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

Date of Decision: 4th February, 2025.

\+ **CUSAA 35/2025 & CM APPL. 2882/2025**

SUSHIL AGGARWAL …..Appellant

Through: Mr. Pradeep Jain, Mr. Shubhankar Jha & Mr. Sambhav Jain, Advs. (M:9212023661)

versus

PRINCIPAL COMMISSIONER OF CUSTOMS …..Respondent

Through: Ms. Anushree Narain, SSC

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\+ **CUSAA 38/2025 & CM APPL. 3563/2025**

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT), NEW DELHI .....Appellant

Through: Ms. Anushree Narain, SSC

versus

SUNIL AIDASANI @ VICKY .....Respondent

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Maninder Kaur, Mr. Ayush Mittal, Ms. Oshin Maggu, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Background

2. The present appeals are filed by the Appellants- Sushil Aggarwal and Principal Commissioner of Customs (Import) New Delhi challenging the impugned order dated 30th April, 2024 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter '*CESTAT*'). The said order has also been challenged by the Appellant-Sushil Aggarwal in ***CUSAA 35/2025***

as CESTAT dismissed its appeal vide Final Order No.55702-55704/2024 and upheld the penalties imposed on him under Sections 112 and 114 A of the Customs Act, 1962 (hereinafter '*the Act*') as per the order in original dated 30th October, 2019.

3. The Principal Commissioner in ***CUSAA 38/2025*** has filed an appeal against the order dated 30th April, 2024, as CESTAT allowed the appeal filed by the Respondent-Sunil Aidasani @ Vicky in the same final order by which the penalties imposed as per order in original dated 30th October, 2019 was set aside. The CESTAT also observed that a statement made by Mr. Bhalla under Section 108 of the Act will be relevant to prove the case as per Section 138B of the Act and thus the said person should be cross examined.

Brief Facts

4. The entire investigation emanated from the order in original passed on 30th October, 2019 passed by the Principal Commissioner of Customs (Import) wherein an investigation had been commenced against five firms which were seen to be involved in declaration of goods and import of prohibited goods. The said five firms are:

S. No.	Name of the Company & Address	IEC No.	Director/Prop./Partner
1.	M/s B.M. International F-9, Sagar Pur West, New Delhi	0514098171	(i) Inder Preet Singh Bhalla (ii) Manish Kumar
2.	M/s Preet International F-9, Sagar Pur West, New Delhi	0512072744	(i) Inder Preet Singh Bhalla (ii) Manish Kumar
3.	M/s Bhalla Enterprises Shop No. 8, DDA Market, Vikas Kinj, Vikas Puri, N. Delhi	0505065649	Inder Preet Singh Bhalla

4.	M/s Manish & Bhalla International D2/2, D2 Block, Jeewan Park, Pankha Road, N. Delhi	0511076126	(i) Inder Preet Singh Bhalla (ii) Manish Kumar
5.	M/s K. M. Enterprises F-9, Sagar Pur West, New Delhi	0513091882	Manish Kumar

5. A detailed investigation was conducted and various persons were found to be involved in the said imports running into 19 containers without any Bill of Entry, except for two containers. After analysing the role of various parties, the order in original imposed penalties against various persons including the firms. The said order reads as under:

> *"A. In respect of M/s B.M. International, F-9, Sagar Pur West, New Delhi and its partners Shri Inderpreet Singh Bhalla and Shri Manish Kumar -*
>
> *i) I hereby reject the declared value of the goods imported by them in Container No. HDMU6797172 (BE No. 9628771 DATED 19.06.2015) under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and redetermine the same as Rs 2,77,86,730/-, as detailed in Annexure- 'A' to the SCN, in terms of Rule 5 and Rule 9 (as applicable) of the said Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962.*
>
> *(ii) I determine the value of the goods imported by them in 2 (Two) Containers i.e. Container No. FCIU8930066 and Container No. PCIU8061867, as Rs 3,93,26,039/-, as detailed in Annexure- 'B' and C to the SCN, in terms of Rule 5 and Rule 9 (as applicable) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.*

iii) I order confiscation of all the goods imported in the said 3 (three) Containers i.e Container No. HDMU6797172, Container No. FCIU8930066 and Container No. PCIU8061867, having assessable value of Rs 6,71,12,770/- (including restricted items i.e. fire works (25.586 MT) valued at Rs. 5,11,72,000/-), as detailed in Annexure A, B & C' to the SCN, under Section 111 (d). (f). (i), (l) & (m) of the Customs Act, 1962. I give an option to them of redemption of these goods (other than the restricted items i.e. fire works (25.586 MT) valued at Rs. 5.11,72,000/-) on payment of fine of Rs. 20,00,000/- (Rupees Twenty Lacs only), in lieu of confiscation. The restricted items i.e. fire works (25.586 MT) valued at Rs. 5.11,72,000/- are ordered for absolute confiscation.

