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

\+ W.P.(CRL) 2242/2024 & CRL.M.A. 21886/2024

LAKSHMI .....Petitioner

Through: Mrs. Anjali Jha Manish, Ms. Priyadarshini Manish & Ms. Sherin Shahajan, Advcoates

versus

COMMISSIONER OF CUSTOMS (PREVENTIVE) & ORS. .....Respondents

Through: Mr. Aditya Singla, Senior Standing Counsel with Mr. Rithvik Saha & Ms. Saakshi Garg, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **26.07.2024**

CRL.M.A. 21887/2024 *(Exemption)*

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(CRL) 2242/2024

3. The present Petition under Section 226 of the Constitution of India read with Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023*(hereinafter referred to as* "BNSS, 2023"*)* has been filed on behalf of the petitioner seeking the following prayers: -

> *"(a) Issue a writ order or direction in the nature of certiorari to quash and set-aside the inquiry in reference to the Petitioner conducted against file bearing No. C.No. VIII (SB) 10 / Cus. Prev./ Gr-IIA R-35 / EI / 38 / 24-25 under the Customs Act, 1962;*

(b) Issue a writ order or direction in the nature of certiorari to quash and set-aside the summons bearing No. C.No. VIII (SB) 10/Cus. Prev./Gr-IIA / R-35 / EI / 38 / 24-25 dated 16.07.2024 issued to Petitioner under Section 108 of the Customs Act, 1962;

(c) Issue a writ order or direction in the nature of mandamus to direct the Respondent not to issue further summons under Section 108 of the Customs Act, 1962."

4. The petitioner, wife of Shri Santosh Kumar, is aggrieved by the Summons dated 16.07.2024 issued to her in the capacity of partner of Firm i.e., M/s Prime World Logistics by the Superintendent, New Customs House, New Delhi with reference to Enquiry being conducted in connection with the imported goods viz., old, used and refurbished laptops of different brands imported *vide* Bill of Entry No. 3783543 dated 01.06.2024 and Bill of Entry No. 3784491 dated 013.06.2024 through ACC Import, Delhi.

5. It is submitted that further documents have been demanded from the husband of the petitioner, Shri Santosh Kumar and she has been directed to appear on 22.07.2024 at 12:45 P.M.

6. The **grounds of challenge** of the aforesaid Summons dated 16.07.2024 essentially are that the petitioner is a housewife and has been made a namesake partner in the partnership Firm and she is not aware of the day-to-day affairs of the Firm which are managed by her husband.

7. It is further explained that the import against said two Bills of Entry has been done by Shri Sanjay Rawat, employee of the partnership Firm. Shri Sanjay Rawat in his Anticipatory Bail Application, has categorically stead that the idea of import and its execution was solely his own and his employer i.e., M/s Prime World Logistics was neither involved nor aware of this import. The clients in whose name the goods were imported, were

selected by Shri Sanjay Rawat. The CHA filed the documents provided by Shri Sanjay Rawat. Furthermore, Shri Sanjay Rawat has joined the investigations and his statement has been recorded by the Department/Custom Officers on 06.06.2024 and he has provided all the required information and documents.

8. Also, the Customs Department, while opposing the Anticipatory Bail Application of Shri Sanjay Rawat, was aware that the Partnership Firm which has been referred to as "Victim Company", has already filed a complaint against Shri Sanjay Rawat. It is Shri Sanjay Rawat who had the key role in deliberately arranging and facilitating the instant import. There is no reason for the petitioner to be summoned by the Customs Department.

9. Furthermore, the Anticipatory Bail Application of Shri Sanjay Rawat had been allowed *vide* Order dated 03.07.2024, wherein it has been observed that it is not a case of evasion of customs duty on imported goods. It is only a case of import of goods which are *restricted in nature* and could have been imported under the valid licence. The imported goods i.e., old, used and refurbished laptops of different brands, do not carry any import/customs duty.

10. It has been further observed that Section 125 of the Customs Act, 1962 *(hereinafter referred to as* "the Act, 1962"*)* which provides that whenever a confiscation is authorised under this Act, the Officer adjudicating the matter, shall give to the owner of goods (where such owner is not known, the person from whose possession or custody such goods, have been seized), an option to pay in lieu of confiscation, such fine as the said Officer thinks fit.

11. It is submitted that the Customs Department has already seized the

goods which do not carry Import duty. The husband, Shri Santosh Kumar, of the petitioner has already informed that the respondents that his wife is only a homemaker and only a namesake partner in the partnership Firm, despite which, she is still being summoned.

12. None of the summonses have been communicated to the petitioner either on her postal address or on her e-mail account whatsoever. The service of summons is prescribed under Section 153 of the Act, 1962, but the said procedure has not been followed. It, therefore, implies that the petitioner has not been effectively served.

13. Furthermore, the petitioner's Firm or the petitioner is neither importer nor the customs broker who has filed the Bill of Entry and is in no manner associated with the import which has been made against the aforementioned Bills of Entry. The petitioner neither falls in the category of a person who can give evidence or can produce the documents. The person summoned i.e., Shri Sanjay Rawat has already appeared before the Customs Department and has given his statement as well as submitted all the documents.

14. The petitioner has further claimed that under the Act, 1962, there is no provision for summoning of the women and children and, therefore, the provisions of Code of Criminal Procedure, 1973 *(hereinafter referred to as* "Cr.P.C., 1973"*)* or BNSS, 2023 would be applicable.

15. It is submitted that the Investigating Officer ought to have taken recourse to the provisions of Section 160 of Cr.P.C., 1973 or Section 179 of BNSS, 2023, according to which, no woman can be asked to attend the Police Station and it is the Officer who has to go to the place where the woman resides for recording of statement.

