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IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 10TH DAY OF NOVEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.16518 OF 2021(GM-RES)

BETWEEN:

SRI.M.S. SRINIVASA,
AGED ABOUT 56 YEARS,
S/O DR. M. V. SHANKARANARAYANA IYER,
NO.39/1, PINAKI, 2ND FLOOR,
ABOVE SBI, SANNIDHI ROAD,
N R COLONY, BASAVANAGUDI,
BENGALURU-560 004.

...PETITIONER

(BY SRI. SOURABH R K, ADVOCATE)

AND:

1. UNION OF INDIA
   REPRESENTED BY ITS PRINCIPAL SECRETARY,
   DEPARTMENT OF REVENUE,
   MINISTRY OF FINANCE,
   NORTH BLOCK,
   NEW DELHI-110 001.

2. THE COMMISSIONER OF CUSTOMS (APPEALS)
   BMTC BUILDING,
   ABOVE BMTC BUS STAND, DOMLUR,
   BENGALURU-560 071.

... RESPONDENTS

(BY SMT. PRATIBHA R, CGC FOR R1;
SRI. JEEVAN J NEERALGI, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLS 226 OF THE CONSTITUTION OF INDIA PRAYING TO EXPUNGE THE OBSERVATION IN PARAGRAPH 8 OF ORDER DTD.16.3.2021 IN ORDER IN APPEAL NO.206/2021 PASSED BY THE R-2 PRODUCED IN ANNEXURE-D TO THE EXTENT OF THE FOLLOWING SENTENCE THE OBJECTIVE OF IMPOSING A PENALTY OF RS.15000/- IN ONLY TO IMPRESS UPON THE APPELLANT THAT THEY OUGHT TO BE MORE CAREFUL IN FUTURE AND DO JUSTICE TO THEIR ROLE AND DUTIES RATHER THAN TAKE SHELTER BEHIND TECHNICALITIES AND ADVOCATES WHO THINK THEY CAN DEFEND THE

INDEFENSIBLE BY GIVING THEIR OWN SKEWED UNDERSTANDING OF THE LAW AND MISGUIDING APPELLANTS.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner is an advocate by occupation; he had appeared for the appellant in appeal vide A.No. 279/2019 CUS(B-Air); the Commissioner of Customs (Appeals) vide order dated 16.03.2021 at Annexure-D dismissed the appeal; in the course of order, the Commissioner has made certain observations at para 8 therein which read are as under:

> *"8. The objective of imposing a penalty of Rs.15000/- is only to impress upon the appellant that they ought to be more careful in future and do justice to their role and duties rather than take shelter behind technicalities and* ***advocates who think they can defend the indefensible by giving their own skewed understanding of the law and misguiding appellants.****"*
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> (highlighting is mine)

2. The portion of the observations that are highlighted would reflect on the professional conduct of the petitioner, argues his counsel; learned Panel Counsel appearing for the respondents opposes the writ petition contending that the said observations are case specific and

therefore petitioner may not read too much in that; so contending he seeks dismissal of the writ petition.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant reprieve to the petitioner as under and for the following reasons:

(a) The legal profession is of vital importance not only to the administration of justice but also for the rule of law & good governance; lawyers are to the civil society what soldiers are to the frontiers of a nation; lawyers profession is the only profession constitutionally recognized; Marcus Tullius Cicero centuries ago called this profession as the '**noble profession**'; lawyers lend voice to the voiceless; they stand unfazed during social tumult; our Freedom Struggle was led by lawyers; our Constitution is the child of great legal brains; of course, others too have contributed a lot, cannot be denied; the great principles of governance and constitutional doctrines like the doctrine of Basic Structure are the contribution of tall lawyers; it is they who draw the chariot of law & justice; words fall short to extol the greatness of this profession.

(b) It is relevant to quote what the great sages of law have said about advocacy & advocates: *'Their vocation is to fight for truth. The light of truth is their weapon; goodwill is their shield. Occasionally however they fight for a mistaken cause. By tradition they seek to eradicate this crime against the intellect as well as certain other less serious offences. Sometimes they succeed'.* A lawyer has a duty to the court, a duty to his client and a duty to the profession as well; he has his privileges too; the observations of Calcutta High Court in **EMPEROR vs. RAJANIKANTA BOSE & OTHERS,** ILR (1922) 49 Cal.732 are worth reproducing:

> *'The practice of the law is not a business open to all who wish to engage in it. It is a personal right or privilege …. It is in the nature of a franchise from the State. That you are a member of the legal profession is your privilege; that you can represent your client is your privilege; that you can in that capacity claim audience in Court is your privilege.* ***Yours is an exalted profession in which your privilege is your duty and your duty is your privilege. They both coincide***"

(c) The hallmarks of legal profession, to borrow the words of jurist Dr. Upendra Baxi are: 'Courage, Craft & Contention'; advocacy is a distinguished profession affording full scope for the talents of the brightest intellect; a lawyer should be free to put forward creative & generic

ideas concerning the case, unhindered & fearlessly; in the free trade of ideas, some "intellectual collisions" do unavoidably occur; they are like sparks of light and therefore are welcome; that facilitates the march of law whereby freedom of citizens broadens from 'precedent to precedent'; however this is not to sanction indiscipline & lawlessness in the adjudicatory process; the horizons of due process of law widen by novelty & innovation of ideas; it is not impertinent to quote what the American Law Professor Grant Gilmore (1910-1982) had said:

> *"In Heaven there will be no law and the lion will lie down with the lamb. In Hell there will be nothing but law, and due process will be meticulously observed".*

(d) At times 'Law shows its face in mask', said Jeremy Bentham (1748-1832) more than a century ago; novel & innovative arguments come handy in removing the mask and seeing the true face of law & justice; merely because the arguments of a lawyer are laced with novelty & innovation, at times that may not be to the liking of adjudicating authority, the judgments cannot be couched in unhappy words; petitioner is more than justified in submitting that the Courts & adjudicatory authorities should not be too sensitive; they should give a greater

leverage to the counsel on feet in conducting their cases; this is as of necessity.

(e) In some occasions that are marked by their rarity, one may transcend the traditional contours of professional conduct; but this happens even with adjudicators as well; the ultimate object is to do justice to the cause; it hardly needs to be stated that the judgments & orders should not be written with a pen dipped in acid; after all 'acidity' affects health; the acidic words rob away the living beauty of the scripts; viewed from this angle, the highlighted portion of the observations in the subject order need to be expunged; it is in the best interest of both the stakeholders, namely, Bar & the Bench; such expunction would only add to the beauty of the order in question which is meticulously texted with appreciable articulation.

In the above circumstances, this writ petition succeeds and the objectionable expression in the order in question as mentioned *supra* by highlighting, is expunged; rest all in the subject order remains intact.

Sd/-
JUDGE

Bsv