO of M/s Alliance Strategies Ltd. A penalty of ₹20 lacs each under Section 112 and under Section 114AA of the Customs Act, 1962 was imposed on the appellant. On the other hand, a lower rate of penalty of ₹6 lacs each under the two provisions was imposed upon two other employees of M/s Alliance Strategies Ltd. i.e. Mr. Amit Mahajan, Ex-Manager and on Ms.Anuradha Diwan, Assistant Manager, both of whom were equally culpable and had worked for M/s Alliance Strategies Ltd.

9. The appellant urges that the penalties imposed in this case are *ex-facie* arbitrary and unreasonable. In the absence of differentiating the role of the three employees i.e. the appellant, Mr. Amit Mahajan and Ms. Anuradha Diwan, he could not be singled out and imposed with a higher penalty of Rs.40 lacs.

10. The Revenue urges that in the present case there was a difference, inasmuch as, the appellant was responsible for the forgery of a larger number of documents and that the findings indicate that the

appellant was involved in forgery and other two employees were coordinating him.

11. This Court is of the opinion that the imposition of different amounts as penalties upon the appellant on the one hand and the other two employees on the other, in the peculiar facts of this case, does not appear to be justified. Although the Revenue's counsel sought to justify this difference by emphasising upon the nature of the role, what appears from the record is that the lower authorities were carried away by the fact that the appellant was a Manager whereas, the other two were lesser ranked employees.

12. Having regard to the above observations and finding the penalty imposed upon the appellant (₹20 lacs each under Section 112 and 114AA of the Customs Act) is hereby reduced to ₹6 lacs under each provision.

13. The appeal partly succeeds to the above extent and is accordingly allowed.

14. The appellant shall deposit this amount within four weeks from today.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 13, 2018
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