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

Date of Decision: 14.10.2019

\+ W.P.(C) 10880/2019

M/S ASHOKA AUTOTECH ..... Petitioner

Through: Ms. Binisa Mohanty, Adv.

versus

ASSISTANT COMMISSIONER OF CUSTOMS (GR-V) AND ANR. ..... Respondents

Through: Mr. Amit Bansal with Mr. Aman Rewaria & Ms. Vipasha Mishra, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

D.N. PATEL, CHIEF JUSTICE *(Oral)*

1. The present writ petition has been preferred challenging the show-cause notice issued by the respondents dated 29.03.2019 and Order-In-Original dated 19.09.2018 which are at Annexure P-5 and Annexure P-1 respectively. The duty demanded by the respondents is @ Rs.1,35,557/-.

2. Having heard learned counsel for the petitioner and looking to the facts and circumstances of the case, it appears that bill of entry is dated 01.09.2016. The dispute in question is about the valuation of the goods, the freight amount, the insurance amount and how this amount has been added by the respondents and ultimately a show-cause notice was issued on 29.03.2019 (Annexure P-5 to the memo of this writ petition).

3. It further appears from the facts of the case that adequate opportunity of being heard was given as stated in paragraph 4 of the Order-In-Original (at Page No.24) i.e. on 08.08.2018, 17.08.2018, 06.09.2018 and 17.09.2018. For ready reference, paragraph 4 of the order in original reads as under:

> ***"RECORDS OF PERSONAL HEARING***
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> *4. No reply to the demand cum show cause notice was received from the importer. Opportunities for personal hearing were granted to the importer in the matter on 08.08.2018, 17.08.2018, 06.09.2018 and 17.09.2018. However, nobody appeared on the behalf of the importer."*

4. Looking to the memo of the writ petition, there is no denial of the aforesaid four dates given by the respondents for the hearing of the petitioner.

5. In view of these facts, no error has been committed by the respondents while passing Order-In-Original.

6. In this writ petition, the only contention raised is regarding the personal hearing. As contended by the petitioner, an ex parte order has been passed by the respondents as Order-In-Original dated 19.09.2019 (Annexure P-1). We are not in agreement with this contention because on several occasions adjournments were given and the opportunity of being heard was not availed by the petitioner. Hence, there is no violation of the principles of natural justice by the respondent.

7. Moreover, the aforesaid Order-In-Original was appealable at the relevant time. Statutory appeal was tenable under the Customs Act, 1962. The petitioner has allowed the statutory period including the maximum condonable delay within which appeal could be preferred, to lapse, and has sought to invoke the extraordinary jurisdiction of this court at a much

belated stage. If such a practice is tolerated, it would render the provision of appeal, as provided in the Customs Act, 1962, totally otiose, and would amount to granting premium for indolence. As nothing has been argued out on merits, we are also not discussing about the valuation of the goods and how the amount of freight and insurance are added by the respondents.

8. Moreover, the learned counsel for the petitioner has argued, that on the basis of the bill of entry, the freight was fixed as per the CIF norms and not as per FOB value.

9. Looking to the reasons stated in the Order-in-Original, Assistant Commissioner of Customs, especially, in paragraphs 6, 7 and 8 makes certain observations, which are reproduced hereunder:

> *"6. For the sake of brevity, I will not repeat the facts of the case which have already been detailed in the preceding paras. I find that the importer had filed Bill of Entry No.6583653 dated 01.09.2016 and declared the invoice value as USD 33450 CIF. I find that the audit scrutiny of the bill of entry revealed that the terms of invoice mentioned on the import invoice was FOB. Thus, it is clear that the amount of USD 33450 mentioned in the invoice was not inclusive of cost of freight and insurance charges.*
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> *7. I find that as per section 14 of Customs Act, 1962 the value of imported goods for assessment of Customs duty shall be the value of such goods for delivery at the time and place of importation and shall include (a) the cost of transport of the imported goods to the place of importation (b) loading unloading and handling charges incurred at the place of importation and (c) the cost of insurance. Further, as per Notification No. 39/90-Cus (N.T), if the invoice price does not includes ocean freight and insurance, following elements have to be added to make it CIF value.*

> 1. *Where actual sea/air freight is not ascertainable, 20% of FOB value.*
> 2. *Where actual insurance is not ascertainable, 1.125% of FOB value.*
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> *8. I find that in the subject case the importer have not come forward to submit any documentary evidences in respect of actual freight or insurance charges. Therefore, for the purpose of calculation of customs duty, freight charges @ 20% of FOB value and insurance charges @ 1.125% of FOB value have to be added to the invoice value in terms of provisions of Section 14 of the Customs Act, 1962 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Thus, I find that non inclusion of cost of freight and insurance for calculating assessable value and duty thereon resulted in short levy of duty amounting to Rs.1,35,557/-."*
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> *(emphasis supplied)*

10. We are in full agreement with the reasons given in Order-In-Original.

11. In view of the aforesaid observations, we see no reason to entertain this writ petition on merits. Even otherwise also, the duty amount involved is only Rs.1,35,557/-. Hence also we see no reason to entertain this writ petition and the same is therefore dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

OCTOBER 14, 2019
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