

Himanshu Mongia & Anr vs Principal Commissioner Of Customs ... on 12 December, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 12998/2023& CM APPL. 51242/2023 (Interim
HIMANSHU MONGIA & ANR.

Through:

versus

PRINCIPAL COMMISSIONER OF CUSTOMS
(PREVENTIVE) & ORS.

..... Respondents

Through:

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W.P.(C) 13001/2023 & CM APPL. 51248/2023(Interim
SAHIL KHURANA & ANR.

Through:

versus

PRINCIPAL COMMISSIONER OF CUSTOMS
(PREVENTIVE) & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 12.12.2023 This is a digitally signed order.

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1. The petitioner who is a partner in M/s. Fortuner Impex, a firm duly registered under the Indian Partnership Act, 1932 ['Partnership Act'] has approached this Court assailing the recovery notices

which have been issued by the respondents invoking the provisions of Section 90 of the Central Goods and Services Tax Act, 2017 ['CGST Act'] together with Section 142(1)(d) of the Customs Act, 1962 ['Customs Act'] and Section 25 of the Partnership Act.

2. The recovery notices originate from an Order-in-Original dated 5 October 2021 in terms of which the following directions came to be framed: -

"13. In view of the above findings & discussion, I pass the following orders: -

(i) I reject the assessable value of Rs.18,78,791/- (Rupees eighteen lakh seventy eight thousand seven hundred and ninety one only) declared by the Importer in respect of goods imported vide Bill of Entry No.5520546 dated 20.09.2021, under Rule 12 of the Customs Valuation Rules (Determination of Value of Imported Goods) Rules 2007 and re-determine the assessable value as Rs.1,11,76,280/-

(Rupees one crore eleven lakh seventy six thousand two hundred and eighty only) under Rule 4 and 5 of the Customs Valuation Rules, 2007 in respect of all goods as mentioned in Table in para 4.1 supra.

(ii) I re-determine the total duty (Including BCD, SWS and IGST) as Rs.41,87,752/- (Rupees forty one lakh eighty seven thousand seven hundred and fifty two only) after re- determination of the value as against the total duty Rs.7,03,983/- (Rupees seven lakh three thousand nine hundred and eighty three only) on the basis of Bill of Entry filed in the matter and accordingly a differential duty of Rs.34,83,769/- (Rupees thirty four lakh eighty three thousand seven hundred and sixty nine only) is hereby determined under Section 28(4) of the Customs Act, 1962 which is ordered to be recovered from the importer along with interest under Section 28AA of the Customs Act, 1962.

(iii) I order for confiscation of the goods under the Bill of Entry No.5520546 dated 20.09.2021 as mentioned in Table at para 4.1 above having total re-determined value of Rs.1,11,76,280/- (Rupees one crore eleven lakh seventy six thousand two hundred and eighty only) as detailed in Table This is a digitally signed order.

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(iv) I impose penalty of Rs.34,83,769/- (Rupees thirty four lakh eighty three thousand seven hundred and sixty nine only) on the M/s Fortuner Impex, Ground Floor, 3871/24, Reghar Pura, Karol Bagh, New Delhi-110005,(IEC No.AAHFF0812G) under Section 114A of the Customs Act, 1962 provided that where such duty or interest, as the case may be, as determined under sub-section (8)

of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined."

3. As is manifest from the aforesaid, the assessable value of the imported articles as declared by the importer firm was rejected, the value thereof was determined and an order for confiscation of goods as well as levy of penalty came to ensue.

4. It is not disputed before us that the option to redeem was not exercised by the importer firm.

5. The principal submission is that the Customs Act does not raise or foist any personal liability upon the partners of a firm. It is in the aforesaid context that Mr. Ramesh Singh, learned senior counsel appearing for the petitioners, drew our attention to the judgments rendered by the Supreme Court in *Dena Bank vs. Bhikhabhai Prabhudhas Parekh & Co. and Ors.* [(2000) 5 SCC 694] and *Commissioner of Sales Tax, Madhya Pradesh, Indore and Ors. vs. Radhakrishnan and Ors.* [(1979) 2 SCC 249].

6. According to Mr. Singh since the statute enables an entity other This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 18/12/2023 at 20:36:08 than an individual to act as an importer, it would place the case of the importer firm on the same pedestal as a dealer as defined in those taxing statutes. It was in that context that Mr. Singh commended for our consideration the principles laid down by the Supreme Court in *Dena Bank* and which had held that where a firm is accorded a separate legal status, the provisions of Section 25 of the Partnership Act would cease to apply.

7. Mr. Harpreet Singh, learned counsel representing the Customs has on the other hand sought to draw sustenance from the judgments rendered by the Supreme Court in *Her Highness Maharani Mandalsa Devi and Ors. vs. M. Ramnarain Private Ltd. and Ors.* [1965 SCC OnLine SC 91] as also the judgment rendered by a learned Judge of the High Court of Madhya Pradesh in *Harikishan Shivhare s/o Shri Ram Gwalior vs. State of Madhya Pradesh & Ors.* [1995 SCC OnLine MP 133].

8. It, however, becomes pertinent to note that the decision in *Her Highness Maharani Mandalsa Devi* pertained to the execution of a decree and which would thus be governed by the provisions of Order XXI Rule 49 and 50 of the Code of Civil Procedure, 1908 ['Code']. Those provisions, as would be evident from a reading thereof, make specific provisions for the decree being executed even against the partners of a firm.

9. Insofar as the decision of the High Court of Madhya Pradesh in *Harikishan Shivhare* is concerned, the same also arose out of a demand for recovery of excise duty. A reading of that decision, however, does not indicate the special statutory provisions which may have operated insofar as excise duty liability is concerned.

10. In view of the above and since the questions raised in the This is a digitally signed order.

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11. Let the writ petitions be called again on 08.02.2024 as part heard.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

DECEMBER 12, 2023 RW This is a digitally signed order.

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