

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

**W.P.(C) No. 2228 of 2008**

Reserved on: 13<sup>th</sup> January 2010  
Decision on : 03<sup>rd</sup> March 2010

NAVSHAKTI INDUSTRIES P.LTD. & ANR. .... Petitioner  
Through: Mr. T.P.S. Kang, Advocate.

versus

COMMISSIONER OF CUSTOMS & ORS. .... Respondents  
Through: Mr. Mukesh Anand, Advocate for R-1.  
Mr. Satish Aggarwala with  
Ms. Hrishika Pandit, Advocates for R-2 & R-3.

**W.P.(C) No. 8243 of 2008**

PRADEEP KUMAR .... Petitioner  
Through: Mr. T.P.S. Kang, Advocate.

versus

COMMISSIONER OF CUSTOMS & ORS. .... Respondents  
Through: Mr. Mukesh Anand, Advocate for R-1.  
Mr. Satish Aggarwala with Ms Hrishika Pandit,  
Advocates for R-2 & R-3.

**CORAM: JUSTICE S. MURALIDHAR**

- |                                                                                 |     |
|---------------------------------------------------------------------------------|-----|
| 1. Whether reporters of the local newspapers<br>be allowed to see the judgment? | No  |
| 2.To be referred to the Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                       | Yes |

**JUDGMENT**

1. Writ Petition (Civil) No.2228 of 2008 by Navshakti Industries Pvt. Ltd. (NIPL) seeks a direction to the Respondents to release on an urgent basis the consignments lying in the godowns situated at Khasra No.421, Village Hiran Kudna, Rohtak Road, Delhi and 11/16, Kavita Colony, Nangloi, Delhi after

taking a bond.

2. Writ Petition (Civil) No. 8243 of 2008 is by Mr. Pradeep Kumar, the Proprietor of Rakesh Paper Company (RPC) for a direction to the Respondents to release the consignments of the Petitioner lying at the godowns situated in Khasra No.421, Village Hiran Kudna, Rohtak Road, Nangloi, Delhi without any preconditions.

3. NIPL is an importer of newsprint and facilitator of newspaper/magazines. It is also an importer and indenting agent for certain consignments of Light Weight Coated Paper (LWC), GNP and SNP papers on behalf of the RNI registered publishers as per their entitlements and requirements for printing of newspaper. Mr. Praveen Goel, s/o Mr. K.C. Goel is a Director of NIPL and Petitioner No.2 in Writ Petition (Civil) No.2228 of 2008.

4. As far as Mr. Pradeep Kumar, the Sole Proprietor of RPC [Petitioner in W.P.(C) No. 8243 of 2008] is concerned, he was an earlier importer of newsprint, who states that he has now stopped dealing in import of goods for almost last seven years.

5. On 22<sup>nd</sup> December 2006, a show cause notice was issued by the Directorate of Intelligence (DRI) stating that it had received intelligence that some unscrupulous importers of Paper and Paper Board (falling under Chapter **WP(C) Nos.2228/2008 & 8243/2008**

Heading No.48 of Customs Tariff) were evading customs duty by way of misdeclaration of the description of the imported goods and undervaluing the same, in connivance with various holders of certificates issued by the Registrar of Newspapers in India (hereinafter referred to as 'the RNI'). The intelligence also indicated the violation of the actual user condition specified in the ITC (HS) & Customs Notification No.21/2002 dated 1<sup>st</sup> March 2002 in respect of import of newsprint & LWC paper, these traders were diverting goods to the local market instead of using them for printing of newspapers and magazines as per the provisions of the Exim Policy and Customs Notification.

