IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-807-MA-2014
DECIDED ON: 12.03.2019

INSPECTOR OF CUSTOMS (ANTI SMUGGLING), UOI ...APPLICANT..

VERSUS

ASHOK KUMAR ...RESPONDENT..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Davindera Dutt Sharma, Advocate,
for the applicant.

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RAMENDRA JAIN, J. (ORAL)

Through this application under Section 378 (4) Cr.P.C., applicant has sought grant of leave to file appeal against the order dated 12.02.2014 of the trial court, acquitting the respondent in a complaint case under Sections 132 and 135 of the Customs Act, 1962 (for short, "Act").

Briefly, applicant filed a complaint under Sections 132 and 135 of the Act against the respondent on the allegations that M/s Golden Tools International, Jalandhar, owned by the respondent, fraudulently availed benefits under the Duty Entitlement Pass Books Scheme (for short, "DEPB") on the basis of forged Bank Realization Certificates (BRC). After holding trial, the respondent was acquitted vide impugned judgment dated 12.02.2014, dismissing the complaint of the applicant.

Inter alia, learned counsel contends that the impugned judgment of the trial court dismissing the complaint of the applicant is based on surmises and conjectures. The trial court has failed to appreciate that respondent had obtained DEPB by submitting forged BRC. Therefore, he was liable to be punished under Section 132 of the Act.

Having given thoughtful consideration to the submission made by learned counsel for the applicant, this Court finds instant application merits dismissal for the reasons to follow:-

Complaint was filed against the respondent by the applicant mainly on following grounds; (i) respondent obtained forged BRC and obtained transferable DEPB scrips; (ii) he evaded custom duty of ₹2,79,436/-.

According to letter dated 18.09.2018, written by Assistant Commissioner (Local), Mr. Amrik Singh to learned counsel for the applicant, no revenue loss of ₹2,79,436/- was ever caused by the respondent by evading custom duty. Photocopy of the same is taken on record. Hence, the impugned judgment of the trial court qua acquitting the respondent under Section 135 of the Act is liable to be upheld.

As far as, acquittal of respondent under Section 132 of the Act is concerned, this Court is not inclined to differ with the findings of the trial court, which are as follows:-

> 21. *"If an Export Unit applies to the Joint Director General of Foreign Trade along with Export*

Promotion copies of Shipping Bills and Bank Realization Certificates or BRCs and obtained transferable DEPB Scrips. The concerned Bank issues BCE&R after the export proceeds are realized. The BRC in question is Ex. PW1/C which bears No.GT/08EXP/99 dated 15.07.1999. There is seal of Chief Manager, State bank of Bikaner & Jaipur, Madhopuri Chowk, Ludhiana bearing signature of authorized officer, which has been denied by the concerned Bank Officer. It is also mentioned on this BRC that it was not issued by the Bank. It is admitted fact that the amount in question was realized from the foreign buyer. After realization of the amount, BRC was required to be issued. It is not the case of complainant that after realization a BRC was issued. Rather, same BRC was considered while realization of amount as is clear from letter dated 11.09.2013 Ex.DA. It is mentioned in Ex.DA that the bill was purchased their Madhopuri Chowk Ludhiana Branch on 26.07.1999 and on the basis of Branch Transfer, their Jalandhar Branch credited an amount of ₹16,49,930/- on 27.07.1999. The bill was realised by their Madhopuri Chowk Branch on 06.09.1999 and same was responded by their Jalandhar Branch on 07.09.1999. If this BRC was not issued by the Bank, under what circumstances it was considered. There is no evidence on the file that after realization of the amount, another BRC was issued by the Bank. Thus, it is clear that the BRC in question was issued by the Bank in advance and later on they denied issuance of the same just to save themselves from their act of

> *issuance of the same without getting the amount realised. If the Bank did not issue this BRC, a case could be registered against the accused and others with the police, but no such action was taken by the Bank. Even the complainant has not filed this complaint for offence of forgery. No handwriting expert has been examined to prove signature of the person on the BRC in question. All these facts have created doubts in version of complainant. It is settled principle of criminal jurisprudence that benefit of doubt always goes to accused."*

Learned counsel for the applicant has not been able to point out any infirmity in the aforesaid findings of trial court.

In view of the above discussion, this Court does not find any infirmity and illegality in the impugned order dated 12.02.2014. As such, the same is upheld.

Dismissed.

12.03.2019 **(RAMENDRA JAIN)**
sonika **JUDGE**

Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**