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

\+ **W.P.(C) 6295/2025, CM APPL. 28707/2025**

SHRI SATISH KUMAR .....Petitioner

Through: Mr. Umakant Misra, Ms. Prabhati Nayak, Ms. Debabrata Dash and Mr. Apoorva Sharma, Advs.

versus

ADDITIONAL COMMISSIONER OF CUSTOMS ICD PPG AND OTHER ICDS .....Respondent

Through: Mr Aakarsh Srivastava, Senior Standing Counsel and Ms. Anugya Gupta, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% 13.05.2025

1. This hearing has been done through hybrid mode.

CM APPL. 28708/2025 & CM APPL. 28709/2025 (Exemption)

2. Allowed, subject to all just exceptions. The applications are disposed of.

W.P.(C) 6295/2025, CM APPL. 28707/2025

3. The present petition has been filed by the Petitioner- Satish Kumar under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original bearing no. 306/PVSM/ADC/Shayam Corporation/ICD-PPG/2024-25 dated 25th March 2025 (hereinafter, '*impugned order*'). *Vide* the impugned order, a penalty of Rs.5 Crores was imposed upon the Petitioner under Section 114AA of the Customs Act, 1962.

4. The case relates to import of a consignment of Areca Nuts which was

mis-declared as `Ammonium Sulphate'. The consignment was seized and was examined on 26th November 2021 by the Superintendent (Port Preventive), ICD Sonepat. During the said seizure and examination it was seen that the same was containing Areca Nuts and Hydrated Lime (hereinafter, '*goods*') and was wrongly declared as Ammonium Sulphate.

5. The importer in this case was one M/s Shyam Corporation whose proprietor is Mr. Anil Kumar (hereinafter, '*importer*'). The Customs House Agents agent was one Mr. Manjit Singh Flora (hereinafter, '*CHA*'), proprietor of M/s Caspro Logistics Company. The Petitioner admittedly was a friend of both the parties.

6. Statements of these persons *i.e.* Mr. Anil Kumar and Mr. Manjit Singh Flora were recorded by the Department. After recording the statement of the parties, the Adjudicating Authority came to the conclusion that the Petitioner is the mastermind behind the smuggling of Areca Nuts by mis-declaration. The findings in the impugned order reads as under:

> *"17.3* ***From the above it is clear that Sh.Satish Sharma has pivotal role in the import of Areca Nut and he along with the proprietor orchestrated a plan for smuggling of Areca Nut into India by mis-declaring the same knowingly and intentionally by way of suppression of facts and willful mis-declaration.*** *I find that the penalty under Section 144AA is imposed on a person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. I find that Noticee No.2 knowingly and intentionally submitted false declaration about the imported goods and submitted false invoice and packing list etc. In view of the above, I am of the opinion that penalty is liable to be imposed on Noticee No.2 namely Sh. Satish Kumar under Section*

114 AA of the Customs Act, 1962."

7. In view of the same, the Adjudicating Authority had directed absolute confiscation of the goods, assessed at Rs.2,63,61,944/-. Penalty to the tune of Rs.2 Crores was imposed on the importer *i.e.* M/s Shayam Corporation and penalty to the tune of Rs. 5 Crores was imposed on the Petitioner. The operative portion of the order reads as under:

"***ORDER***

*(i) I order for **absolute confiscation** of the goods imported vide Bill of Entry No. 6793084 dated 22.12.2021 seized vide Seizure Memo dated 29.12.2021, having assessable value of **Rs. 2,63,61,944/- (Rupees Two Crore Sixty Three Lac Sixty One Thousand Nine Hundred and Forty Four only),** under Sections 111(d), 111(l) & 111(m) of the Customs Act, 1962*

*(ii) I impose penalty of **Rs.2,00,00,000/- (Rupees Two Crore only)** on the importer M/s Shayam Corporation under Section 112 (a) (i) of the Customs Act, 1962 for their act of omission and commission as mentioned above.*

*(iii) I impose penalty of **Rs.5,00,00,000/- (Rupees Five Crore only)** on Noticee No.2 i.e. Shri Satish Kumar under Section 114 AA of the Customs Act, 1962 for his act of omission and commission mentioned above."*

8. The submission of Mr. Mishra, ld. Counsel appearing for the Petitioner is four fold. First, that the Petitioner's role has not been identified and established in the impugned order. Secondly, the statement of both, the CHA and the importer are the only basis for imposing a hefty penalty on the Petitioner. Third, that the Petitioner has not been given an opportunity to cross examine the said two persons *i.e.* Mr. Anil Kumar and Mr. Manjit Singh Flora. Fourth, one of the persons *i.e.* Deepak Kumar was not called by the Department and his statement was not recorded. It is also submitted by the ld.

