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

\+ CRL.M.C. 1076/2025

DIRECTORATE OF REVENUE INTELLIGENCE .....Petitioner

Through: Mr. Vikramjit Banerjee, ASG with Mr. Anurag Ojha, SSC and Mr. Siddharth Sinha, SSC, Mr. Dipak Raj, Mr. Vipul Kumar, Advocates

versus

BABA LEATHER IMPEX PVT LTD AND ORS .....Respondents

Through: Mr. Piyush Kumar, Ms. Shikha Sapra, Ms. Reena Rawat, Mr. Dhruv Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **07.04.2025**

1. Issue notice. Counsel as recorded in the appearance above accepts notice. With the consent of counsel for the parties and having regard to the nature of the controversy, the matter is taken up for final disposal at the stage of admission.

2. The present petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 assails order dated 16th December, 2024[1] passed by the ACJM-04, RADC, New Delhi in CT Case No. 12/2023 to the extent it imposes a cost of INR 50,000/- on the Petitioner. The impugned order was passed while allowing an application filed by the Directorate of Revenue

[1] "the impugned order"

Intelligence[2] under Section 311 of the Code of Criminal Procedure, 1973,[3] seeking leave to produce additional documents. The Trial Court allowed this request, but made it conditional upon the imposition of cost. The Petitioner is aggrieved by the tenor and content of the observations recorded in paragraphs No. 18 to 20 of the impugned order, which, *inter alia*, direct that the cost be recovered from the 'responsible officer' within the Department, failing which it shall be deducted from the salary of the Principal Additional Director General, DRI. The relevant extract of the impugned order reads as follows:

> "*18. Henceforth, this Court is of the opinion that the application is allowed subject to the cost of Rs. 50,000/- to be paid in DLSA by the DRI. It is clarified herein, that the department has to deduct the amount from the responsible officer for such lapse as since the cost is being imposed upon the State/ Department of State, it cannot be the case that the same be burden upon Exchequer. It is also not appreciated that though Sr. Counsel had submitted that physical copies is already seized by the Department and department could not lay his hand over such documents, and therefore Computer Copies from the database is required. This speaks clearly about the health of prosecution with 17 years delay, case being registered in 2023 before the Court, application under Section 311 Cr.P.C. has already being moved with present application being second application and delay on the part of DRI to bring it to the notice of Court with intricacies that same are confidential documents. The reason for imposing the cost is also that there have not been any genuine endeavor on the part of department to locate the already seized documents.*
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> *19. Application stands allowed as the document is relevant for the adjudication the case and in particular, regarding the input qua thickness of item (i.e. 0.6 mm), subject to payment of cost within one month. The ease with which the application has been moved, the diligence with which the complaint has been initiated after 17 years and despite the untiring efforts of the Department for all the 17 years,*

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[2] "DRI"

[3] "Cr.P.C."

have failed to put forth the document which admittedly have been seized by their officers and reluctance with which instead of locating such document, the audacity with which the second application has been moved under Section 311 Cr.P.C. to prove such documents which were uploaded upon computer during the course of the business is deprecated. ***The lack of vigilance and diligence on the part of the Department speaks volume and responsible officer be attributed by the Principal, ADG, DRI, Delhi Zonal Unit B-3 & 4, 6th Floor, Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003, and the cost shall be deducted from the salary of such officer and if there are series of officer then proportionate reduction of salary be deducted from such officers. In the case the Principal, ADG, DRI, Delhi Zonal Unit B-3 & 4, 6th Floor, Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 fails to attribute such negligence on the concerned officer, the cost shall be ultimately deducted from the salary of Principal, ADG, DRI, Delhi Zonal Unit B-3 & 4, 6th Floor, Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003. It is rather deprecated that such tale of submission, with averment that same cannot be procured but for the order of the court or by the higher officials of the custom speaks volume that despite the untiring effort of 17 years, the DRI is still failed to keep all the documents before the court and further did not take the occasion on the very first instance as where the aid of the court is required for prosecution.***"

3. Mr. Vikramjit Banerjee, ASG for DRI, argues that the cost imposed by the Trial Court is both arbitrary and excessive, urging that there were valid reasons for the delay in filing the complaint, which the Trial Court overlooked. He urges the following crucial aspects explaining the delay:

3.1. The dispute arose from a show cause notice issued by the DRI on 29th November, 2005 which culminated in Order-in-Original dated 31st August, 2007 passed by the Office of the Commissioner of Central Excise (Adjudication). Thereafter, an appeal against the said order was preferred before the Customs, Excise, Service Tax Appellate Tribunal,[4] which was

[4] "CESTAT"

decided by order dated 12th June, 2017.

3.2. The issue before CESTAT was whether DRI officers had jurisdiction to issue show cause notices under the Customs Act, 1962.[5] The Supreme Court in ***Commissioner of Customs v. Sayed Ali & Another***[6] held that DRI officers were not authorized under Section 2(34) of the Customs Act. This led to the Customs (Amendment and Validation) Act, 2011, granting retrospective jurisdiction to DRI officers.