6. It was pointed out that the effective rate of Customs duty on import of LWC paper up to 70 GSM was 5% and nil rate of counter-veiling duty (CVD) as per Notification Nos. 21/2002-CUS dated 1<sup>st</sup> March 2002 as amended and Notification No.6/2002/CE dated 1<sup>st</sup> March 2002. These rates were subject to actual user condition for printing magazines. Pursuant to the intelligence gathered, the residential and office premises of three major traders were searched on 28<sup>th</sup> December 2005. These included M/s Newsprint Trading Corporation Pvt. Ltd. (NPTC) of Mr. Prakash Garg; the residential premises of Mr. Prakash Garg; the office premises of Mr. Utpal Gupta, Director of M/s Allied Freight System Pvt. Ltd. (AFS) as well as his residential premises and the office-cum-godown premises of M/s Vijay Enterprises. The searches led to the recovery of several incriminating documents including blank signed cheque-books of various RNI holders, rubber stamps of various RNI holders, the blank signed cheque books of Qaumi Patrika, Qaumi Shaheed and M/s Sankalp Times along with CPUs and the laptops.

7. In a statement recorded under Section 108 of the Customs Act, 1962 (Act) on 28<sup>th</sup> December 2005 Mr. Prakash Garg stated that besides the NPTC he was running Vijay Enterprises and Salwan International Pvt. Ltd. (SIPL) and that he was looking after the affairs of the said firms as General Manager. AFS was the Customs Handling Agent (CHA) for his three companies. For the imports made by his three companies, Mr. Prakash Garg used to file Bills of Entries in the name of RNI holders. All the imports were through the International Container Depot at Tughlakabad, New Delhi. The import consignments after customs clearance used to be offloaded in these four godowns situated near Palla More, Alipur, Delhi from where he used to sell the imported newsprint to different parties. Mr. Garg stated that in the invoice raised by the overseas supplier, the description of the imported paper used to be mentioned as paper roll. The invoice used to be scanned and then description would be changed as newspaper paper roll, and thereafter filed before the customs authorities. The *modus operandi* was that the description in the Bill of Lading would not be changed but only in the Bill of Entry. A sum of Rs.25,000/- per container was paid to the CHA for getting the consignment cleared. The imported newsprint paper would not be physically supplied to the RNI holder. Debit notes used to be raised and the newspapers would give him the payment against the debit notes. An equivalent amount in cash would be returned to the RNI holder to whom a small quantity of newsprint would be supplied. The rest used to be sold in the open market.

8. Mr. Prakash Garg stated that he was using the names of following RNI

newspapers, i.e., (1) The Hawk, Haridwar (2) The Qaumi Patrika, Delhi (3) In Dinon (4) These Days and (5) Jadeed In Dinon. After encashing blank signed cheque of the RNI holder, he used to return the amount in cash to the respective newspapers and since the RNI holder was shown as importer he used to keep the rubber stamps of the RNI holder. The amount in cash would be returned to the respective newspaper. The statement of Mr. Vinod Kumar Singh, an employee of Mr. Prakash Garg was also recorded which corroborated the above statement of Mr. Prakash Garg. More details came forth from the statements of Mr. Utpal Gupta, the CHA, recorded on 28<sup>th</sup> December 2005 and 29<sup>th</sup> December 2005. The statements of a number of others were also recorded.

9. The show cause notice also records that Mr. G.S. Babbar, a Publisher and Controller of Qaumi Patrika/Qaumi Shaheed/Sankalp Times whose premises were searched on 12<sup>th</sup> January 2006, was summoned to the DRI office and his statements were recorded on 12<sup>th</sup> and 13<sup>th</sup> January 2006. On the basis of his statements, searches were conducted in the office premises, inter alia, NIPL and Mr. Praveen Kumar Goel on 15<sup>th</sup> February 2006. While documents relevant to the investigation were recovered from the office premises of NIPL, nothing relevant was found from the residential premises of Mr. Praveen Kumar Goel, searched on 15<sup>th</sup> February 2006. Mr. Praveen Kumar Goel was summoned and his statement was recorded on 1<sup>st</sup> March 2006 and 2<sup>nd</sup> March 2006 under Section 108 of the Act. He then disclosed that he used to place orders on overseas suppliers for import of newsprint/LWC paper in the name of various RNI holders, including Qaumi Patrika and Sandhya Qaumi Patrika

