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

% *Date of Decision: 22nd February, 2023*

+ **CUSAA 8/2023 & CM APPL. 8597/2023**

SH S K JINDAL DIRECTOR Appellant
Through: Ms. Priyanka Goel, Adv.

versus

COMMISSIONER OF CUSTOMS Respondent
Through: Mr. Anurag Ojha, Senior
Standing Counsel for
Revenue with Mr. Kumar
Abhishek and Mr. Gautam
Barnwal, Advs.

+ **CUSAA 9/2023 & CM APPL. 8675/2023**

M/S BHAVANA JINDAL EXIM PVT. LTD.
THROUGH DIRECTOR Appellant
Through: Ms. Priyanka Goel, Adv.

versus

COMMISSIONER OF CUSTOMS Respondent
Through: Mr. Anurag Ojha, Senior
Standing Counsel for
Revenue with Mr. Kumar
Abhishek and Mr. Gautam
Barnwal, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The appellants have filed the present appeals impugning an order dated 02.08.2022 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereafter '**the**

Tribunal’) in the respective appeals preferred by the appellants – Customs Appeal No. 50306 of 2022 [SM] and Customs Appeal No. 51272 of 2022 [SM].

2. M/s Bhavana Jindal Exim Pvt. Limited (appellant in CUSAA9/2023 and hereafter referred to as ‘**the company**’) is, inter alia, engaged in the business of exports. Sh S.K. Jindal (appellant in CUSAA 8/2023) is one of the directors of the company.

3. The controversy arises in the context of two shipping bills dated 27.01.2017 (Shipping Bill No. 3718938 and 3718934) which were filed by the company’s CHA (M/s. Sadagati Clearing Services Pvt. Ltd.).

4. The shipping bills related to shipment of ‘Leather Apparels and Leather Gents Long Jacket’, which were being exported to M/s Unimax Handbags, Los Angeles.

5. It is the respondent’s case that DRI Officers, on the basis of some intelligence, examined the goods on 17.02.2017 and on visual examination, found that those goods were old and used.

6. Thereafter, the statement of Sh S. K. Jindal (Appellant in CUSAA 8/2023), was recorded. It is apparent from the said statement that he admitted that the goods, which were being exported were old.

7. Thereafter, the Show Cause Notice dated 02.08.2017 was issued calling upon the appellants to show cause why penalty under Section 114 of the Customs Act, 1962 (hereafter ‘**the Customs Act**’) not be imposed. It was alleged that the goods were over-valued to avail a higher duty drawback.

8. The adjudicating authority adjudicated the said show cause notice by an order dated 10.01.2019. The adjudicating authority denied the drawback of ₹ 6,09,976.74/-, claimed on the goods CUSAA 8/2023 & CUSAA 9/2023

covered under the shipping bills in question. The adjudicating authority also imposed penalty of ₹5 Lakhs under Section 114(iii) of the Customs Act and a penalty of ₹5 Lakhs under 114AA of the Customs Act on the company. In addition penalties of ₹ 1 Lakh under Section 114(iii) and 114AA of the Customs Act were also imposed on Sh. S.K. Jindal.

9. It was found that the declared unit price was USD 130 (₹8762) per piece and USD 135 (₹9099) per piece, as mentioned in the shipping bills. However, the value of the said goods was determined at ₹500 per unit totalling to ₹3,52,500/-. This was also confirmed by Sh. S K Jindal (appellant in CUSAA 8/2023) in his statement.

10. The appellants appealed against the said order dated 10.01.2019 before the Commissioner of Customs (Appeals). However, the said appeals were rejected by an order dated 01.10.2021.

11. The appellants carried the matter in appeal before the Tribunal. These appeals were dismissed by the impugned order.

12. A plain reading of the pleadings as well as the impugned orders, indicates that there is no dispute that the goods in question were over-valued.

13. Ms Goel, the Learned counsel appearing for the appellants submits that although it is admitted that the goods in question are not new but the appellants had not admitted that the goods were used.

14. In our view, that makes little difference as there is no real dispute that the goods were over-valued.

15. The appellants' defence rests on their claim that the company had sent a letter dated 31.01.2017 requesting permission for withdrawal of both the shipments.

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16. It is stoutly contended that since the appellants had sought withdrawal of the export shipments, no *mens rea* could be attributed to them. More importantly the company had no intention to avail duty drawback.

17. It is also pleaded that the said letter was sent because the CHA, while examining the goods on 27.01.2017, had found the goods to be old and used and had informed the same to the appellants. The Director of the appellant was travelling and therefore had reacted a few days later by sending the letter dated 31.01.2017.

18. The said explanation was rejected by the Commissioner of Customs (Appeals) for various reasons. First, the Commissioner (Appeals) found that the said letter had not been produced before the adjudicating authority. Second, it found that the said letter did not contain any acknowledgement evidencing that the said letter was in fact received by the concerned authorities. And third, the reasons stated in the said letter do not corroborate the explanation provided by the appellant.

19. The reasons provided by the appellant for withdrawal of the export shipments was that the buyer had cancelled both the shipments / cargo due to late delivery. This did not conform with the explanation that the appellants had sought permission to withdraw the shipments on becoming aware that the goods being dispatched were old and over-valued.

20. As stated above, there is no dispute that the goods were over-valued. Therefore, the questions involved in the present appeals, essentially, are whether the letter dated 31.01.2017 was, in fact, sent and, if so, what is the import of the said letter

21. We are of the view that the question whether the said letter has been received by the concerned authorities is solely a
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question of fact. There is no dispute that the said letter was not produced before the adjudicating authority. The Commissioner (Appeals) had found that the delivery of the letter to the department is itself doubtful apart from the fact that the letter did not corroborate the explanation as provided by the appellant. This being a finding of fact, no substantial question of law arises in the present appeals.

22. The appeals are, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 22, 2023

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