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

\+ **W.P.(C) 9222/2025**

M/S DS CARGO AGENCY .....Petitioner

Through: Mr. Faraz Anees, Mr. Mukeshwar Nath Dubey, Mr. Divesh, Mr. Ajay Kumar and Ms. Shagufi Kamal, Advocates.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Sarvan Shukla and Mr. Yash B., Advocates for UOI.
Mr. Vishal Chadha, SSC for R-2 & 3.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% 07.07.2025

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed by the Petitioner – M/s DS Cargo Agency under Article 226 and 227 of the Constitution of India *inter alia* challenging the impugned Order-in-Original dated 28th February, 2025 dispatched on 05th March, 2025, passed by the Office of the Commissioner of Customs, Air Cargo Complex (Export), Delhi. Vide the said order, penalties have been imposed on both, the Petitioner, as also its proprietor, *i.e.,* Mr. Diva Kant Jha.

3. It is stated that the Petitioner is a custom broker firm. During the years, 2016-2017, it verified the Know Your Customer *('KYC')* details of two firms, M/s Yash enterprises and M/s Emerson Corporation. According to the Petitioner, the verification of KYC and other documents of the said two firms

was done for the purpose of exporting ready made garments from Delhi.

4. It is the allegation of the Customs Department that various firms, including M/s Yash enterprises and M/s Emerson Corporation were involved in the export of ready made garments. The said firms inflated the price of goods and the same was only with a view to acquire benefits under the duty drawbacks schemes.

5. Ld. Counsel for the Petitioner submits that the penalties under Section 114 (iii) and 114AA of the Customs Act, 1962 have been imposed on both the persons, i.e., the Petitioner and its proprietor, which is impermissible in law.

6. Learned Counsel for the Respondents submits that the present orders are appealable orders.

7. The order in question has been passed by the Adjudicating Authority and in terms of Section 128 of the Customs Act, 1962 the same is appealable to the Commissioner (Appeals). The difficulty that the Petitioner's Counsel expresses is that the Petitioner would have to file a pre-deposit amount under Section 129E of the Customs Act, 1962 to the tune of 7.5 % of the total penalties which have been imposed on the Petitioner as also its proprietor.

8. It is the settled position in law that a sole proprietary concern does not have any distinct identity from the sole proprietor. Accordingly, in the present case, the Petitioner is permitted to file an appeal before the Commissioner (Appeals) under Section 128 of the Customs Act, 1962. The sole proprietor is also permitted to file an appeal to the Commissioner appeals. However, the pre-deposit of 7.5 % would be only in respect of Rs. 60,00,000/- which is the amount, imposed as penalty, upon the sole proprietor of the Petitioner concern.

9. Ld. Counsel for the Petitioner also submits that the limitation period to

file the appeal against the impugned order has expired on 05th June, 2025. The present writ petition was filed on 30th May, 2025 before this Court.

10. In view thereof, the Petitioners, Mr. Diva Kant Jha and M/s DS Cargo Agency are granted a period of one month to file their respective appeals against the impugned order. If the appeals are filed within one month, along with the pre-deposit as directed above, the same shall not be dismissed on the ground of limitation. The appeals shall be adjudicated on merits.

11. The present writ petition is disposed of in the above terms.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

JULY 7, 2025/*MR/rks*