Counsel for the Petitioner that if no penalty has been imposed on the Petitioner under Section 112(a)(i) of the Customs Act 1962, then penalty could not have been imposed on the Petitioner under Section 144 AA of the Customs Act 1962.

9. On behalf of the Respondent, ld. SSC submits that the Petitioner himself has admitted in the reply dated 11th July 2022 filed by him that he was the person who had filed the bill of entry. In the reply itself, it is clear that the Petitioner knew of all the documents and that he was also aware of the import of the consignment.

10. Ld. SSC further submits that the persons who were involved in the alleged smuggling *i.e.* Importer and the CHA were also closely aligned with the Petitioner which is also admitted by the Petitioner in his letter. Ld. SSC also highlights that insofar as Deepak Kumar is concerned, the Petitioner never sought permission to cross-examine Deepak Kumar.

11. The Court has considered the matter. It is firstly confirmed and admitted by ld. Counsel for the Petitioner, that the Petitioner uses two names – Satish Kumar and Satish Sharma. The impugned order dated 25th March 2025 is an appealable order under Section 129 of the Customs Act, 1962. The only issue raised is that the Petitioner would have make a pre-deposit to the tune of 7.5 % of the penalty imposed.

12. Secondly, insofar as the Petitioner's role is concerned, the Petitioner's role is fully established by the statement recorded by the parties *i.e.* CHA as also the importer, who have clearly stated in the statement that they had acted for and on behalf of the Petitioner. The said statements as extracted in the impugned order are set out below:

*"5. Summons were issued to **<u>Shri Manjit Singh Flora, Proprietor of the Customs Broker firm M/s Caspro Logistics Company,</u>** 2185/5, Guru Arjun Nagar, New Delhi-110008 and his voluntary statement dated 04.01.2022 was recorded under Section 108 of the Customs Act, 1962 in which he, Inter alia, stated that:-*

*i) **<u>He met the importer through Satish Kumar, Proprietor of M/s Satguru Logistics, at ICD Sonepat for the first time on 29.12.2021 when he had come to ICD Sonepat for examination of the goods covered by impugned Bill of Entry No. 6793084, dated 22.12.2021.</u>***

ii) He met Shri Satish Sharma (Satish Kumar) through Mr. Deepak Kumar who looks after his (Manjit Singh Flora) work on profit sharing basis at ICD Sonepat.

*iii) Mr. Decpak Kumar had collected the KYC documents from the importer **<u>through Shri Satish Sharma</u>** before filing of the Bill of Entry. He himself had also collected a copy of KYC from the importer, shri Anil Kumar or 29.12.2021 and he submitted the same to customs authorities. The authority letter was however, collected from the imparter on 04.01.2022 and submitted with the customs,*

*iv) The import documents were received by Shri Deepak Kumar- from importer **<u>through Mr. Satish Sharma,</u>** Satish Sharma's office is located in Pocket A, Vasant Kunj and Mr. Deepak who sits in Mahipalpur frequently met Mr. Salish Kumar.*

v) They had checked the required documents through electronic means only and that they never visited the premises of the importer.

vi) He has dealt only with one consignment of M/s Shayam Corporation and has not cleared any other consignment of the said importer earlier.

vii) It was decided that the importer shall pay

Rs. 6,000/- per container for the clearance of the said consignment but he is yet to receive any amount from the importer

viii) On being asked as to how and when did he know that the goods in the container were not as per the B.E, filed, he stated that he was telephonically informed by Shri Deepak Kumar on 28.12.2021 that the goods in container are not as per BE and he (Manjit Singh) was requested to get the customs examination done for the said shipment on 29.12.2021

ix) On being asked as to whether he received any revised documents from the importer or from any other person, he stated that he received the file containing a copy of the BE along ***with a request letter sent to customs by importer through Shri Satish Sharma*** *on 29.12.2021 when he came for attending the customs examination of the shipment.*

x) The Importer vide their letter dated 14.02.2022 submitted the copy of bank statement along with previous consignment sale bills and submitted that they never did any remittance with the supplier of the goods and transaction of foreign currency is not done by them. If further requested to the department to give the order for re-export of the goods and declared that they do not want any personal hearing and any show clause Notice in the regard. On going through the copy of bank statement and previous consignment bill no documentary evidence related to this case is established

