CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 52654 OF 2019

(Arising out of Order-in-Original No. SKS/COMMR/ACE/08/2019 dated 24.07.2019 passed by the Commissioner of Customs (Export), Air Cargo Export, New Delhi.)

Nishant Kumar Singh **.....Appellant**
Director of M/s Avlokan Exim Pvt. Ltd.
GF-III, LIG/300, Gali No. 1
Mangal Bazar Road, Laxmi Nagar,
New Delhi- 110092

Also at,
Legislegal, D-11 (Basement),
LGF, Friends Colony, Maharani Bagh
New Delhi- 110065

versus

Commissioner of Customs (Export) **.....Respondent**
Air Cargo Export, New Customs House,
Near IGI Airport, New Delhi
110037

APPEARANCE:

Shri T. Chakrapani and Shri Anil Kumar, Consultants for the Appellant
Shri M.K. Shukla, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: April 22, 2025

FINAL ORDER NO. 50528/2025

P.V. SUBBA RAO:

This appeal is filed by Shri Nishant Kumar Singh[1] to assail the order dated 24.07.2019[2] passed by the Commissioner whereby, he, inter alia, imposed penalty of Rs. 5 lakhs on the appellant under Section 114 of the Customs Act, 1962[3]. It is pointed out by learned Consultant that against the impugned order, Final Order No. 58861-58866/2024 dated 18.10.2024 was passed in the appeals filed by Shri

1. **Appellant**
2. **Imugned Order**
3. **Act**

Mayank Gupta, Shri Ravindra Kumar and the Commissioner of Customs. The operative part of the order is as follows:

> "43. In view of the above, the appeals are disposed of, as below :-
>
> (i) Appeal No. : C/52671 of 2019 filed by Shri Mayank Gupta is dismissed.
>
> (ii) Appeal No. : C/50017 of 2020 filed by Revenue seeking imposition of penalty on Shri Mayank Gupta under section 114AA of the Act is dismissed.
>
> (iii) Appeal No. : C/52762 of 2019 filed by Shri Ravindra Kumar is dismissed.
>
> (iv) Appeal No. : C/50016 of 2020 filed by Revenue seeking imposition of penalty under section 114AA of the Act on Shri Ravindra Kumar is dismissed.
>
> (v) Appeal No. : C/50018 of 2020 filed by the Revenue seeking imposition of penalty under section 114AA of the Act on Shri Sarvesh Kumar is allowed and the impugned order is modified imposing penalty of Rs. 75,00,000/- on Shri Sarvesh Kumar under section 114AA of the Act.
>
> (vi) Appeal No. : C/50015 of 2020 filed by Revenue seeking imposition of penalty under section 114AA of the Act on Shri Krishna Chandra Jha is allowed and the impugned order is modified imposing the penalty of Rs. 50,00,000/- on Shri Krishna Chandra Jha under section 114AA of the Act."

2. This appeal assails the imposition of penalty of Rs. 5 lakhs on Shri Nishant Kumar Singh. The facts of the case are that the officers of the Special Intelligence and Investigation Branch[4] of the Customs House received intelligence that prohibited goods were being attempted to be exported by mis-declaring them as unaccompanied baggage through Malaysian Airlines. Acting on this intelligence, officers visited the office of Malaysian Airlines where they found one, Shri Ankit Kumar, trying to hand over the baggage declaration, airway bill and other documents to Malaysian Airlines. Shri Ankit

