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

% *Date of Decision: 01.05.2023*

\+ **W.P.(C) 14549/2022 & CM APPL. 44489/2022**

ASHISH BANSAL ..... Petitioner

Through: Mr. Gandharv Anand and Ms. Reena Rawat, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (PREVENTIVE) & ANR. ..... Respondents

Through: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur, Advs. for R1.
Mr. Anand Solanki, Adv.

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, *inter alia,* impugning an order-in-original dated 18.12.2020, passed by the Principal Commissioner of Customs (Preventive), New Delhi. The petitioner also impugns the constitutional validity of Sections 86, 87, 88, 94 & 97 of the Finance Act, 2022. In addition, the petitioner has also assailed the show cause notice dated 18.05.2018.

2. At the outset, the learned counsel appearing for the petitioner states that he confines the present petition to impugning the order-in-original dated 18.12.2020 and, in the alternative, praying for waiver of any pre-deposit under Section 129E of the Customs Act, 1962 (hereafter 'the Customs Act') for

maintaining an appeal before the learned Customs, Excise and Service Tax Appellate Tribunal (hereafter 'CESTAT'). He does not press any other relief.

3. In terms of the order-in-original, the Adjudicating Authority has imposed a penalty of ₹6,00,00,000/- under Section 112(b)(i) of the Customs Act.

4. The impugned order indicates that the officers of the Directorate of Revenue Intelligence, acting on the basis of specific intelligence, had boarded the Train No. 12313, Sealdah – New Delhi Rajdhani Express at Kanpur Railway Station on 20.11.2017.

5. The object was for surveillance on certain person suspected of being involved in illegal activities. The said person (Ritesh Kumar S/o Devendra Prasad) alighted the train around 10:15 am on 20.11.2017 in the yard area of Ghaziabad Junction Railway Station.

6. He was apprehended and certain gold bars of foreign origin were allegedly recovered from him, in addition to certain Indian currency.

7. It is alleged that Sh. Ritesh Kumar could not produce any document showing the import or purchase of the gold bars in question, which, according to the department, weighed around 22625 grams. The said goods were thereafter seized and the statement of Sh. Ritesh Kumar was recorded under Section 108 of the Customs Act.

8. It appears that Sh. Ritesh Kumar implicated one Sh. Rajesh

Thakur of Haryana Bullion and, *inter alia,* stated that he was required to hand over the gold bars to the said person. He also named one Sh. Dilip Kumar of Haryana Bullion. It is stated that Sh. Dilip Kumar has implicated the petitioner.

9. The penalty has been imposed on the petitioner solely on the basis of a string of statements recorded in the said proceedings.

10. The petitioner disputes that he has any connection with the said persons or that he has carried out any business or transactions with them. The petitioner also submits that the respondents have not recovered any contraband from the petitioner or any proceeds that could be attributed to contraband.

11. The petitioner has filed the copies of Income Tax Returns for the last few years. His Income Tax Return for the Assessment Year 2019-20 indicates that the petitioner's gross income for the Financial Year 2018-19 was ₹4,93,770.

12. The petitioner has also produced statements of his bank accounts, which indicate that the balances available in the said accounts are as under :-

	A/c No.	A/c Holder	Bank	Balance as on 31.03.2020	Amount as on today
1	Current Account No. 330393309899	Haryana Jewellers	State Bank of India	1,06,878.54	35,404.54
2	Current Account No. 113205501155	Haryana Jewellers	ICICI Bank Ltd.	45,526.64	2,03,404.56

3	Saving Account No. 629201061337	Haryana Jewellers	ICICI Bank Ltd.	40,264.75	19,511.75

13. The bank account statements also indicate that there has been no substantial withdrawal from the same.

14. The petitioner had also filed a petition challenging an order-in-original dated 20.11.2020 [W.P.(C) No. 6855/2022], whereby a penalty of over ₹110 Crores was imposed on the petitioner. In the said proceedings, this Court had noted that the said penalty was also imposed on the basis of statements made by certain persons and without any other material. And, the said writ petition was disposed of by an order dated 17.03.2023 directing the learned CESTAT to consider the petitioner's appeal without any pre-deposit.

15. Considering the financial status of the petitioner as well as the manner in which the penalty had been imposed, we are of the view that insistence on pre-deposit would effectively render the petitioner's remedy of an appeal before the learned CESTAT, illusory.

16. In the given circumstances, we consider it apposite to direct the learned CESTAT to consider the petitioner's appeal on merits, without insisting on any pre-deposit.

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

18. It is clarified that this Court has not expressed any opinion on merits of the petitioner's challenge to the order-in-original dated 18.12.2020 and the learned CESTAT shall consider the petitioner's appeal uninfluenced by any of the observations made

in this order.

19. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 1, 2023
"AT"