(iv) I impose penalty of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lacs only) under Section 112 (a) & (b) of the Customs Act, 1962, on M/s B.M. International.

(v) I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lacs only), under Section 112 (a) & (b) of the Customs Act, 1962 and Rs. 20,00,000/- (Rupees Twenty Lacs only) under Section -114AA of the Customs Act, 1962 on Shri Inderpreet Singh Bhalla.

(vi) I impose penalty of Rs. 50,00,000/- (Rupees Fifty Lacs only), under Section 112 (a) & (b) of the Customs Act, 1962 and Rs. 20,00,000/- (Rupees Twenty Lacs only) under Section 114AA of the Customs Act, 1962 on Shri Manish Kumar.

B. In respect of M/s Manish & Bhalla International, D2/1, D2, Block, Jeewan Park, Pankha Road, New Delhi and its partners Shri Inderpreet Singh Bhalla and Shri Manish Kumar-

(i) I hereby reject the declared value of the goods imported by them in 6(Six) Containers i.e. Container No. HDMU6566450; Container

No.NYKU4808510; Container No. DRYU9508818; Container No. HDMU6362138; Container No. NYKU4136740 and Container No. TRLU7440117, and re-determine the same as Rs 33,33,43,347/- as detailed in Annexure- 'D,E,F,G,H & l' to the SCN, in terms of Rule 5 and Rule 9 (as applicable) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962

(ii) I order confiscation of all the goods imported in the said 6(six) Containers i.e. Container No. HDMU6566450; Container No.NYKU4808510; Container No. DRYU9508818; Container No. HDMU6362138; Container No. NYKU4136740 and Container No. TRLU7440117 having assessable value of Rs 33,33,43,347/-(including restricted items i.e. fire works (6.092 MT) valued at Rs. 1,21,84,000/-), as detailed in Annexure- D,E,F,G,H & I' to the SCN under Section 111 (d), (f). (i). (l) & (m) of the Customs Act, 1962. I give an option to them of redemption of these goods (other than restricted items ie. fire works (6.092 MT) valued at Rs. 1,21,84,000/-), on payment of fine of Rs. Rs. 3,00,00,000/-(Rupees Three Crore only), in lieu of confiscation. The restricted items i.e. fire works (6.092 MT) valued at Rs. 1,21,84,000/- are ordered for absolute confiscation.

(iii) I impose penalty of Rs. 6,00,00,000/- (Rupees Six Crore only) under Section 112 (a) & (b) of the Customs Act, 1962 on M/s Manish & Bhalla International.

(iv) I impose penalty of Rs. 2,00,00,000/- (Rupees Two Crore only), under Section 112 (a) & (b) of the Customs Act, 1962 and Rs. 1,00,00,000/- (Rupees One Crore only), under Section 114AA of the Customs Act, 1962 on Shri Inderpreet Singh

Bhalla.
(v) I impose penalty of Rs. 2,00,00,000/- (Rupees Two Crore only), under Section 112 (a) & (b) of the Customs Act, 1962 and Rs. 1,00,00,000/- (Rupees One Crore only), under Section 114AA of the Customs Act, 1962 on Shri Manish Kumar.

6. The persons involved in this investigation had made statements before the Department and reliance was placed on the said statements including statement of one Mr. Bhalla, who has implicated the Appellant-Mr. Sushil Aggarwal in this matter and whose statement has also been relied upon against Mr. Aidasani. Mr. Sushil Aggarwal and Aidasani were two parties who had argued before the Department that they were not given a chance to cross examine Inderpreet Singh Bhalla @ Bobby. In respect thereof, a detailed order was passed in the order in original stating the reasons why the right of cross examination is not an unfettered right. In fact, the Department relies upon the decision in ***Kanungo & Co. vs Collector of Customs, Kolkata & Others, 1983 (13) E.L.T. 1486 (S.C.)*** as also few other judgments which state that the principles of natural justice do not bind the Informants to be examined in the presence of Appellant or be allowed to be cross-examined by them regarding the statements made before the Customs Authorities.