since 2001-02 and that the paper imported in their names were kept in his godowns in Nangloi. He had supplied only 25% to 30% of the total quantity of the newsprint imported to the RNI holder and the rest was sold by him in the open market. For this, he used to pay Rs.500/- per metric tonne in cash to Mr. G.S. Babbar who used to raise debit notes in their name; used to give the amounts shown in the debit note to Mr. GS Babbar in cash and later on Mr. G.S. Babbar used to give him the cheque of the equivalent amount. After importing he used to keep the imported consignment in his godown and used to sell the consignments in the open market.

10. The show cause notice recorded that Mr. Praveen Kumar Goel was arrested under the Act on 2<sup>nd</sup> March 2006 and was remanded to judicial custody. The godowns of NIPL at Kavita Colony in Nangloi, Delhi in Khasra No.421, Village Hiran Kundli, New Delhi was sealed under separate *panchnamas* both dated 3<sup>rd</sup> March 2006.

11. The show cause notice sets out the analysis of the documents gathered during the searches and the statements recorded of said persons under Section 108 of the Act. The *modus operandi* was explained as under:-

“The consignments imported in the guise of newsprint and LWC were not newsprint/LWC but were actually different kinds of paper with higher GSM, much more than 65 GSM and 72 GSM respectively, and were cleared at concessional rate of duty in the name of RNI holder. Such consignments have been fraudulently cleared by misdeclaring them newsprint which were actually chargeable to full rate of duty.

The overseas supplier used to mention and change the description of goods in the import documents on the directions of Prakash Garg.

The description of the imported paper on the bill of lading used to be Paper in Roll whereas, in the invoices and packing list, the description used to mentioned as Newsprint paper/LWC paper in reels; This is corroborated with the statement of Vinod Singh and Prakash Garg where they have stated how they use to manipulate the invoices;

The invoices were also raised by the overseas suppliers at the behest of Prakash Garg showing much lesser value than agreed and the overseas supplier used to raise credit memorandum against the under-invoiced amount.

In some correspondences, the indenting agents had mentioned in the correspondence made with the overseas supplier that by giving the description the description as Newsprint Paper, their party i.e. the importer could get the consignment cleared at concessional rate of duty. Such overseas suppliers and their indentors have actively connived with Prakash Garg in the commission of this fraud;

The documents also established that how the payments of the differential amount were routed to the overseas supplier.

Some charts resumed, prepared by Nambiar, clearly showed the actual contracted price and the invoiced price.”

12. On 28<sup>th</sup> August 2006, the DRI issued a show cause notice under Section 124 of the Act to NIPL seeking extension of time limit by six months under the proviso to Section 110 (2) of the Act in respect of the goods placed in the godowns of NIPL at Kavita Colony and Village Hiran Kudna. The adjudicating authority i.e., the Commissioner of Customs by an order dated 1<sup>st</sup> September 2006 extended the time limit for issuance of show cause notice in respect of the above goods. Against the aforementioned order dated 1<sup>st</sup>

September 2006, passed by the adjudicating authority, NIPL filed an appeal before the Customs Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi on 9<sup>th</sup> October 2006. The stay application of NIPL was dismissed by the CESTAT on 21<sup>st</sup> November 2006.

