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

% *Date of Decision: 31st January, 2023*

\+ **CUSAA 5/2021**

SH. MANISH GUPTA, PROPRIETOR OF WLM INDIA

..... Appellant

Through: Mr. Devinder Singh Nagi, Mr. Rajiv Jaipal & Ms. Raminder Kaur, Advs

versus

COMMISSIONER OF CUSTOMS, AIR CARGO EXPORTS

..... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.(ORAL)

1. The appellant has filed the present appeal impugning an order dated 20.11.2017, passed by the Customs, Excise & Service Tax Appellate Tribunal (hereafter '**the Tribunal**') in customs appeal 50843/2017. The appellant had preferred the said appeal impugning an order dated 13.05.2015, passed by the Commissioner of Customs (Appeals), New Delhi, which in turn was passed in an appeal preferred by the appellant against an order-in-original dated 31.03.2014, passed by the Additional Commissioner of Customs (Adjudication).

2. By the order-in-original dated 31.03.2014, the Adjudicating Authority had imposed a penalty of ₹15 lakhs on the appellant under Section 114(i) of Customs Act, 1962 (hereafter "**the Customs Act**").

3. The proceedings relate to the consignments of goods which were found to be prohibited goods (Red Sandalwood/Red Sanders). The

appellant claims that it is a consolidator for two courier companies, namely, M/s. Fedex and M/s. Overseas Courier Services (OCS). Admittedly, the said consignments had been accepted by the appellant and it had issued the Airway Bills (although, the appellant claims it had done so as a coordinator). According to the appellant, one of the consignments was forwarded by another courier agency namely, M/s. Shuttle Express, New Delhi (which was also one of the noticees before the Adjudicating Authority). The other consignments were received from two individuals, who were Chinese nationals, Mr. Zhicheng Li and Mr. Zhang Jun.

4. According to the appellant, the said persons had walked into its office at Nehru Place, New Delhi and had booked the said shipments. Admittedly, the appellant had generated the computerized Airway Bills. However, the concerned authorities found that the two individuals, Mr. Zhicheng Li and Mr. Zhang Jun were not present in India on the date when the consignments were booked.

5. The order-in-original indicates that the Adjudicating Authority had examined the statement of the appellant as recorded under Section 108 of the Customs Act as well as the statements of several other persons, including one of the employees of the appellant. The Adjudicating Authority found that it is an admitted fact that Mr. Manish Gupta, the appellant had booked the consignments covered under the Airway Bills in question (10 in number). One of the consignments was booked on 27.01.2012, which is stated to have been received from M/s. Shuttle Express. The other consignments were booked on 10.01.2012 and 12.01.2012. The Adjudicating Authority did not accept the

statement of Mr. Manish Gupta that Mr. Zhicheng Li and Mr. Zhang Jun had booked the consignments personally at the appellant's office on 10.01.2012 and 12.01.2012. He noted that there was nothing on record which could substantiate the same. Further, the AFRRO (Assistant Foreigners Regional Assistance Office) as well as the Intelligence Bureau had verified that Mr. Zhicheng Li and Mr. Zhang Jun were not present in India on the given dates, that is on 10.01.2012 and 12.01.2012. Thus, it was not possible for them to book the consignment on those dates. In addition, the Adjudicating Authority found that the appellant did not have the authority to accept bookings on behalf of the courier companies.

6. In the given circumstances, the Adjudicating Authority had imposed a penalty of ₹15 lakhs under Section 114(i) of the Customs Act.

7. The appellant appealed the said decision before the Commissioner of Customs (Appeals), which was rejected by an order dated 13.05.2015. As stated above, the appellant's appeal against the said order was dismissed by the impugned order.

8. The learned counsel for the appellant submits that the orders passed by the Commissioner of Customs (Appeals) and the learned Tribunal are unreasoned and non-speaking orders. He contends that the question of law that arises in the present case is that whether the said orders are unreasoned or not.

9. We do not find any merit in the aforesaid contention. The impugned decision turned on findings of facts as noted by the Adjudicating Authority. The order-in-appeal dated 13.05.2015 is a short order, however, it is not an unreasoned one. The Commissioner of

Customs (Appeals) had found no infirmity with the decision of the Adjudicating Authority and its findings that certain parties were involved in the illegal export of Red Sandalwood/Red Sanders and therefore, did not interfere with the order passed by the Adjudicating Authority. The learned Tribunal has also not found any grounds to interfere with the findings recorded by the Adjudicating Authority.

10. It is contended on behalf of the appellant that he had made a grievance before the learned Tribunal that one of the Chinese nationals had not been examined. Further, there was no punishment imposed on the consignors. It is obvious that in view of the findings that the persons, who the appellant claims had personally booked the shipments, were not in India, no proceedings were warranted against them.

11. The learned Tribunal concluded that the appellant was remiss as he had not made proper enquiry. The learned Tribunal had also observed that the appellant was aware of the prohibited goods and accordingly dismissed the appeals.

12. It is clear from the impugned order that the learned Tribunal had found no reason to interfere with the findings recorded by the Adjudicating Authority.

13. In the given facts, we do not find any substantial question of law that arises in the present appeal. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 31, 2023/"SK"