7. The said order was challenged before the CESTAT. The CESTAT however curiously dismissed the appeal of Sushil Aggarwal and held that right of cross examination need not be given. However, in the same breath the CESTAT held that in respect of Aidasani, since right of cross examination was not given under Section 138(B) of the Act, the appeal was allowed and the penalty imposed upon him was set aside. The relevant paragraphs thereto are set out below:

*"17. **Sushil Aggarwal:** Admittedly, he was the indentor in China and would connect buyers from India and the sellers from China and when the deal is struck, he would receive commission for his services.*

18. However, as his statements indicate, his role does not end with placing orders. After the goods have been shipped, he would collect the Bills of Lading from Bhalla and give them to the CHA to get the goods cleared and further to get the delivery order and obtain the goods from the Shipping Line. Evidently, as the person who placed the orders and got the goods shipped, Sushil Aggarwal must be fully aware of what was actually bought and what was mentioned in the Bills of Lading and that prohibited goods were bought and shipped but were not declared in the Bill of Lading.

19. The role which he played did not end there. He would follow up the movement of the containers and after they have been cleared, he had even accompanied the goods upto the godown of the importer at Sitapur where Manish would take over and distribute the goods to the buyers. Manish would distribute them either on instructions of Bhalla or on the instructions of Sushil Aggarwal.

20. After Manish had sold the goods, Sushil Aggarwal would collect the sale proceeds and distribute them to the CHA, Bhalla and others.

21. We have no doubts in our minds that the Sushil Aggarwal was not merely an indenting agent but was an active player involved at every stage in the entire operation from placing orders for the imported goods including the import of the prohibited goods, mis-declaration in the documents, clearance of the goods, transporting them to the godown and selling them, receiving the sale proceeds and further distributing them among various operators.

22. We find the penalties imposed on him under

<u>Section 112 and l 14AA must be sustained and they call for no interference</u>.

Sunil Aidasani

23. The allegations against Aidasani are that he was the supplier of the seized goods, that 12 of the 19 containers actually belonged to him and that he had not responded nor given his statements despite repeated summons.

24. Aidasani denies being the owner of the goods but he admits to working for S S Imports & Exports Ltd. which had sold the goods to the importers. According to him, he was the sourcing agent working in China.

25. He claims to have never received the summons and hence he had not appeared to give his statements.

26. As far as the allegations that 12 of the 19 containers actually belonged to him are concerned, these are based on the statements of Bhalla. <u>A statement made by Bhalla under section 108 of the Customs Act will be relevant to prove the case only as per section 138B. This requires the adjudicating authority to examine the person making the statement and decide if it is to be admitted in evidence. Needless to say that if it is admitted in evidence and is proposed to be used against another person, such person should be allowed to cross examine the person making the statement.</u>

<u>27. Since the procedure prescribed under section 138B was not followed, the statement is not relevant to prove the case against Aidasani.</u>

<u>28. We also find that neither section 112 nor section 114A4 provide for penalty for not responding to summons or not cooperating with the investigation.</u>

<u>29. Therefore, the penalties imposed on Aidasani in the impugned order cannot be sustained and need to be set aside."</u>

8. It is in respect of these findings of the CESTAT that both the Appellants-Mr. Sushil Aggarwal in ***CUSAA-35/2025*** and Principal Commissioner of Customs (Import), New Delhi in ***CUSAA No.38/2025*** are before the Court.

9. Mr. Jain, ld. Counsel appearing for Mr. Sushil Aggarwal submits that the CESTAT has discriminated between his client and Mr. Sunil Aidasani as the appeal of Mr. Sunil Aidasani was allowed however Mr. Sunil Aggarwal's appeal was dismissed.

10. The Department argues the same but to the contrary that in case of Mr. Aidasani, the appeal could not have been allowed due to non-compliance of Section 138 (B) of the Act.

Analysis and Conclusion

11. The short question in the present appeals is therefore whether an opportunity ought to be given to both the Appellants before CESTAT to cross examine Mr. Bhalla in terms of Section 138(B) of the Act.

