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

\+ CUSAA 174/2018 & CM Nos.31710-11/2018

RAVINDER SINGH CHAUHAN ..... Appellant
Through : Mr. Gaurav Mitra, Mr. Lokesh Chopra and Mr. Adit Singh, Advs.

versus

COMMISSIONER OF CUSTOMS ..... Respondent
Through : Mr. Sanjeev Narula, Sr. Standing Counsel with Mr. Sunil Dalal, Mr. Abhishek Ghai and Mr. Shravan Kumar Shukla, Advs.

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

O R D E R

% **18.09.2018**

The question of law urged on behalf of the appellant, i.e. the assessee/importer is that the imposition of penalty under Section 114AA of the Customs Act, 1962 [hereafter "the Act"] was unwarranted and illegal given that the provision was inserted in the statute book w.e.f. 13.07.2006.

The facts briefly are that the assessee was a salaried Director employed by M/s Atlas Interactive (India) Pvt. Ltd. ('*Atlas*' hereafter) which imported certain quantity of goods from a Chinese supplier –

M/s. ZTE Corporation to fulfil its obligation with the Bharat Sanchar Nigam Limited (hereafter "BSNL") of which it was a franchisee. The equipments were broadly telecommunication networking equipments – including supporting software. The contract with BSNL ran into trouble; the goods could not be released. Eventually the dispute with BSNL was referred to arbitration. The value of the goods – as declared was ₹24 crores. Somewhere after the importation and the filing of the bill of entry (which was in 2007), the assessee Atlas sought to re-export the goods – this time claiming that the consignee was its sister concern, i.e. M/s. Atlas Opportunities Ltd. (a British Virgin Islands incorporated company), which is said to have been carrying on its commercial activities in Slovakia. The Let Export Orders (LET) were issued on different dates in 2007. At that stage, the Directorate of Revenue Intelligence (DRI) suspected that the transaction was not genuine. In the meanwhile, the importer approached this court under Article 226 of the Constitution of India – unsuccessfully urging that in the absence of a Show Cause Notice (SCN), the prolonged retention was illegal. It approached the Supreme Court - but to no avail since his Special Leave Petition (SLP) was dismissed. The ensuing adjudication by the Commissioner noticed that the Chinese company in the meanwhile had agreed to accept the goods for free. After overall appreciation of the circumstances, the Commissioner confiscated the goods and imposed penalty on the company and penalty to the tune of ₹1 crore was *inter alia* imposed upon the appellant.

Mr. Gaurav Mitra, learned counsel for the appellant urges that the cause or occasion, so to say, for imposing penalty in this case occurred prior to the insertion of Section 114AA and to that extent the concurrent imposition of penalty was unlawful. It was emphasized in this regard that the Bills of Entry (BoE) were initially filed in 2005; for its own convenience, the Customs authorities asked them to split the same into 14 bills which Atlas did in 2006. It was therefore, urged that the ensuing litigation with BSNL was not of importer's (Atlas) making**;** consequently its request for re-export – under Section 50(51) was only a consequential action. In fact, the Commissioner recorded satisfaction upon full scrutiny of the material and granted the LET Order**.**

This court has considered the submissions. Although, the BoE – which signifies the importation of goods and the official record thereof undoubtedly occurred in 2005, the occasion for the DRI to investigate the genuineness of the transaction arose when the appellant sought to re-export the goods to a company which did not exist. In that sense, it was not the original importation but rather re-attempted importation upon its failure to clear the goods on account of apparently factors beyond its control, such as dispute with BSNL which rather strangely and lamely it omitted to pursue and let go of the claim of reimbursement of ₹24 crores. In other words, the re-export application made sometime in 2007 and the order, which was issued upon it, in the opinion of this court, constituted attempts that were successful on the appellant's part to claim a fraudulent or otherwise fictitious transaction, to be genuine. In these circumstances, the imposition of penalty, which was in respect of the facts that took place after 13.07.2006, was justified.

For the above reasons, this court is of the opinion that no question of law arises. The appeal is therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 18, 2018
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