3.3. For the period subsequent to the amendment, this Court in ***Mangali Impex Limited v. Union of India***[7] held that even the newly inserted Section 28(11) of the Customs Act does not empower either the officers of DRI to issue the SCN for the period prior to 8th April, 2011. Since the same issue was pending before the High Court of Bombay and High Court for the State of Telangana, the matter reached the Supreme Court and the decision in ***Mangali Impex Limited*** was stayed.

3.4. CESTAT then considered the decision of this Court in ***BSNL v. Union of India***[8] whereby the petitioner was permitted to review the challenge depending on the outcome of the appeals filed by Union of India in the Supreme Court against the judgment of ***Mangali Impex Limited***. In light of this decision, the CESTAT set aside the Order-in-Original and remanded the matter to the Adjudicating Authority with the direction to first decide the issue of jurisdiction in terms of the decision in Supreme Court in ***Mangali Impex Limited*** and then on merits of the case. The said order was

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[5] "the Customs Act"
[6] 2011 (265) 17 (S.C.)
[7] 2016 (335) E.L. T. 605 (Del.)
[8] 2017 CC OnLine Del 12911

then challenged by the Commissioner of Customs.

3.5. Subsequently, on 9th March, 2021, in the case of ***Canon India Private Limited v. Commissioner of Customs***,[9] the Supreme Court ruled that the DRI officers lacked the jurisdiction to issue show-cause notices under Section 28 of the Customs Act.

3.6. Against the judgment delivered in ***Canon India Private Limited***, the Commissioner of Customs then filed a Review Petition, however, on 30th March, 2022, the Finance Act, 2022 was passed introducing Section 110AA in the Customs Act to provide DRI officers the jurisdiction to issue show cause notices. Correspondingly, Section 97 of the Finance Act, 2022 also validated actions taken under the Customs Act before the amendment, including the levying of customs duties and actions related to searches, seizures, and arrests. Essentially, this amendment validated all past show-cause notices issued by the DRI.

3.7. In the above background, on 13th May, 2022, this Court set aside the order dated 12th June, 2017 passed by the CESTAT and ordered that direction passed by this Court in ***Principal Commissioner of Customs v. Kunal Lalani***,[10] will apply *mutatis mutandis*, thus, Order-in-Original stood revived.

3.8. The CESTAT was directed to decide the case on merits, however, no order has been rendered thereon.

3.9. Accordingly, in view of the peculiar facts and circumstances of the present matter, the Principal Additional Director General, DRI, DZU

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[9] (2021) 18 SCC 563

[10] in CUSAA 20/2021 decided on 28th March, 2022

granted sanction for prosecution on 26th May, 2023. Following this, CT Case No. 12/2023 was filed before the Court of Chief Metropolitan Magistrate, New Delhi, on 2nd June, 2023. The documents that were initially not filed were later allowed to be submitted under the impugned order dated 16th December, 2024.

4. Having regard to the factual and procedural history outlined above, this Court is satisfied that the delay in the initiation of prosecution arose not from any wilful default or administrative indifference, but from complex legal and jurisdictional questions that were the subject of extended litigation and legislative intervention. The scope of authority exercised by DRI officers remained unsettled until clarified through multiple judgments and statutory amendments. In this background, the procedural delays, including the timing of the sanction and the belated filing of complaint, are not without explanation. However, the Department cannot be absolved of responsibility altogether. The complaint may have been filed only in 2023, but the delay in producing documents, especially those that were admittedly in the Department's possession, raises legitimate questions about procedural diligence. The failure to place relevant documents on record in a timely manner, has undoubtedly impeded the progress of proceedings. In this context, the imposition of costs by the Trial Court does not warrant interference. It operates as a measured judicial response to procedural lapses which, while understandable, cannot be left entirely unaddressed.

5. This Court is mindful of the Trial Court's direction to fix responsibility for the delay through an internal inquiry. That concern is not misplaced. However, having regard to the nature of the delay in the present

case, as outlined above, it is evident that the cause does not lie in an overt act of omission on the part of any individual.

6. The appropriate institutional response to such lapses is internal accountability, not presumptive financial liability. The nature of the delay, while unfortunate, cannot, on the facts noted above, be definitively traced to any individual officer, nor can it be assumed that any single official acted with disregard or deliberate omission. In such a context, the delay is more plausibly attributable to systemic inertia than to any singular act of negligence. To proceed on the assumption that one or more officers can now, with retrospective precision, be held individually liable for that delay is to overlook the complexity of the administrative environment in which they were operating.

7. Thus, while the Trial Court was correct in viewing the Department as collectively responsible for the procedural lapse, the mode of enforcing that responsibility is not be warranted.

8. For the reasons stated above, the petition is partly allowed. Accordingly, the cost imposed as a measure of institutional accountability by the Trial Court, is upheld. However, the directions contained in paragraphs No. 18 to 20 of the impugned order, insofar as they mandate recovery of the said cost from specific officers or from the Principal Additional Director General, DRI, are hereby set aside.

9. Disposed of.

SANJEEV NARULA, J

APRIL 7, 2025/ab