13. The show cause notice dated 22<sup>nd</sup> December 2006 indicated NIPL and Mr. Praveen Kumar Goel as Noticees Nos.13 and 14 respectively. A similar show cause notice dated 23<sup>rd</sup> December 2006 in relation to RNI holder, Kranti Sankalp in whose name the above imports were made which resulted in diversion of newsprint to the domestic market, was also issued. On 2<sup>nd</sup> March 2007 in relation to the show cause notice dated 22<sup>nd</sup> December 2006 issued in respect of RNI holder, Qaumi Shaheed, an addendum was issued adding paras 40, 40A, 40B, 40C and 40D to the earlier show cause notice dated 22<sup>nd</sup> December 2006. In the said show cause notice it was noted that a letter had been received on 8<sup>th</sup> July 2006 from the Advocate for NIPL, alleging that the DRI had taken away all the documents from the office of the NIPL without preparing any *panchnama* and that no documents have been provided till that date. It was further mentioned in the letter dated 12<sup>th</sup> July 2006 by the advocate of NIPL that it was not possible to get the inventorization done due to the indisposition of Mr. Praveen Kumar Goel. In para 40D, it was mentioned that by a letter dated 4<sup>th</sup> August 2006 the DRI clarified to Mr. Praveen Goel that the search of premises of NIPL was conducted under a proper search authorisation issued under Section 105 of the Act and that the documents have been seized by drawing up a proper *panchnama*. He was directed to be present in the DRI office on any working day for inspection of documents. However, Mr. Praveen Goel did not turn up or cooperate in the

investigation.

14. The addendum to the show cause notice added further paragraphs 63A, 63B, 63C and 63D in which it was noted that although Mr. Praveen Goel appeared in the DRI office on 3<sup>rd</sup> October 2006 and informed them that he would accompany the DRI officers within ten days for examination/inventorization of the goods kept in the two godown premises, he did not turn up for that purpose. Although summoned to appear on 13<sup>th</sup> October 2006 and 16<sup>th</sup> November 2006 he did not appear in the DRI office. On 2<sup>nd</sup> November 2006 the DRI supplied copies of the documents seized from the office premises of NIPL. This was received by an employee of NIPL. The rest of the documents were supplied on 28<sup>th</sup> November 2006 which were received by the daughter of Mr. Praveen Goel.

15. The addendum to the show cause notice also noted that against the order dated 21<sup>st</sup> November 2006 passed by the CESTAT, NIPL and Mr. Praveen Goel filed Writ Petition (Civil) Nos.18208 of 2006 and 18209 of 2006 in this Court seeking directions to the CESTAT to delete the observations made in the order dated 21<sup>st</sup> November 2006. By an order dated 8<sup>th</sup> December 2006 this Court directed the adjudicating authority to grant a post-decisional hearing. The addendum dated 2<sup>nd</sup> March 2007 to the show cause notice further noted that an application was filed by the DRI in the Criminal Court for the cancellation if the bail granted to Mr. Praveen Goel as he was refusing to cooperate in the investigations. The ACMM by an order dated 24<sup>th</sup> February

2007 directed Mr. Praveen Goel to report to the Senior Intelligence Officer within a period of seven days from 24<sup>th</sup> February 2007 with prior intimation to the Senior Intelligence Officer at least one day in advance.

16. The addendum to the show cause notice recorded in paras 65 F and 65 G that by a letter dated 28<sup>th</sup> February 2007, the DRI advised Praveen Goel to be present at the godown premises on 1<sup>st</sup> March 2007 for the purpose of examination/inventorization of the goods lying therein. The letter was served upon Mr. K.C. Goel, the father of Praveen Goel. A copy was also sent to his counsel. The DRI officers on 1<sup>st</sup> March 2007 waited for a considerable period of time at the godown premises but neither Mr. Praveen Goel nor his authorized representative turned up. Thereafter the goods stored in the two godowns located in Kavita Colony and village Hiran Kudna were examined in the presence of witnesses. Two separate *panchnamas* dated 1<sup>st</sup> March 2007 were drawn up. Different types of papers were recovered and were inventorised in the presence of witnesses and under the Act. Representative samples were drawn for testing purposes. The details of the papers seized in both the godowns were as under:-

| Sl. No. | Godown                                                          | Quantity seized (Paper Rolls and Paper Sheets) | Value of the paper seized |
|---------|-----------------------------------------------------------------|------------------------------------------------|---------------------------|
| 1.      | 11/16, Kavita Colony, Nangloi, Delhi                            | 353.535 MTs                                    | Rs.1,59,09,098/-          |
| 2.      | Khasra No.421, Village Hiran Kudna, Rohtak Road, Nangloi, Delhi | 142.225 MTs                                    | Rs.64,00,125/-            |
|         | TOTAL                                                           | 495.76 MTs                                     | Rs.2,23,09,223/-          |

