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

\+ CUSAA 72/2024

SANDEEP KUMAR .....Appellant

Through: Mr. Ehraz Zafar, Ms. Neha Jain, Mr. Pranav Bhatnagar & Ms. Poonam, Advocates

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Advocate

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\+ CUSAA 73/2024

PRADEEP KUMAR .....Appellant

Through: Mr. Ehraz Zafar, Ms. Neha Jain, Mr. Pranav Bhatnagar & Ms. Poonam, Advocates

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Advocate

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\+ CUSAA 74/2024

BHARAT VIDHURI .....Appellant

Through: Mr. Ehraz Zafar, Ms. Neha Jain, Mr. Pranav Bhatnagar & Ms. Poonam, Advocates

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Advocate

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

<u>O R D E R</u>

% **05.09.2024**

<u>CM APPL. 51503/2024 (Exemption) in CUSAA 72/2024</u>
<u>CM APPL. 51518/2024 (Exemption) in CUSAA 73/2024</u>

CM APPL. 51533/2024 (Exemption) in CUSAA 74/2024

Allowed, subject to all just exceptions.

This application stands disposed of.

CM APPL. 51504/2024 (27 Days Delay in Refiling) in CUSAA 72/2024
CM APPL. 51519/2024 (27 Days Delay in Refiling) in CUSAA 73/2024
CM APPL. 51534/2024 (27 Days Delay in Refiling)in CUSAA 74/2024

Bearing in mind the disclosures made in the application, the delay of 27 days in refiling the appeal is condoned.

Application stands disposed of.

CUSAA 72/2024 & CM APPL. 51502/2024 (Interim Stay)
CUSAA 73/2024 & CM APPL. 51517/2024 (Interim Stay)
CUSAA 74/2024 & CM APPL. 51532/2024 (Interim Stay)

1. These three appeals impugn the order of the Customs, Excise and Service Tax Appellate Tribunal ["**CESTAT**"] dated 08 December 2023. We note that the CESTAT has succinctly captured the facts which were noted in the Order-in Original in paragraphs 32 to 34 and which are reproduced herein below:-

> "**32.** Pursuant to the said remand order, sufficient opportunity of hearing was given to the appellants and the matter was heard regularly and continuously by the Tribunal on several dates. The allegation in the show cause notice has been confirmed by the Original adjudicating authority as follows:
> (1) Shri Ajit Singh Chadha and Shri Rohit Sakhuja had conspired to remove eight containers clandestinely from the ICD, TKD by forging customs document i.e. Customs manual gate pass. The goods in the container included goods import whereof was restricted under Foreign Trade Policy.
> (2) Seven of the eight containers were originally booked in the name of M/s. Star Aircon, in which both of them had substantial financial stake and were the de facto owners.
> (3) All the drivers who transported the said eight containers were originally identified by Shri Ajit Singh Chadha who himself was present during the relevant time and on whose instructions/supervisions goods were being de-stuffed an

stored/shifted.
(4) Shri Sanjay Kumar, employee of Shri Ajit Singh Chadha and Shri Rohit Sakhuja admitted that he was present at the Ranhola, Nangloi godown along with Shri Ajit Singh Chadha when goods from the said eight containers were being de-stuffed there. It is also on record that both them tried to avoid investigation they lied about their whereabouts even associates, employees and relatives feigned ignorance regarding whereabouts. They remained absconded for almost two months with an intention to avoid investigation. They also alleged that they obtained fake sim cards/mobile connection in the name of their employees (Shri Arun Lal and Suraj) and he also obtained Mobile connection on the basis of ID proof of (Pritam Singh). It has been found that forged/bogus photo identity card was submitted to the shipping line for obtaining the delivery orders and forged/bogus indemnity bonds were executed had been held forged and bogus.
(5) Penalties on all appellants, who had been held involved in the alleged clandestine removal of the goods from the Customs area on the basis of forged documents and forged illegal import of prohibited goods had been imported under sections 112 and 114AA of the Customs Act, 1962.

33. From the facts of the case, we observe that the department got initially a specific intelligence that container No.KKFU7222266 was contained mis-declared goods. The said container found to had been moved from ICD, TKD without any Bill of Entry by using Customs manual gate pass. While investigating about the said illegal removal of the said container from the Customs area, it was found that the seven other containers had also been cleared in the same manner, however, in the name of different consignees by using the same modus operandi.

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34. The officers whose names, signatures and stamp were found appended on the Customs manual gate pass denied their signatures and stamp affixed alleged to be fake. Deposition of the said officers got confirmed from the report of Forensic Science Laboratory, Chandigarh on forensic examination vide their reported dated 1.10,2012. Nothing has been produced on record by any of the appellant to falsify the said report. We hold that there is no illegality in the order under challenge when these Customs manual gate passes are held to be forged documents obtained upon bogus identity. However, CONCOR issued these gate passes seeing the signatures and stamps on manual customs gate passes out of charge basis."

2. On an overall analysis of the evidence which was gathered, it

had ultimately come to the following conclusions:

> "**56.** From the entire evidence on record, it is clear that all the above names persons have acknowledged that they knew about Customs manual gate passes have been forged by Shri Rohit Sakhuja and Shri Ajit Singh Chadha for clandestine removal of containers from ICD,TKD. They knew that the goods are illegally imported by Shri Rohit Sakhuja and Shri Ajit Singh Chadha by adopting such modus operandi so as to defraud the competent authority.
>
> **57.** All the concerned i.e. employees, transporters, the labourers/contractors, CHA the dummy proprietors of firms Shri Rohit Sakhuja and Shri Ajit Singh Chadha have acknowledged that they knowingly indulged in impugned fraudulent act of removing illegally imported goods from customs area. Their statements have already been appreciated above. We do not find anything which may falsify testimony of any of these witnesses. We do not find any infirmity in the findings where all these people are held responsible for abetting and facilitating impugned fraud committed for clandestine removal of the goods and improper importation of such goods also. Shri Kamal Virmani also has acknowledged about knowingly storing, distributing and Selling illegally imported air conditioners and prohibited R-22 gas cylinders. Shri Satish Kumar also acknowledged about knowingly purchasing R-22 gas cylinders that those restricted goods have been illegally imported. Similarly Mr. Dilip Singh Jain and Vijay Kumar Sharma were found in possession of illegally imported goods with full knowledge in that respect."

3. Bearing in mind the direct evidence which was collated and which clearly established the complicity of the appellants here, we find no justification to interfere with the order impugned. The appeals same shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 5, 2024/ib