12. Reliance is placed upon the decision in ***Shri Krishan Kishor Aggarwal vs Additional Commissioner of Customs, 2019:DHC:2228-DB*** wherein a coordinate bench of this Court observed that if a statement of the co-accused becomes the basis of an impugned order, then denial of cross examination of such witnesses will violate the principles of natural justice. The right of cross examination was thereafter granted after discussing the decision in ***Kanungo & Co. Vs. Collector of Customs, Calcutta and Others – 1983 (13) E.L.T. 1486 (S.C.)*** wherein the Coordinate bench of this Court after analysing the said judgment observed that if any information is received from a statutory authority and an adjudicating process is initiated, there is nothing in law which compels the information provider to be involved in the judicial proceedings

or warrant him/her for cross examination. The said observations of the Division Bench read as under:

> *4. In addition, the Order-in-Original relied upon the Bench rulings of the Customs, Excise & Service Tax Appellate Tribunal ["CESTAT"]. This Court is of the opinion that the view and approach of the Additional Commissioner is flawed. A plain reading of the judgment in Kanungo & Co. (supra), relied upon in the impugned order shows that the Additional Commissioner completely misinterpreted the terms and purport of the Supreme Court judgment. What the Court said in that case was that, if information is received by the statutory authorities, which triggers an inquiry and culminates in adjudicating proceedings, there is nothing in law to compel the authorities to involve the informant, (or the person providing the information), in the judicial proceedings so as to warrant her or his cross-examination. This, however, does not imply that if an individual is involved in the proceeding, which results in an adverse order against a third party, (and who is asked to join the proceedings, or whose statement is used) the third party is precluded from seeking cross-examination of the informant, if the latter's statements were recorded or were to be considered in the proceedings as material evidence. This Court notices in the present case that the statements of the co-accused, recorded under Section 108 of the Act, ultimately became the basis of the impugned order. The denial of the right of cross examination of such witnesses, was plainly in violation of the principles of natural justice.*
>
> *5. Having regard to the above discussion, the Court is of the opinion that it would not be appropriate to relegate the appellant to the remedy of cross-examination in the course of an appeal, which would*

in effect amount to denial of an appellate forum, in the event, the findings of the Additional Commissioner are affirmed. As a consequence, the impugned order dated 07.02.2019 [O-I.O.No.45/2019/K.R.Madhar/ADC/EXP/ICD/TKD] is set aside, as against the petitioners. T<u>he Additional Commissioner of Customs shall proceed to hear the petitioners and also grant appropriate and sufficient opportunity to cross-examine the witnesses, whose cross-examination was sought but denied in the original proceedings, which culminated in the impugned original order</u>. The parties shall be present before the Additional Commissioner on 15th May, 2019, who shall then proceed to act in accordance with law."

13. In the above decision, it was also observed as to why the matters cannot be also relegated to CESTAT for cross examination, as the parties would be deprived of their right in the Appellant forum if the findings of the Additional Commissioner are affirmed.

14. In this case,the CESTAT has followed a curious course where in respect of one of the Appellants, despite the right of cross examination having not been given, the penalty has been upheld and the appeal has been dismissed by CESTAT. However, in case of the other party *i.e.*, Sunil Aidasani, the exact opposite approach has been adopted by CESTAT in the same case. Such discrimination between two similarly placed persons would not be possible.

15. Accordingly, this Court is of the opinion that in order to ensure that there is compliance of Section 138(B) of the Act, though the same cannot be claimed as an unfettered right in all cases, in the facts of the present case, both Mr. Sushil Aggarwal and Mr. Aidasani are afforded an opportunity to cross examine Mr. Bhalla. The said cross examination shall be fixed on one

particular date and the cross examination shall be concluded on the same date or one more date. No further adjournments or opportunities for cross examination shall be given. Upon the right to cross examination being afforded, the authority shall proceed to adjudicate the matter in accordance with law only *qua* these two Appellants.

16. In respect of the other parties and issues involved, this Court has not made any observation *qua* the impugned order.

17. The notice for cross examination shall be served upon the parties as also the ld. Counsels *i.e.,* whose details are as under :

Sushil Aggarwal
Advocate: Pradeep Jain
Email: jainglobus@gmail.com
Mob. No.:9899152568

Sunil Aidasani
Advocate: Mr. Akhil Krishan Maggu
Email:Lexworks@gmail.com
Mob. no.:8826872049

18. The order-in-original *qua* the other noticees is also not being disturbed. In case the adjudicating authority again imposes a penalty on the Appellants, since this would be the second round, the pre-deposit condition shall stand waived.

19. The appeals are disposed of in the above terms along with all pending applications.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 4, 2025/gs/ks