17. Finally the addendum dated 2<sup>nd</sup> March 2007 to the show cause notice dated 22<sup>nd</sup> December 2006 noted that apart from the 1905.45 MTS of paper mis-declared as SNP and NIPL had also imported as under:-

“.... including 495.76 MTs of imported paper valued at Rs.22309223/- seized vide two separate panchnamas dated 1.3.07 from the godown premises situated at 11/16, Kavita Colony, Nangloi, Delhi and at Khasra no.421, Village Hirankudna, Rohtak Road, Delhi.”

18. In response to a letter dated 5<sup>th</sup> March 2007 written by the Petitioner to the DRI, the DRI by a letter dated 15<sup>th</sup> March 2007 asked him to approach the adjudicating authority, i.e., the Commissioner of Customs for release of the seized goods lying in the two godowns. This was reiterated by a letter dated 24<sup>th</sup> April 2007. The Petitioners, however, contested the above statements. They wrote again on 5<sup>th</sup> May 2007 to the DRI, stating that there was confusion as to which authority had to be approached for release of the goods. On 25<sup>th</sup> June 2007 the Commissioner of Customs wrote to Mr. Praveen Goel asking him to produce the import documents like Bills of Lading, Bills of Entry, price list, etc., with regard to the seized goods to enable them to release the goods provisionally. In the circumstances, NIPL filed a Writ Petition (Civil) No.3813 of 2007 in this Court seeking provisional release of the goods.

19. On 6<sup>th</sup> September 2007 this Court passed an order disposing of the said writ W.P.(C) No. 3813 of 2007 by a detailed order. This Court noticed that by a letter dated 7<sup>th</sup> May 2007, the Assistant Director, DRI had indicated the terms upon which the goods could be released. This included payment of

differential duty involved on the seized goods and execution of bank guarantee to the extent of 25% of the seizure value. The other conditions included execution of indemnity bond to the extent of full seizure value of seized goods, execution of an affidavit by the party that he will not challenge the identity of the seized goods during the course of adjudication or prosecution proceedings, if any. The submission of the counsel for the Petitioner that the Respondent could not have acted outside the scope of the Customs (Provisional Duty Assessment) Regulations, 1963 ('PDA Regulations') and only 20% of the duty could have been insisted upon for being paid as a pre-condition for such provisional release, was noticed. The response of the DRI that the Petitioner had not yet produced the import documents as requested in the letter dated 25<sup>th</sup> June 2007, was also noticed. Thereafter this Court issued the following directions:-

- “(a) The petitioner’s representative shall be present before the Additional Commissioner (Adjudication) on 17.9.2007 at 11 a.m. with all the necessary documents indicated in the letter dated 25.6.2007. After submission of these documents, the respondent shall inspect the godown which is presently sealed and to relate them with the documents.
- (b) After completion of above exercise the Custom Authorities shall proceed to issue an appropriate adjudicatory order provisionally assessing the goods in accordance with law within four weeks, thereafter.
- (c) It is open to the Customs Authorities to seek assistance of such other parties as may be necessary for effective adjudication of the matter.”

20. It appears that despite the above directions, Mr. Praveen Goel was not personally present with all the documentation before the Additional

Commissioner (Adjudication) on 17<sup>th</sup> September 2007. The Petitioners have  
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placed on record a letter dated 19<sup>th</sup> September 2007 of Mr. Praveen Goel and claim that the documents had been supplied on 17<sup>th</sup> September 2007. A further letter dated 20<sup>th</sup> September 2007 claimed that they had made an effort to have a personal hearing but that could not take place as they were informed that the Commissioner of Customs was engaged in granting personal hearings in pre-fixed matters. As a result this Court was again approached with an application.

