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

\+ CUSAA 70/2024

CONTAINER CORPORATION OF INDIA LTD .....Appellant

Through: Mr. Abhinav Dagar and Mr. Abhay Gaind, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT ICD TUGHLAKABAD .....Respondent

Through: Mr. R. Ramchandran, Sr. St. Counsel.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **28.08.2024**

CM APPL. 48968/2024 (Ex.)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

CUSAA 70/2024 & CM APPL. 48967/2024 (Interim Relief)

1. This instant appeal has been preferred against the final order rendered by the Customs, Excise and Service Tax Appellant Tribunal ["**CESTAT**"] dated 26 February 2024 and which has affirmed the imposition of duty on the appellant by virtue of the provisions made in Section 45(3) of the Customs Act, 1962 **["Act"]**.

2. The principal contention of the appellant appears to have been that since the imported goods were ultimately confiscated under clauses (l) and (m) of Section 111 of the Act, they were liable to be viewed as "smuggled goods", and thus falling outside the ambit of

"imported goods" which stands defined in Section 2(25) of the Act.

3. In support of the aforesaid contention, learned counsel for the appellant has also sought to draw sustenance from the following passages appearing in **Commr. of Customs (Preventive) v. M. Ambalal & Co** [(2011) 2 SCC 74]:-

> **"21.** In short, question before us is: whether goods that are smuggled into the country can be read within the meaning of the expression "imported goods" for the purpose of benefit of the exemption notification? We are of the view that "smuggled goods" will not come within the definition of "imported goods" for the purpose of the exemption notification, for the reason, the Act defines both the expressions looking at the different definitions given to the two classes of goods: imported and smuggled, and we are of the view that if the two were to be treated as the same, then there would be no need to have two different definitions.
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> **22.** In order to understand the true meaning of the term "imported goods" in the exemption notification, the entire scheme of the Act requires to be taken note of. As noted above, "imported goods" for the purpose of this Act is explained by a conjoint reading of Sections 2(25), 11, 111 and 112. Reading these sections together, it can be found that one of the primary purposes for prohibition of import referred to the latter is the prevention of smuggling [See Section 11(2)(*c*)]. Further, in the light of the objects of the Act and the basic skeletal framework that has been enumerated above, it is clear that one of the principal functions of the Act is to curb the ills of smuggling on the economy. In the light of these findings, it would be antithetical to consider that "smuggled goods" could be read within the definition of "imported goods" for the purpose of the Act. In the same light, it would be contrary to the purpose of exemption notifications to accord the benefit meant for imported goods on smuggled goods."

4. We find ourselves unable to sustain the challenge which stands raised for the following reasons. As is manifest from a plain reading of Section 45(3) of the Act, the custodian of the imported goods having been in custody is liable to pay duty in case they are pilfered while in custody. "Imported goods" stand defined in Section 2(25) as goods brought into India from a place outside. Undisputedly, the goods in question had entered the customs area as defined under the Act and

were placed in the custody of the appellant.

5. The submissions of learned counsel proceeding on the basis of Section 2(39) of the Act and which refers to the concept of smuggled goods is clearly misconceived bearing in mind the clear and unambiguous intent of Section 45 which lays the duty burden upon the custodian. It would thus be erroneous to impute the principles of smuggled goods which is concerned with confiscation and the consequential penalties which are liable to be enforced on an importer.

6. Accordingly and for the aforesaid reasons, we find no merit in the instant appeal. The appeal shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 28, 2024/ib