



\$~52

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 10th March, 2025

+ **W.P.(C) 3012/2025 & CM APPL. 14249/2025, CM APPL.14250/2025**
YOGENDRA SINGH BALYANPetitioner
Through: Mr Anurag Soan, Mr Akshay Saxena,
Mr. Rituraj, Mr Nishank, Advs.

versus
UNION OF INDIA & ORS.Respondents
Through: Mr. Raghwendra Tiwari, SPC (UOI).
Mr. Harpreet Singh, SSC along with
Ms. Suhani Mathur and Mr. Jai Ahuja,
Advs. for R-2 & 5.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking quashing of the impugned Order-in-Original dated 14th January, 2025. The Exporter - M/s Abhishek Exim had exported certain goods and claimed duty drawback in respect thereof.
3. The case of the Department was that various fraudulent documents were relied upon for claiming the duty drawback. Accordingly, two Show Cause Notices were issued on 14th January, 2021 and 30th December, 2021 respectively. The reply was filed by the Petitioner and hearings were also held. The impugned Order-in-Original was passed on 14th January, 2025 holding the Petitioner guilty and liable to pay penalties *inter alia* to the extent of Rs. 5,00,000.
4. Ld. Counsel for the Petitioner challenges the said impugned order on two primary grounds:



- i) Firstly, that the Show Cause Notice was issued beyond the prescribed period of limitation which is three years;
- ii) Secondly, that the said issue regarding limitation was not even considered in the impugned order.

5. Mr. Harpreet Singh, Id. Sr. Standing Counsel submits that the Order-in-Original clearly records that the Petitioner was a Chartered Accountant who was found to be earning commission of 1% of the invoice value and that fraudulent documents were submitted for claiming the duty drawback. Mr. Singh places reliance on paragraph 54 of the impugned order in this regard.

6. Ld. Counsel for the Petitioner on the other hand relies upon the decision of the Gujarat High Court in *SJS International v Union of India [SCA no. 20484 of 2019 – Judgment dated 9th December 2021]* and *Raghav International Through Proprietor Vishal Bharatbhushan Jain & Ors. v Union of India [SCA no. 7165 of 2021– Judgment dated 22nd February 2023]* to argue that if the Show Cause Notice is beyond the period of three years, the Petitioner would be entitled to relief.

7. Heard. The first thing that this Court notices is that the allegations against the Petitioner are quite serious. Paragraph 54 of the Order-in-Original is extracted below:

*“54. As far as Penalty under Section 114AA of the Customs Act, 1962 is concerned, I find Section 114AA of the Customs Act, 1962 deals with penalty upon any person, if any person knowingly and intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false and incorrect in any material particular, in the transaction of any business for the purpose of this Act, shall be liable to a penalty not exceeding five times of the value of the goods. **In the instant case, I find that Shri Rajbir Singh has produced false/fabricated documents before the***



Customs with the help of Shri Manoj Goyal and Shri Yogendra Balyan. Shri Manoj Goyal and Shri Yogendra Balyan has raised false/fabricated documents from their firm for the sake of monetary consideration. Shri Yogendra Balyan used to receive 1% of invoice value from Shri Rajbir Singh and Shri Manoj Goyal used to receive 5% of the invoice value from Shri Rajbir Singh.
In view of the above, it is clear that they have fix share in the business of Shri Rajbir Singh. Therefore, I hold that the noticees are liable for penal action under Section 114AA of the Customs Act, 1962.”

8. The Petitioner is a Chartered Accountant who is stated to have assisted the main accused in producing false and fabricated documents in return for receiving 1% of the invoice value. The allegations being serious and factual in nature, this Court in writ jurisdiction would not be able to examine the said factual aspects. Secondly, insofar as the judgment of the Gujarat High Court is concerned, the challenge therein was to the belated issuance of the Show Cause Notice itself and the Show Cause Notices were quashed by the Gujarat High Court at the instance of the actual exporters. In the present case, Petitioner is not the actual exporter but a Chartered Accountant who is providing services to the actual exporter.

9. Under these circumstances, this Court is of the opinion that the Petitioner deserves to be relegated to avail of the appellate remedy. Under Section 128 of the Customs Act, 1962, the order is appealable before the Commissioner (Appeals). The said provision reads as under:

“128. Appeals to Commissioner (Appeals).—(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to



him of such decision or order: Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf”

10. Accordingly, the Petitioner may file an appeal in accordance with law challenging the Order-in-Original before the appropriate Appellate Authority.
11. All objections including the objection of limitation may be raised before the Appellate Authority which shall be adjudicated in accordance with law. This Court has not examined the merits of the matter.
12. The petition is accordingly disposed of with the liberty to the Petitioner to avail of his appellate remedies. All pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MARCH 10, 2025
Rahul/ck