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

% *Date of Decision: 13th February, 2023*

\+ **W.P.(C) 10390/2022 & CM APPL. 29970/2022**

SH. JAGDEEP SINGH ..... Petitioner

Through: Mr. R.P. Singh, Mr. Shivam Tyagi & Ms. Priyanka Goel, Advs.

versus

OFFICE OF THE COMMISSIONER OF CUSTOMS (DELHI AIRPORT) & ANR. ..... Respondents

Through: Mr. Anurag Ojha, Sr. SC with Mr. Kumar Abhishek, Mr. Gautam Barnwal & Mr. Nikhilesh, Advs.

\+ **W.P.(C) 10403/2022 & CM APPL. 29997/2022**

SH. RAKESH GODARA ..... Petitioner

Through: Mr. R.P. Singh, Mr. Shivam Tyagi & Ms. Priyanka Goel, Advs.

versus

OFFICE OF THE COMMISSIONER OF CUSTOMS ` (DELHI AIRPORT) THROUGH COMMISSIONER & ANR. ..... Respondents

Through: Mr. Anurag Ojha, Sr. SC with Mr. Kumar Abhishek, Mr. Gautam Barnwal & Mr. Nikhilesh, Advs.

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

VIBHU BAKHRU, J.

1. The petitioners have filed the present petitions impugning two orders. First, an order dated 14.02.2022 passed by Respondent No. 1 (order bearing no. 53/ Adj/ Jyotiraditya/ JC/ 2022); and second, an order dated 26.03.2022, passed by Respondent No. 2 (order bearing no. DLI/ CUS/ PREV/AK/JC/ 491/ 2021-22).

2. The aforementioned impugned orders were passed pursuant to a show cause notice dated 22.05.2019 issued to three persons – the petitioners and one Sh. Shera.

3. The petitioners assail the impugned orders principally on the ground that both the orders are pursuant to the show cause notice proposing to impose penalties on the petitioners (and one other noticee) on the same set of facts. The impugned orders impose penalties in respect of the same allegations. The petitioners contend that they cannot be subjected to penalties twice over, in regard to the same alleged offences. The petitioners also rely on the decision of this Court in ***FNS Agro Foods Ltd. & Ors. v. CC (Preventive) Delhi & Anr.: (2016) 337 ELT 31***, whereby this Court held that there cannot be two adjudication orders-in-original in respect of the same goods.

4. The controversy in these petitions, arises in the context of allegations made in the show cause notice dated 22.05.2019. The Revenue alleges that the officers of the Directorate of Revenue Intelligence (DRI), acting on specific intelligence, intercepted Sh. Jagdeep Singh [petitioner in WP(C) No. 10390/2022] while he was scheduled to depart by flight no. AI 334 from New Delhi to Bangkok from T-3, IGI Airport, New Delhi. The said petitioner was allegedly carrying foreign currency of a market value

equivalent to ₹1,28,81,650/- wrapped in newspapers and taped to the bottom and the side walls of a stroller bag. The foreign currency was seized under Section 110 of the Customs Act, 1962 (hereafter 'Customs Act') read with Foreign Exchange Management Act, 1999 (hereafter 'FEMA') and a *panchnama* dated 24.11.2018 was drawn up. The said petitioner's (Sh. Jagdeep Singh's) statement was recorded and he had confessed to carrying the said currency, which was meant to purchase anabolic steroids. He claims that he was approached by a person, who, according to the Revenue, is Sh. Rakesh Godara [petitioner in WP(C) No. 10403/2022]. Sh. Jagdeep Singh is alleged to have stated that Sh. Rakesh Godara had offered him ₹15,000/- plus air tickets along with lodging and boarding in Thailand to carry the currency and for importing anabolic drugs and medicines.

5. The Revenue claims that on 24.11.2018, it conducted search operations on the premises bearing no. A-127, 2nd Floor, Sharda Puri, Ramesh Nagar, Delhi-110015 (hereafter 'the premises') , based on specific intelligence. It is alleged that the said premises was rented out to Sh. Rakesh Godara [petitioner in WP(C)10403/2022] by the landlady, Mrs. Veena Rani. During the search proceedings, large quantities of anabolic drugs, tablets and injections of foreign origin were found. The same were seized by the DRI officers believing the same to be smuggled goods. According to the Revenue, the market value of the seized drugs and injections was ascertained as ₹2,48,16,358/-. Further searches were conducted at the residence of the petitioners on 20.03.2019 but nothing incriminating was found.