5.1 *Summons were issued to the Importer and statement of* ***Shri Anil Kumar, Proprietor, M/s Shayam Corporation*** *tendered voluntarily and recorded on 04.01.2022 under Section 108 of the Customs Act, 1962 in which he inter alia, stated as under:-*

i) On being asked, he stated that he was doing his office work from his home and there is no employee employed by him. ***<u>Shri Satish Sharma advised him to come into this business and he only helped him getting IEC and the GSTIN registration done with respective authorities</u>***

ii) On being asked, he stated that he did not personally know the supplier or exporter of the goods. ***<u>It was all done by Shri Satish Sharma on his behalf</u>****. He has never ever visited supplier of the goods*

iii) On being asked about the order placed, he stated that he did not know any such procedure as ***<u>everything was done by Shri Satish Sharma on his behalf, including payments to supplier. All his banking transactions including mail work is being done by Shri Satish Sharma on his behalf and he is having all his bank accounts details, mail ID and its password. Mr. Satish Sharma is also in possession of his ATM card, cheque books and other related papers. Everything in respect of his firm is being governed by Shri Satish Sharma</u>****. Previous to this consignment, he understood that four containers were imported under his IEC and details of the goods imported are not known to him as he was assured to get amount of Rs. 20,000/- per container. However, till the date of the statement, he had received Rs. 40,000/- in cash from Shri Satish Sharma.*

iv) On being asked, he stated that he has never received a copy of invoice, packing list and BL. Everything was arranged by Shri Satish Sharma on his behalf.

v) On being asked, he stated that he did not know the CHA. He met the CHA, Manjit Singh Flora only on 29.12.2021 for the first time during examination of the consignment. Shri Satish

Sharma provided documents pertaining to this shipment to the CHA.

vi) On being asked, he stated that he has-two current accounts in the name of the firm, one in HDFC Bank, Pillukhera and other in ICICI Bank, Delhi. He has one savings bank account in PNB, Pillukhera. He promised to provide bank statements after consulting Mr. Satish Sharma.

vii) On being asked as to how did he come to know that- items in the containers are Areca Nuts and Hydrated Lime, he stated that he was informed by Shri Satish Sharma that the containers contained Areca Nuts and Hydrated Lime and, in this relation, he is to attend the examination. As per his directions, he presented himself near the containers imported in his firm's name where CHA, Mr. Manjit Singh Flora was also present and who also informed that this is Areca Nuts (supari) and Hydrated Lime and as per BE it should be Ammonium Sulphate.

vii) On being asked that despite knowing from supplier, that goods are mis- stuffed why the BE was filed, he stated that Shri Satish Sharma informed him that wrong goods have been stuffed in the containers as going through his e-mail details dated 23.12.2021 at 10.10pm (enclosing copy of letter dated 20.12.2021 and invoice & packing list dated 19.11.2021, copies of which already submitted). However, BE was already filed on 22.12.2021. Mr, Satish Sharma also informed that a mail written to the Department for re-exporting the goods back to the supplier and certain other mails were sent to the Department (copies of emails submitted).

ix) On being asked to see cell phone including mails from 20.12.2021 till 04.01.2022, he stated that the phone details available in his phone are *only from 30.12.2021 to date as the previous phone was dismantled (broken) by Shri Satish Sharma after taking out the SIM card from his phone and new phone was given to him on 30.12.2021 in which details of only 30.12.2021 onwards are available."*

13. In fact, the Petitioner himself admits in his statement recorded on 24th January 2022 under Section 108 of the Customs Act, 1962, which has also been reproduced in paragraph no. 5.2 of the impugned order. According to the said statement, the Petitioner used to advise the importer on day to day work in respect of sale, purchase, bank transactions, etc and he has also admitted that the two persons *i.e.* CHA and importer were closely associated with him. The said statement as extracted in the impugned order is set out below:

"5.2 Summons were issued to Shri Satish Kumar, owner of CHA firm-M/6 Satguru Logistics (hereinafter referred to as "Noticee No. 2") on 10.01.2022 to appear on 12.01.2022 but due to illness he did not appear and requested extension of date. Accordingly summons dated 20.01.2022 was issued to appear on 24.01.2022 and his statement tendered voluntarily and recorded on 24.01.2022 under Section 108 of the Customs Act, 1962 in which he inter alia, stated as under: -

i)On being asked, he stated that he used to advise Shri Anil Kumar, Proprietor of M/s Shayam Corporation in his day-to-day work in respect of purchase/sale, bank transactions etc. for which he never charged any money from Mr. Anil Kumar. Further he has not been issued any authority letter in this regard. ...

