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

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Date of decision: 12.02.2024

+ **CUSAA 85/2023**

COMMISSIONER OF CUSTOMS

..... Appellant

versus

M/S EVERGREEN SHIPPING AGENCY INDIA PVT.
LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Sonu Bhatnagar, Senior Standing Counsel with
Ms. Nishtha Mittal & Ms. Apurva Singh, Advocates.

Respondent: Mr. Prashant Srivastava, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant, Commissioner of Customs, impugns order dated 10.05.2023 passed by the Custom Excise & Service Tax Appellate Tribunal (hereinafter referred to as the "Tribunal"), whereby, the appeal of the respondent impugning a penalty imposed against the respondent was allowed.



2. The Tribunal noticed that a common Show Cause Notice dated 14.08.2017 had been issued to the respondent along with other noticees i.e. M/s. A.K.S. Apparels, Mr. Nitin Gupta, Mr. Imran Mirza and M/s. A.P.L. India Pvt. Ltd.

3. M/s. A.K.S. Apparels and Mr. Nitin Gupta had approached the Settlement Commission and the Settlement Commission vide its final order dated 20.04.2018, granted immunity to said M/s. A.K.S. Apparels and Mr. Nitin Gupta from prosecution etc.

4. The Tribunal by the impugned order dated 10.05.2023 held that since the appellant was a co-noticee along with M/s. A.K.S. Apparels and Mr. Nitin Gupta, appellant was also entitled to immunity granted by the Settlement Commission to the main noticee.

5. Aggrieved by the said observation, the Commissioner of Customs has filed the subject appeal.

6. Reference may be had to the judgment of a Coordinate Bench of this Court dated 18.05.2023 in *CUSAA No. 88/2022* titled *M/s Seville Products Ltd. Vs. Commissioner of Customs & Exports*, wherein the Division Bench has held that discharge of liability of one of the noticees either by making a payment without contest or by settlement before the Settlement Commissioner would not absolve other noticees from their liability.



7. We are informed that a Special Leave Petition impugning the said judgment in M/s. *Seville Products* being SLP (C) (Diary) No. 45245/2023 has been dismissed by the Hon'ble Supreme Court on 12.01.2024.

8. In view of the judgment of the Coordinate Bench in M/s. *Seville Products. (supra)* as upheld by the Hon'ble Supreme Court the reasoning of the Tribunal extending immunity granted to the other co-noticees to the respondent is not sustainable.

9. Accordingly, the impugned order dated 10.05.2023 passed by the Tribunal granting immunity to the respondent is set aside. The appeal of the respondent is restored on the records of the Tribunal. The matter is remitted to the Tribunal to decide the appeal filed by the respondent on merits in accordance with law.

10. The appeal is accordingly disposed of in view of the above.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 12, 2024/sk