6. Essentially, the allegations against Sh. Jagdeep Singh [petitioner in WP(C) No. 10390/2022] is that he is involved in

the smuggling of foreign currency amounting to ₹1,28,81,650/-. It is alleged that he has deliberately violated the provisions of the Customs Act read with FEMA; and he was involved in dealing with anabolic steroids without a license issued by the concerned authority.

7. The allegations against Sh. Rakesh Godara [petitioner in WP(C) No.10403/2022] are that he was the mastermind of the illegal acts and had engaged in the export of foreign currency and import of anabolic drugs through Sh. Jagdeep Singh.

8. As stated above, in addition to the petitioners, the show cause notice was also issued to one Sh. Shera, who was allegedly involved in the activities of illegal export of currency and import of steroids and was also acting as a link between the petitioners.

9. The petitioners responded to the show cause notice by filing separate replies dated 29.08.2019. Sh. Jagdeep Singh claims that he was a college student and was apprehended by the officers of DRI at T-3, IGI Airport, New Delhi while on his way to board a flight to Bangkok. He claims that his statement was recorded under threat and coercion, which he has subsequently retracted. He claims that no foreign currency was seized from him and he has no connection with the same. He also denied that he had any connection with the seizure of drugs from the premises (no. A-127, 2nd Floor, Sharda Puri, Ramesh Nagar, Delhi-110015).

10. Sh. Rakesh Godara also denied the allegations. He stated that he used to travel often and used to hand over the keys to the landlady (Mrs. Veena Rani) for safe keeping during his absence. He also claims that he had vacated the premises prior to the date

of the search and had nothing to do with the anabolic drugs and injections found during the search operations.

11. Respondent no.1 has passed the common impugned order against the three noticees (petitioners and Sh. Shera)

12. Respondent no.1 found that the seized currency was liable for confiscation. Respondent no.1 also found that Sh. Jagdeep Singh was involved in the smuggling of the foreign currency at the direction of Sh. Rakesh Godara; that the premises were let out to Sh. Rakesh Godara and the drugs seized from the premises belonged to Sh. Rakesh Godara; and the same were brought by Sh. Jagdeep Singh on his return journey from Bangkok. The same was facilitated by Sh. Shera. Respondent no.1 held that the drugs were liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act.

13. In view of the aforesaid findings, respondent no.1, *inter alia,* directed confiscation of the foreign currency as well as the drugs and also imposed penalties on the petitioners. The operative part of the impugned order reads as under:-

"ORDER

I. IN RESPECT OF SEIZED FOREIGN CURRENCY

A. I pass the following order w.r.t. Mr. Jagdeep Singh (Noticee-1):

a. I order absolute confiscation of Foreign Currency having market value of **Rs, 1,28,81,650/- (Rupees One Crore Twenty Eight Lakh Eighty One: Thousand Six Hundred Fifty Only)** recovered from the possession of Mr. Jagdeep Singh (**Noticee-1**), under Section113(d) of the Customs Act, 1962 for violation of Customs Act, 1962 read with provisions of FEMA, 1999;

b. I further order confiscation of concealing material used for packing concealing and carrying seized Foreign Currency recovered from **Noticee-1** under Section 118(b) of the Customs Act, 1962.

c. I also impose a penalty of **Rs. 12,90,000/- (Rs. Twelve Lakh Ninety Thousand only)** on the **Noticee-1** under Section 114(i) of the Customs Act, 1962 for his acts of omission and commission, as brought out above;

B. **<u>I pass the following order w.r.t. Mr. Rakesh Godara (Noticee-2)</u>**

a. I impost a penalty of **Rs. 12,90,000/- (Rs. Twelve Lakh Ninety Thousand only)** on the **Noticee-2** under Section 114(i) of the Customs Act, 1962 for his acts of omission and commission, as brought out above;

C. **I pass the following order w.r.t. Mr. Shera (Noticee-3)**

a. I impose a penalty of **Rs. 12,90,000/- (Rs. Twelve Lakh Ninety Thousand only)** on the **Noticee-3** under Section 114(i) of the Customs Act, 1962 for his ;acts of omission and commission, as brought out above;