xxx xxx xxx

vi) On being asked, he admitted that he was in possession of ATM card of Shri Anil Kumar as also cheque books and other papers relating to bank transaction of his firm *and that Shri Anil Kumar was*

> *assured of getting Rs. 20,000/- per container and that Anil Kumar received Rs. 40,000/- from him (Satish Kumar) but no consideration was paid in respect of the impugned Bill of Entry"*

14. The Petitioner in the said statement admits that he also has the cheque book and the bank related papers of Mr. Anil Kumar, who is proprietor of M/s Shayam Corporation.

15. After having perused the statements recorded in the impugned order, the Court also takes note of the reply dated 11th July 2022 that was filed by the Petitioner to the Show Cause Notice dated 21st June 2022. The relevant portion of the said reply reads as under:

> *"(1)* ***We had filed an EDI Bill of Entry No. 6793084 dated 22.12.2021 through our Customs Broker M/s Caspro Logistics Company.*** *Our customs broker had filed said BE on the basis of Invoice, Packing List and Copy of Bill of Lading provided to them. Therefore, the item description in the bill of entry read as "AMMONIUM SULPHATE" classified under CTH 31022100."*

16. On the conjoint reading of the statements and the reply filed by the Petitioner, it cannot be said that the Petitioner did not have any role at all in the import of the consignment. The statements recorded reveal that the Petitioner did have an active role and as held in the impugned order, could have been the master mind. The document which connects the Petitioner to the import is the reply which has been filed on record apart from the oral statements.

17. Ld. Counsel submits that the opportunity to cross-examine was not given. It is a settled legal position that cross-examination is not an unfettered

right as held by this Court in ***M/s Vallabh Textiles v. Additional Commissioner Central Tax GSt, Delhi East & Ors.' (2025: DHC: 2559-DB)***. The relevant portion of the said order reads as under:

> *"15. While cross-examination can be granted in certain proceedings, if it is deemed appropriate, the right to cross-examine cannot be an unfettered right. This has been so held recently by this Court in* ***Sushil Aggarwal v. Principal Commissioner Of Customs (2025:DHC:698-DB).*** *The relevant portion of the decision reads as under:*
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> > *"15. Accordingly, this Court is of the opinion that in order to ensure that there is compliance of Section 138(B) of the Act,* ***<u>though the same cannot be claimed as an unfettered right in all cases</u>****, in the facts of the present case, both Mr. Sushil Aggarwal and Mr. Aidasani are afforded an opportunity to cross examine Mr. Bhalla."*
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> *XXXX*
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> *17. In the present case, the request to cross-examine certain witness statements was rejected, as mentioned above, on the grounds that the statements in question were only corroborative of undisputed documentary evidence already on record, and thus, did not warrant cross-examination. The Supreme Court in* ***Telestar Travels (Supra)*** *while, in fact, dealing with similar circumstances has observed as under:*
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> > *"28. Coming to the case at hand, the adjudicating authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises****<u>. But, there is no dispute that apart from what was seized from the business premises of the appellants, the adjudicating authority also placed reliance upon the documents produced by Miss Anita Chotrani and Mr Raut. These documents were, it is</u>***

> ***admitted, disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination. Such being the case, the refusal of the adjudicating authority to permit cross- examination of the witnesses producing the documents cannot even on the principles of the Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the courts below.*** *The third limb of the case of the appellants also in that view fails and is rejected." (emphasis supplied)"*

> *18. A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof."*

18. The Petitioner is well aware of the CHA and the importer. The impugned order is an appealable order. The question as to what role was played by the Petitioner would have to be adjudicated in an appeal on the basis of facts as the same would not merely be a legal issue.

19. However, the only question that the Court considers at this stage is in respect of the penalty which has been imposed upon the Petitioner.

20. The penalty appears to be slightly disproportionate considering the penalty imposed of Rs. 2 crores on the importer. In view thereof, the Petitioner is permitted to file an appeal challenging the impugned order before the Customs, Excise and Service Tax Appellate Tribunal along with a pre-deposit of 7.5 % of Rs. 2 Crores. If however, the penalty of Rs. 5 crores is upheld in appeal, then the pre-deposit amount in full would have to be deposited by the Petitioner.

21. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 13, 2025
ssc/ck