16. **Section 4 of Cr.P.C., 1973/BNSS, 2023** further provides that all the

offences under any other law are required to be investigated into, tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offence.

17. It is asserted that in the absence of any provision, no summons could have been issued to the petitioner to appear before the Customs Department.

18. Learned counsel for the petitioner has placed reliance on the decisions in *Directorate of Enforcement vs. Deepak Mahajan*, (1994) 3 SCC 440, *Asmita Agarwal vs. Enforcement Directorate*, 2001 SCC OnLine Del 1254, *Union of India vs. Ashok Kumar Sharma*, (2021) 12 SCC 674, *S.R. Venataraman vs. Union of India*, (1979) 2 SCC 491, *Birendra Kumar Pandey & Anr. v. Union of India & Anr.* W.P(Crl) No. 28 of 2012 dated 16.04.2012, and *Satender Kumar Antil vs. Central Bureau of Investigation & Anr.*, (2022) 10 SCC 51.

19. It is claimed that summoning of the petitioner is without any authority of law and is not sustainable; hence, the prayer is made to quash of the inquiry being conducted against the petitioner with reference to Summons dated 16.07.2024 and to set aside the Summons dated 16.07.2024.

20. **Learned Senior Standing Counsel on behalf of the respondents on the other hand has contended** that there is no provision under any law which bars a proposed person suspected of commission of offence, from being summoned before the Investigating Officer.

21. He has submitted that Section 179 of BNSS, 2023 only pertains to the witnesses and not to the persons suspected to have committed a crime.

22. Furthermore, it is only a claim of the petitioner that she is a sleeping partner and she has no concern in day-to-day affairs of the partnership Firm,

but again this is subject to further investigation.

23. The Learned Senior Standing Counsel on behalf of the respondents has placed reliance on *Union of India v. Padam Narain Aggarwal & Ors.* (2008) 13 SCC 305, *Sandeep Jain v. Additional Director, DRI & Anr.* W.P. (C) No. 9561 of 2019 dated 02.09.2019, *Sandeep Jain v. Additional Director, DRI & Anr.* Review Petition No. 387 of 2019 dated 10.12.2019, and *State of Gujarat v. Choodamani Parmeshwaran Iyer* [(2023) 8 Centax 224 (SC)] to oppose the case of the petitioner.

24. Learned Senior Standing Counsel on behalf of the respondents has also submitted that inquiry is being conducted in accordance with the provisions of Customs Law and there is no merit in the present petition.

25. **Submissions heard.**

26. The first ground of challenging the summons is that the petitioner is a sleeping partner and she is not aware of the day-to-day affairs of the partnership Firm which is essentially being taken care of by her husband, Shri Santosh Kumar. Whether the petitioner is a sleeping partner or not, cannot independently be asserted by her; for this, she is required to appear before the Customs Department and to explain her status or dealings in the Partnership Firm.

27. To outrightly accept the assertions of the petitioner by way of present petition that she is not aware of any of the affairs of the partnership Firm, may amount to pre-judgment in the entire Enquiry being conducted under the Summons dated 16.07.2024.

28. The **petitioner has further claimed** that Shri Sanjay Rawat, who was an employee of the partnership Firm, has already admitted that the goods had been imported by him under the aforesaid two disputed Bills of Entry in

the name of a customer of his own choice with which the partnership Firm had no concern and on this ground, he was granted Anticipatory Bail *vide* Order dated 03.07.2024.

29. Shri Sanjay Rawat may have admitted the crime, but that does not lead to any inference of not conducting any further investigation in regard to the role of the Partnership Firm under the banner of which the import had allegedly been done. Shri Sanjay Rawat may have been found responsible or he may have taken the entire responsibility, but for the complete investigations, the role of all other stakeholders is required to be examined. The admission of facts by Shri Sanjay Rawat does not preclude the further enquiry into the attending facts.

30. Further, there is also Section 125 of the Act, 1962 which provides that whenever a confiscation is authorised under this Act, the Officer adjudicating the matter shall give to the owner of goods (where such owner is not known, the person from whose possession or custody such goods, have been seized), an option to pay in lieu of confiscation, such fine as the said Officer thinks fit.

31. It is pertinent also to refer to the submissions of the petitioner that the goods have been subjected to forensic examination and have been found to be old, used and refurbished laptops of different brands. Again, as has already been observed, it is a matter of investigation and merely because summons has been issued to the petitioner, there is no presumption of any accusations against her; the statement is only to collect complete facts which in fact, may enure benefit to her, rather than to bring disadvantage to her.

32. In the light of Section 125 Customs Act as well it become pertinent to issue Notice to the Partnership Firm of which the petitioner is admittedly a

partner, though she alleges herself to be a sleeping partner.

33. The **third contention** raised on behalf of the petitioner is that there is a proper procedure under Section 153 of the Act, 1962 for serving a Notice upon the person which has not been followed.

34. Apparently, the petitioner was being informed through her husband, Shri Santosh Kumar on his e-mail.

35. The respondents are hereby directed to issue the summons to the petitioner in strict compliance of Section 153 of the Act, 1962.

36. In case, the petitioner is being summonsed as a witness, the respondents are further directed to issue the summons in strict compliance of Section 160 of Cr.P.C., 1973/BNSS, 2023.

37. For the foregoing reasons it cannot be said that the summons have been wrongly issued to the petitioner or that they are required to be quashed. The Enquiry has been done to consider all the aspects surrounding the import of goods by the alleged Bill of Ladings. The present petition is hereby disposed of with the aforesaid directions. The pending application, if any, also stands disposed of.

NEENA BANSAL KRISHNA, J

JULY 26, 2024
S.Sharma