Pradnya Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CUSTOM APPEAL NO. 35 OF 2019

The Commissioner of Customs (Export) ..Appellant
vs.
Omprakash Parasrampuria ..Respondent

**WITH
CUSTOM APPEAL NO. 36 OF 2019**

The Commissioner of Customs (Export) ..Appellant
vs.
Sanjay Parasrampuria ..Respondent

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Mr. P.S. Jetly a/w Mr. J.B. Mishra for Appellant.
Mr. S. Sridharan for Respondents.

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**CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.**

DATE : 11 FEBRUARY 2020

P.C.:-

These two Appeals arise from the same set of facts and have been disposed of by common order by the Customs, Excise Service Tax Appellate Tribunal, Mumbai dated 13 March 2019.

2. By the impugned order the Tribunal had reduced the penalty imposed on the Respondents-Directors of a Company

from Rs.10,00,00,000/- (Rupees Ten Crores Only) to Rs.1,00,000/- (Rupees One Lakh Only). The Appeals were admitted by order dated 7 November 2019, observing that *prima facie* the Court was of the view that the impugned order is a non-speaking order and require reconsideration at the hands of the Tribunal, hearing of the Appeals was fixed on 3 February 2020. Accordingly, the Appeals are taken up for hearing today.

3. We have heard learned counsel for the parties. After hearing learned counsel for the parties we have reframed the question of law as under :-

> *"Whether impugned order passed by the Tribunal is required to be set aside and the proceedings be relegated for reconsideration of the Tribunal on the ground that the order is non-speaking order?"*

4. In view of this limited question framed, it is not necessary to narrate the facts in detail.

5. Parasrampuria Industries Limited was issued certain Advance Licenses by the Directorate General of Foreign Trade. The bonds were executed in respect of these Licenses. Parasrampuria Industries Limited was allowed imports under the Advanced Licenses. According to the Appellant, Parasrampuria Industries Limited (the Company) had undertaken to fulfill the

Export Obligations and the Company failed to submit the Export Obligation Discharge Certificate. The Commissioner imposed penalty of Rupees Ten Crores. The Appeals filed by the Respondents were taken up by the Tribunal. The Tribunal, after referring to the rival contentions held that the Respondents were liable for penalty under Section 112A of the Customs Act. The Tribunal however reduced the penalty from Rs.10,00,00,000/- to Rs.1,00,000/- observing thus :-

> *"However, looking into the facts and circumstances of the case including that appeals against the main company and one of the Directors have been abated, in our view, the ends of justice will be met, if penalty is reduced from Rs.10.00 crores to Rs.1.00 lakh on the each appellants. We order accordingly."*

It is the contention of the Appellant that this order is entirely non-speaking and perverse, while it is the contention of the Respondents that considering the background facts, the order is correct and should not be interfered with. It is contended by the Respondents that the reasons are given in the order about the abatement of Appeals against the Company and one of the Directors.

6. That the Tribunal would have discretion to fix the quantum of penalty can not be disputed, but such exercise can not be a arbitrary one. The Commissioner, after considering all these

circumstances had imposed penalty of Rupees Ten Crores. If it has to be brought down to Rupees One Lakh, the Tribunal was under obligation to give detailed reasoning thereof. That the Appeals against the Company and Directors have abated was one of the factors for the use of discretion, but in absence of statutory provisions mandating reduction in penalty on this ground, other factors for the use of discretion also had to be considered. From the perusal of the order passed by the Commissioner it does appear that there were various other parameters which should have been taken into consideration while fixing the amount of penalty. Since there is an absence of considerations of all the parameters the question of law as reframed will have to be answered in favour of the Appellant.

7. Accordingly the Appeals are allowed. The impugned order dated 13 March 2019 to the extent it reduces the penalty from Rupees Ten Crores to Rupees One Lakh is quashed and set aside.

8. The Appeals No.C/919 and 921/2009 stand restored to the file of the Tribunal, only on the aspect of fixation of the quantum of penalty. We make it clear that we are not interfering with the findings of the Tribunal that the Respondents are liable for penalty under Section 112A. We also make it clear that as what is stated in this order is only to stress on the absence of reasoning

and we have not commented on the merits of the matter as it will be within the domain of the Tribunal to fix the penalty after giving the reasons for the same.

9. Keeping all the contentions of the parties on this aspect open, the Appeals are disposed of as above.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**