CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Appeal No. C/56607/2013 -[SM]

(Arising out of Order-in-Appeal No. 221-222/CUS/APPL/DLH-IV/2012 dated 17/12/2012 passed by the Commissioner (Appeals), Delhi-IV)

Delisha Impex **......Appellant**
(Flat No. 263-264, Neelakanth Apartments Sector-13, Rohini New Delhi)

VERSUS

C.C.-Delhi-IV **......Respondent**
(New CGO Complex, NH-IV NIT, Faridabad, Haryana, 121001)

WITH

Appeal No. C/56608/2013 -[SM]

(Arising out of Order-in-Appeal No. 221-222/CUS/APPL/DLH-IV/2012 dated 17/12/2012 passed by the Commissioner (Appeals), Delhi-IV)

Arsh Kumar **......Appellant**
(Flat No. 263-264, Neelakanth Apartments Sector-13, Rohini New Delhi)

VERSUS

C.C.- Delhi-IV **......Respondent**
(New CGO Complex, NH-IV NIT, Faridabad, Haryana, 121001)

<u>APPEARANCE:</u>

Shri Saurabh Kapoor, Advocate for the Appellant

Shri Rajesh Rai, Authorised Representative for the Respondent

<u>CORAM:</u> HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 61128-61129 of 2019

DATE OF HEARING: 03.12.2019
DATE OF DECISION: 03.12.2019

PER ASHOK JINDAL:

The appellants are in appeal against the impugned order contesting the penalties imposed on them under Sections 112(a)(i) and 112(a)(ii) of the Customs Act, 1962 respectively.

2. The facts of the case are that the appellant no.1 imported one consignment of miscellaneous items and declared them ordinary goods. On an inspection, the goods were found branded goods, therefore, the case of under valuation and infringement of IPR was made out against the appellant. The matter was adjudicated. The goods were absolutely confiscated and redemption fine of Rs.20,00,000/- was imposed on the appellant no.1 and penalty on both the appellants were imposed of Rs.12,00,000/- and Rs.15,00,000/- respectively. Against the said order, the appellants are before me.

3. The Ld. Counsel for the appellants submits that at this stage the appellants are not contesting to claim on goods and issue of valuation. The appellants are contesting only imposition of redemption fine and penalties on both the appellants. It is his contention that as appellants are not contesting the value of the goods and not claiming the goods for release, therefore, redemption fine is not imposable on the appellants. He further submits that the penalty has been imposed on the firm as well as on the proprietor of the firm. The same cannot be imposed as held by the Hon'ble Bombay High Court in the case of ***Commissioner of Cus. CSI***

Airport, Mumbai Vs. Gyanchand Jain *reported in* ***2015 (321) E.L.T. 199 (Bom.)***. He further submits that as the differential value works out to be Rs.18,00,000/-, therefore, penalty of Rs.12,00,000/- & Rs. 15,00,000/- is highly excessive. In these terms, he prays that penalty be reduced to the minimum as they are not claiming the goods.

5. On the other hand, the Ld. AR opposes the contention of the appellant and submits that as it is a fact coming on record that the appellant imported branded goods which amounts to infringement of IPR; moreover, has not declared correct value, therefore, penalty imposed on the appellant are as per the profit to be earned by the appellant on the said goods.

6. Heard the parties and considered the submissions.

7. On careful consideration of the submissions made by both the sides, two issues arise before me :-

(i) Whether in the facts and circumstances of the case, the redemption fine can be imposed on the appellant when they have abandoned the claims on goods; and

(ii) Whether penalty can be imposed on proprietor as well as the firm in this case.

8. Issue No. (i)- As appellant has abandoned the claim on the said goods, therefore, redemption fine cannot be demanded from the appellant because the Revenue remain the owner of the goods and only at the time of the release of the goods, redemption fine is required to be paid by the appellant.

9. Issue No. (ii)- In this case, penalty on the proprietor as well as on the firm has been imposed, the same cannot be imposable as held by the Hon'ble Bombay High Court in the case of ***Gyanchand Jain* (Supra)**, wherein the Hon'ble High Court observed as under:

> *"3. The Tribunal found in this case that the penalty imposed on the respondent proprietary concern is Rs. 70,00,000/- that is on M/s Vijaybhav. The Commissioner of Customs had imposed a penalty of Rs. 5,00,000/- on the sole proprietor M/s. Gyanchand Jain, who is respondent before us. In law, there could not have been such a direction. Once the assessee is recognized as the sole proprietorship concern, then, imposition of penalty on the firm/concern or the proprietorship concern and sole proprietor separately was not permissible in the given facts and circumstances. In these state of affairs, we do not see that the appeal raises any substantial question of law. The only point argued does not raise any substantial question of law enabling this Court to entertain this appeal. The appeal is, therefore, dismissed."*

Therefore, I hold that penalty on Shri Arsh Kumar cannot be imposed, therefore, penalty of Rs. 15,00,000/- imposed on Shri Arsh Kumar is set aside.

9. Considering the fact that the appellant has relinquish their title on the goods, therefore, penalty of Rs. 12,00,000/- on M/s Delisha Impex is highly excessive and the same is reduced to Rs. 2,00,000/-.

10 With these terms, the appeals are disposed off.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

kailash