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

% *Date of Decision: 23rd March, 2023*

\+ **W.P.(C) 9477/2020 & CM APPL. 30496/2020**

SANDEEP AGGARWAL ..... Petitioner

Through: Dr. Ashutosh, Ms. Fatima and Ms. Monal, Advs.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Jivesh Kr. Tiwari, Senior Panel Counsel or R-1 / UOI.
Mr. Harpreet Singh, Senior Standing Counsel.

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

VIBHU BAKHRU, J. *(Oral)*

1. The petitioner has filed the present petition impugning an order dated 30.09.2020 (compounding order No.05/2020). In terms of the impugned order, the Chief Commissioner of Customs (Preventive) has accepted the petitioner's case for compounding under the provisions of Section 137(3) of the Customs Act, 1962 (the Customs Act) read with Rule 4(3) of the Customs (Compounding of Offences Rule), 2005.

2. The petitioner is, essentially, aggrieved by the quantification of the compounding fee as determined in the impugned order.

3. The petitioner had imported certain goods and declared the assessable value of the said goods as ₹52,20,435.60/-. Out of several items, only two items had been imported on payment of

appropriate duty amounting to ₹1,784/-, and it was found that the other items were imported at concessional rate of duty under Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2016 on the strength of Central Excise Certificate dated 03.06.2016.

4. On examination, it was found that the goods imported were different from those that were declared in the Bill of Entry and were not covered under the Central Excise Certificate. Therefore, it was concluded that the petitioner was not entitled to import the goods on concessional rates as claimed.

5. The goods in question were seized under Section 110 of the Customs Act. The statement of the petitioner (who was proprietor of the importer firm M/s. Goodyear Technologies) was recorded under Section 108 of the Customs Act wherein he practically admitted that the goods imported by him were not eligible for concessional rate of duty. According to him, some "mix up" had happened in the declared goods and he volunteered to pay the duty applicable along with fine and penalty imposed in respect of the import of the goods in question. He also waived the issuance of any show cause notice.

6. The goods were assessed at a value of ₹3,75,95,666/- (Rupees Three Crores Seventy Five Lakhs Ninety Five Thousand Six Hundred and Sixty Six Only). The petitioner also paid the penalty as well as fine which was imposed.

7. The learned Chief Commissioner of Customs considered the petitioner's case for compounding the offence under Section 137(3) of the Customs Act and found that there was no prior incidence of violation. In addition he also found that the goods imported were not of a nature, which precluded the importer to make any application under Section 137(3) of the Customs Act.

8. The learned Chief Commissioner of Customs allowed the petitioner's application and determined the compounding fee at ₹37,59,567/- being 10% of the assessed value of the goods.

9. Rule 5 of the Customs (Compounding of Offences Rules), 2005 specifies that the compounding amount for an offence under Section 135(1)(a) of the Customs Act would be "upto 10% of the amount of the market value of goods, subject to a minimum of ₹1,00,000/-". The compounding amount demanded from the petitioner is thus, the maximum that could be imposed under Rule 5 of the said Rules. However, there is no discussion whatsoever to indicate why the concerned authority thought it fit to impose the maximum compounding fee.

10. This Court also notes that the observations made in the impugned order are largely in favour of the petitioner. The learned Chief Commissioner had found the petitioner to be first time offender with clean antecedents. There is also no material to indicate that the petitioner's explanation was found to be untrue. There is no material, which would even remotely suggest that the petitioner is engaged in the regular business of wrongfully importing goods at concessional rates.

11. We find nothing in the impugned order that would suggest that maximum compounding fee was warranted in the given facts of this case.

12. Learned counsel for the petitioner submits that the petitioner would voluntary deposit ₹5,00,000/- to show its *bona fide*.

13. This Court considers it apposite to set aside the impugned order to the extent of determination of the compounding fee as ₹37,59,567/- and remand the matter to the concerned authority to consider the petitioner's case afresh.

14. Subject to the petitioner depositing the aforesaid amount of ₹5,00,000/- (Rupees Five Lacs) withing a period of two weeks from today, the concerned authority shall determine the compounding fee after taking an overall view of the case, within a period of four weeks after the petitioner has deposited the aforesaid amount.

15. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 23, 2023
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