II. ***<u>IN RESPECT OF SEIZED FOREIGN ORIGIN GOODS</u>***

A. **<u>I pass the following order w.r.t. Mr. Rakesh Godara (Noticee-2)</u>**

a. I order absolute confiscation of the goods recovered from the rented premises of Sh. Rakesh Godara Noticee-2 viz. Anabolic Steroids of foreign origin as detailed in the Table-2 above, having market value of Rs. **2,48,16,358.9/-** under Section 11l(d), Section 111 (1) and Section l11 (m) of the Customs Act, 1962

b. I also impose a penalty of **Rs. 24,80,000/- (Rs. Twenty Four Lakh Eighty Thousand only)** on the **Noticee-2** under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962 for his acts of omission and commission, as brought out above;

B. **<u>I pass the following order w.r.t. Mr. Shera (Noticee-1)</u>**

a. I also impose a penalty of **Rs. 24,80,000/- (Rs. Twenty Four Lakh Eigh Thousand only)** on the **Noticee-1** under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962 for his acts of omission and commission, as brought out above;

C. **<u>I pass the following order w.r.t. Mr. Shera (Noticee-3)</u>**

a. I also impose a penalty of **Rs. 24,80,000/- (Rs. Twenty Four Lakh Eighty Thousand only)** on the **Noticee-3** under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962 for his acts of omission and commission, as brought out above;"

14. The show cause notice was also adjudicated by respondent no.2 in regard to the same set of allegations. Respondent no.2 also found the petitioners guilty of the allegations as contained in the show cause notice and imposed a penalty of ₹75 lakhs on Sh. Jagdeep Singh and ₹1 crore on Sh. Rakesh Godara. The operative part of the order reads as under:-

"**Order**

a) order for absolute confiscation of the goods viz. Anabolic Steroids of foreign origin recovered from the rented premises of Sh. Rakesh Godara as detailed in the Table-2 above, having market value of **Rs. 2,48,16,358.9/-** (Rs Two crore forty eight lakhs sixteen thousand three hundred and fifty nine only) under Section 111 (d),Section 111(1) and Section lll(m) of the Customs Act, 1962;

b) I impose penalty of **Rs.1,00,00,000/- (Rupees One Crore Only)** upon Sh. Rakesh Godara S/o Sh. Om Prakash Godara under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962 for his various acts of omission and commission as detailed above;

c) I impose penalty of **Rs. 75,00,000/- (Rupees Seventy Five Lakhs only)** upon Sh. Jagdeep Singh S/o Late Sh. Jasbeer Singh under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962 for his various acts of omission and commission as detailed above;

d) I impost penalty of Rs**. 50,00,000/- (Rupees Fifty Lakhs only)** upon Sh. Shera under the provisions of Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962 for his various acts of omission and commission as detailed above."

15. It is apparent from the above that the show cause notice has been adjudicated by two authorities (respondent nos.1 and 2). We find merit in the contention that the same set of alleged offences cannot be adjudicated twice over by two authorities.

16. According to the Revenue, respondent no.1 has exceeded its jurisdiction in passing the impugned order dated 14.02.2022. The said impugned order was examined by the concerned Joint Commissioner and he passed a review order dated 08.06.2022

(Review Order No. 12/2022-23), directing that the appeal be preferred before the Commissioner of Customs (Appeals) against the impugned order dated 14.02.2022 seeking that the said order be set aside and matter be remanded to respondent no.1 to consider afresh confined to the issue pertaining to seizure of currency.

17. According to the Revenue, respondent no.1 had no jurisdiction to pass the order pertaining to seizure of anabolic drugs and injections that were seized from the premises. The said premises fell within the jurisdiction of respondent no.2, therefore, the said authority would have the jurisdiction to decide the same.

18. We accept the contention that the impugned order passed by respondent no.1 is liable to be set aside as it would be impermissible for two authorities to adjudicate the same set of allegations. However, we are unable to accept that the impugned order dated 28.03.2022, passed by respondent no.2, is also liable to be set aside on the aforesaid ground.

19. It is relevant to note that the show cause notice had clearly called upon the noticees (petitioners and Sh. Shera) to respond to respondent no. 1 and show cause as to why penalty should not be imposed in respect of seized currency and to respond to respondent no.2 to specifically show cause as to why the penalty should not be imposed in respect of the seized drugs. This is apparent from the following extract of the show cause notice:-

> "**23.1** Now, therefore, **Sh. Jagdeep Singh S/o Late Sh. Jasbeer Singh R/o Ward No. 07, Kacchi Mameran Road, Ellenabad, Sirsa, Haryana**, is hereby called upon to show cause to the Additional/Joint Commissioner of Customs, Terminal-3, IGI Airport, New Delhi- 110037 as to why:
>
> i. the foreign currency recovered from his possession, equivalent to **Rs 1,28,81,650/(Rupees One crore Twenty Eight Lakhs Eighty One Thousand Six Hundred and Fifty**

only) should not be confiscated under Section 113 (d) of the Customs Act, 1962 for violation of Customs Act, 1962 read with provisions of FEMA, 1999;

ii. the concealing material used for concealing the seized currencies should not be confiscated under section 118 (b) of the Customs Act, 1962;

iii. penalty should not be imposed upon him under Section 114(i) for his acts of omission and commission, as brought out herein.

