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

+ W.P.(C) 469/2019 & CM No.2103/2019

STANLEY FERNANDES ..... Petitioner

Through : Mr. Vikram Singh, Adv.

versus

COMMISSIONER OF CUSTOMS (EXPORT).... Respondent

Through : Mr. Harpreet Singh, Sr.  
Standing Counsel with Ms.  
Suhani Mathur, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**

**18.01.2019**

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Issue notice to the respondent.

Mr. Harpreet Singh, Senior Standing Counsel accepts notice on behalf of the respondent. With the consent of learned counsel for the parties, the petition is heard finally.

The writ petitioner is aggrieved by an order dated 22.11.2018 made by the Assistant Commissioner.

The facts of the case are that a consignment of computer UPSs was imported by one Mr. Ashwini Kumar of New Delhi, from CAN; and sought to be cleared in the Courier Terminal, Indira Gandhi International Airport. A bill of entry was filed on 09.08.2017 and an airway bill as well. During examination of the consignment, the

custom authorities found brown colour tapes containing 21510 pieces of 4GB memory cards (unbranded of Taiwan make) and other items valued at ₹14,19,660/- inside the computer UPSs. The consignment however, turned out to be of a non-existent individual. During the pendency of the investigation, the petitioner approached the custom authorities claiming to be the unpaid seller of the goods and by a letter dated 11.10.2017 requested that the goods should be returned to him for resale. The petitioner approached this court by way of W.P.(C)No.8854/2018.

Before this Court, it was pointed out on behalf of the custom authorities that the petitioner was in fact not the consigner but rather one Sui Company of Hong Kong was shown in the relative documents. In these circumstances, the writ petition was disposed of with the following *inter alia* directions :

*“This Court is of the opinion that since the consignee has refused to clear the goods and the present petitioner has approached the Customs Authorities for clearance of the goods - upon payment of applicable duty, the respondent - Customs Authorities should adjudicate upon the request as well as the duty liability, if any, in accordance with law. Since the bills relates to August, 2017, the concerned Adjudicating Authority shall decide the matter expeditiously preferably within six weeks. The respondent shall consider amending show cause notice (without prejudice to its contention at this moment) to ensure the participation of the petitioner/ exporter.*

*Writ petition disposed of in the above terms.”*

It is contended that the Order-In-Original is contumacious and made overlooking the relevant circumstances. Mr. Vikram Singh, learned counsel for the petitioner relied upon the circumstance that the Import General Manifest clearly showed the petitioner's name as well as Sui Co. of Hong Kong and that in these circumstances, the Order-In-Original is liable to be quashed.

This Court has heard the counsel and considered the materials on record. Whilst there was no dispute that M/s Sui company's name is found in the Import General Manifest and further that the petitioner's mobile number too was apparent, the *inter se* relationship between the two is unknown. When this Court directed the adjudicating authority to consider amending the show cause notice, in the opinion of this court at the stage, when the request was taken into account, the onus was upon the petitioner to produce the relevant documents to establish its relationship with the consignor (Sui Co., Hong Kong). That the petitioner's name could be discerned in the Import General Manifest or any other relative document *per se* does not establish that he was the unpaid seller. Other documents *prima facie* indicating that he had a pre-existing relationship with M/s Sui Co. or that he had title to the goods or that he was authorized by the company in some capacity would have strengthened its case. However, he chose not to produce them before this court or the adjudicating authority.

In the given circumstances, this Court is of the opinion that the petitioner's remedy is by way of an appeal to the Commissioner of

Customs (Appeals). In that appeal, it is open to him to make such factual claims as are relevant to the arguments and contentions made by him. In case, any such averment with respect to the petitioner's relationship with the consignor (M/s Sui Co. HK) is made or any document produced, it is open to the Commissioner to make such inquiry in accordance with law, or seek a remand report from the adjudicating authority in the overall interest of justice. Subject to such remand report or the materials made available and a proper adjudication in this regard, the Commissioner of Customs shall pass an appropriate order in accordance with law. All rights and contentions of the parties are reserved.

This petition is disposed of in the above terms.

Order *dasti*.

**S. RAVINDRA BHAT, J**

**PRATEEK JALAN, J**

**JANUARY 18, 2019**

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