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4. SIIB

Kumar was the agent of M/s Sky Barge Freight Pvt. Ltd. He said that one, Shri Krishna Chandra Jha, had requested him to handover those papers to the Malaysian Airlines and he was simply handing over the documents; otherwise he had nothing to do with the consignment or the exporter. He said that he knew Shri Krishna Chandra Jha and on his request he took the papers from him and handed them over to the Malaysian Airlines. Shri Krishna Chandra Jha works for M/s Avlokan Exim Private Limited. Officers examined the goods covered by the baggage declaration and the airway bill and found that the baggage declaration was filed in the name of Shri Vipin Dua with Passport No. H3535709 date 10.02.2009 filed through M/s Sky Barge Freight Pvt. Ltd. (airway bill) and M/s FSD Cargo Movers (baggage declaration). It had 32 boxes declared as household goods and on examination, they were found to contain red sanders- a prohibited item for export. The roles of various persons in the case was investigated and show cause notice dated 05.11.2014 was issued to seven persons. It was proposed in the show cause notice to confiscate the seized red sanders and impose penalties on the individuals. The proposals in the show cause notice were decided by the impugned order of the Commissioner of Customs. Appeals filed by others assailing the impugned order were already decided by this Tribunal's by Final Order dated 18.10.2024 after considering the role played by each of the appellants.

3. As far as the appellant herein, Shri Nishant Kumar is concerned, his role is recorded in the impugned order as follows:

> "**(Viii)** As per the facts and material available on record, Shri Ankit Kumar stated that Shri Krishna Chandra Jha (Krishna) was working for Shri Nishant Kumar, the Director of M/s Avlokan Exim Pvt. Ltd. and during the search of the premises of M/s Avlokan Exim Pvt. Ltd, documents pertaining

> to Shri Krishna Chandra Jha, such as rent agreement and a copy of DGFT license in the name of Shri Krishna Chandra Jha were found, thereby established connection among three. The copy of G-Card No.57/2013 of Shri Brijesh Kumar Saini was found attached with Baggage Declaration No. 2593 dated 01.11.2017 who used to work in M/s Avlokan Exim Pvt. Ltd. Shri Brijesh Kumar Saini stated that he joined M/s Avlokan Exim Pvt. Ltd. a CHA firm in the year 2015, as a G-Card Holder and worked as a G-Card Holder till March, 2017. He deposited his G-Card to M/s Avlokan Exim Pvt. Ltd. in 2017 and the said G-Card was deposited by Avlokan Exim to Custom Authorities, and Shri Nishant Kumar had the possession of said G card. Shri Saini also knew Shri Ankit Kumar for last one year as they came to know each other at the premises of Mis Avlokan Exim Pvt. Ltd. It is obvious, from the facts and circumstances and statements available on record, that Shri Nishant Kumar was in the possession of the documents pertaining to Shri Krishna Chandra Jha and Shri Brijesh Saini which were used in the smuggling of Red Sanders. Shri Nishant also stated that he was friend of Shri Krishna Chandra Jha. Thus, Shri Nishant Kumar Singh is inextricably linked as abettor in the entire fraud and hence I hold him liable to penalty under Section 114 of the Act ibid."

4. The Commissioner imposed penalty on Shri Nishant Kumar Singh on the ground that he had admitted that he knew Shri Krishna Chandra Jha and, therefore, it was the case of a group of persons conspiring to indulge in smuggling of red sanders.

5. We have heard learned Consultant representing the appellant and the learned authorized representative for the Revenue and perused the records. Learned Consultant submits that he does not deny that Shri Nishant Kumar was a friend of Shri Krishna Chandra Jha and as such some documents belonging to Shri Krishna Chandra Jha were found in his office. Beyond that, there is nothing in the

impugned order and the show cause notice to link the appellant Shri Nishant Kumar Singh to the alleged attempt to smuggle red sanders.

6. Learned authorized representative for the Revenue, on the other hand, asserted that this is a case of a number of people getting together and conspiring to smuggle red sanders. There is no reason for Shri Nishant Kumar Singh to be treated differently than others.

7. Having considered the submissions made by both sides and the role of the Nishant Kumar Singh as recorded in the impugned order, we find that there is nothing in the impugned order to show that Shri Nishant Kumar Singh had any role in the attempted smuggling of red sanders other than the fact that he was a friend of Shri Krishna Chandra Jha. In view of the above, we find that Shri Nishant Kumar Singh, the appellant, had no role in the attempted smuggling of red sanders. The penalty imposed on him, therefore, cannot be sustained.

8. The appeal is allowed and the impugned order is set aside insofar as it pertains to imposition of penalty of Rs. 5 lakhs on the appellant. The appellant will be entitled to consequential relief, if any.

(Order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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