IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.C/244,246/2010-CU[DB]

(Arising out of Order-in-Original No.MP(Dem-98/2005) 13 of 2010 dated 26/02/2010 passed by Commissioner, Central Excise & Service Tax, Allahabad)

Shri Hemant Gogia
(In Appeal No.C/244/2010-CU[DB])

Shri Vimal Kalra **Appellant**
(In Appeal No.C/246/2010-CU[DB])
Vs.

Commissioner, Central Excise & Service Tax, Allahabad **Respondent**

Appearance:
Shri Hemant Gogia (Self)
(In Appeal No.C/244/2010-CU[DB])

Shri Vimal Kalra (Self) for Appellant
(In Appeal No.C/246/2010-CU[DB])

Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 06/03/2019

FINAL ORDER NO.**70641-70642 / 2019**
Per: Archana Wadhwa

Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by Commissioner vide which penalty of Rs.25 lakh stand imposed upon Shri Hemant Gogia in terms of provisions of Section 112 of the Customs Act, 1962. Further penalty of Rs.1,00,000/- under Section 112 and of Rs.25,000/- under section 114 of the

Customs Act, 1962 stands imposed upon Shri Vimal Kalra.

2. After hearing both the sides duly represented by the appellants in person and the learned A.R. appearing for the Revenue, we find that the dispute in the present appeal relates to import of secondhand photocopiers by one firm under the name and style of M/s Paramount Trade Links (P) Ltd. (hereinafter referred to as M/s PTLPL). The allegation against the said firm are that they imported the said goods under an obligation to export the same after value addition and the said importer instead of fulfilling his export obligation had diverted the photocopier in the local market, without having any authorization for DTA clearances. Instead they exported the junk material to show the fulfillment of their export obligation. The said appeal is not before us.

3. As regards the penalty imposed upon, Shri Hemant Gogia, we find that he was made Director of M/s PTLPL on 30.07.2003 and resigned on 30.08.2003 i.e. within a period of one month. However, the imports were made by M/s PTLPL in the year 2004-2005. Appellant was not even the Director of the said importer company. Even while discussing his role, the Commissioner has not

attributed any role to him or show that he was an abettor to the violations committed by M/s PTLPL. As such we are of the view that imposition of any penalty upon him is neither justified nor warranted. The same is accordingly set aside.

4. As regards penalty imposed on Shri Vimal Kalra, we note that in spite of the fact that he was one of the Director of the importing firm, Revenue has not shown his active involvement in the import of the goods. The appellant has submitted that he was running a photocopier shop in Kanpur and he was lured to become the Director of the firm. He was not associated with the day to day work of the firm and is not connected with the import of the photocopiers and subsequent fraud by M/s PTLPL. M/s PTLPL had already been imposed penalty equivalent to the duty confirmed.

5. On going through the relevant paragraphs we note that except the fact that the appellant was director of the importing firm, there is neither any allegation nor any evidence to the effect that he was the one who was managing all the affairs of the company. As such being a sleeping director by itself, when the importing firm has already been penalized, in our views, would not invite

any penal action against them. Accordingly, we find no justifiable reasons to impose penalty upon him.

6. In view of the forgoing discussions, penalties imposed upon both the appellants are set aside and both the appeals are allowed with consequential relief.

(Pronounced & Dictated in Court)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Nihal