23.2 Now, therefore, **Sh. Rakesh Godara S/o Sh. Om Prakash Godara R/o MameranKhurd, Mamera (131), Sirsa, Haryana** is hereby called upon to show cause to the Additional/Joint Commissioner of Customs, Terminal-3, IGI Airport, New Delhi-110037 as to why:

i. Penalty should not be imposed upon him under Section 114(i) for his acts of omission and commission, as brought out herein.

23.3 Now, therefore, **Sh. Shera** (whose real name is yet to be ascertained) is hereby called upon to show cause to the Additional/Joint Commissioner of Customs, Terminal-3, IGI Airport, New Delhi-110037 as to why:

i. Penalty should not be imposed upon him under Section 114(i) for his acts of omission and commission, as brought out herein.

24.1 Now, therefore, **Sh. Rakesh Godara S/o Sh. Om Prakash Godara R/o MameranKhurd, Mamera (131), Sirsa, Haryana** is hereby called upon to show cause to the Additional/Joint Commissioner of Customs(Prev.), New Customs House, IGI Airport, New Delhi-110037 as to why:

i. the goods viz. Anabolic Steroids of foreign origin recovered from the rented premises of Sh. Rakesh Godara as detailed in the Table-2 above, having market value of Rs. 2,48,16,358.9/- should not be confiscated under Section 111(d), Section 111(1) and Section lll(m) of the Customs Act, 1962.

ii. Penalty should not be imposed upon him under Section 112(a)(i) and 112(b)(i) for his acts of omission and commission, as brought out herein.

24.2 Now, therefore, **Sh. Jagdeep Singh S/o Late Sh. Jasbeer Singh R/o Ward No. 07, KacchiMameran Road, Ellenabad, Sirsa, Haryana,** is hereby called upon to show cause to the Additional/Joint Commissioner of Customs (Prev.), New Customs House, IGI Airport, New Delhi-110037 as to why:

i. Penalty should not be imposed upon him under Section 112(a)(i) and 112(b)(i) for his ads of omission and commission, as brought out herein.

> **24.3** Now, therefore, **Sh. Shera** (whose real name is yet to be ascertained) is hereby called upon to show cause to the Additional/Joint Commissioner of Customs (Prev.), New Customs House, IGI Airport, New Delhi-110037 as to why:
>
> i. Penalty should not be imposed upon him under Section 112(a)(i) and 112(b)(i) for his acts of omission and commission, as brought out herein."

20. It is seen that although there is a single show cause notice, it specifically called upon the petitioners to submit their respective replies in regard to allegations pertaining to seized currency to respondent no.1. and regarding issue of illegal import of anabolic steroids to respondent no.2.

21. In view of the above, we cannot fault the impugned order passed by respondent no. 2 only on account of that it has been adjudicated on the basis of a single show cause notice dated 22.05.2019.

22. However, insofar as the impugned order dated 14.02.2022 is concerned, the same is clearly without jurisdiction insofar as the penalties have also been imposed on account of possession of anabolic steroids of foreign origin. We also find merit in the contention of the learned counsel for the petitioners that the impugned order dated 14.02.2022 cannot be bifurcated.

23. In view of the above, the impugned order dated 14.02.2022 is set aside. The matter is remanded to respondent no. 1 to decide afresh.

24. It is clarified that this Court has not expressed any opinion on the merits of the allegations made against the petitioners and all rights and contentions of the parties in regard to those allegations are reserved. The petitioners' challenge to the impugned order dated 26.03.2022 has been considered only in

the context of whether the said order could be passed on the basis of the show cause notice. This Court has not examined the merits of the allegations made in the show cause notice and the petitioners are not precluded from availing their remedies in respect of the impugned order dated 26.03.2022.

25. In view of the time spent by the petitioners in pursuing these petitions, we consider it apposite to direct that if the petitioners file their respective appeals against the impugned order dated 26.03.2022, passed by respondent no. 2, within a period of four weeks from today, the same would be considered by the appellate authority uninfluenced by the question of delay.

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 13, 2023
SS/Ch