21. It appears that ultimately on 23<sup>rd</sup> October 2007 in the presence of two panchas inventorization took place at the godown at Kavita Colony in Nangloi. It recorded that Mr. K.C. Goel, Mr. Praveen Goel and the advocate representing NIPL were present. In relation to the roll mentioned at Sl. No.1 in Annexure 'A' of the *panchnama* dated 1<sup>st</sup> March 2007, Mr. K.C. Goel produced a Bill of Entry dated 3<sup>rd</sup> March 2006, invoice dated 6<sup>th</sup> January 2006 and the packing list. It was noticed that the container no. mentioned in the delivery note tallied with the container no. given in the Bill of Entry. However, the delivery note did not bear the stamp/sign either of the Customs authorities or of the Bank and therefore was rejected by the DRI officers. Thereafter Mr. K.C. Goel and his counsel informed that they would not participate in the *panchnama* proceedings till the Customs authorities appeared at the site. Consequently the *panchnama* proceedings were concluded.

22. CM No. 15417 of 2007 filed by the Petitioners in the disposed of Writ Petition (Civil) No.3813 of 2007, complaining that the officials of the Customs were not coming forward for correlation since the DRI had already

issued departmental enquiries against the Customs officials, was disposed of by this Court on 29<sup>th</sup> November 2007 with the following order:

**“C.M.No.15417/2007**

It is stated by counsel for the respondents that there were some discrepancies in the documents since the delivery notes did not bear the stamp of the Customs Authorities.

It was submitted on behalf of the petitioner that a fresh exercise of co-relating the goods can be carried out, if the applicant is so agreeable for this purpose after which the necessary orders would be made by the Authority empowered under the Customs Act under Section 110-A.

In view of the above statement, the two premises shall be visited by the concerned Authorities under the Customs Act for the purpose of settling/co-relating the documents with the goods on 11<sup>th</sup> & 12<sup>th</sup> December, 2007 at 11.00 AM. After completion of the said exercise appropriate order either accepting the petitioner's request or rejecting it shall be passed by the concerned authorities under the Customs Act, empowered to deal with such application for release of goods in terms of the Customs (Provisional Duty Assessment) Regulations, 1963 shall be made, within 4 weeks of the said dates of inspection.

The application is disposed of in terms of the above directions.”

23. On 11<sup>th</sup> December 2007 fresh *panchnamas* were drawn up in relation to the goods at both godowns. In relation to the goods at Kavita Colony godown, the officers of the DRI and customs produced six Bill of Entries and the details thereon were tallied with the stored goods. While goods mentioned at Sl. Nos.1 and 2, i.e., Bill of entry No.437233 dated 6<sup>th</sup> July 2005 and 463584 dated 8<sup>th</sup> November 2005 tallied with the documents submitted by the parties, the Bill of Entry at Sl. Nos.5 and 6 showing the names of the importers as M/s

Reliant Media Pvt. Ltd. and M/s Competition Review Pvt. Ltd. were,  
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according to the importer, not part of the investigation. There were discrepancies as regards the goods at Sl. Nos.3 and 4 as well. As regards the Hiran Kudna godown, rolls at Sl. Nos.4 and 5 had no markings describing of the suppliers. As regards the goods at Sl. Nos.15 to 29 in the panchnama dated 12<sup>th</sup> March 2007, the order no. and the gross weight per roll also differed. As regards the goods lying in godown 'A', Mr. Praveen Goel of NIPL informed that the said godown did not belong to NIPL and hence the correlation of the goods lying in the said godown with the documents could not be conducted. After completion of the panchnama proceedings, the goods lying both in godowns 'A' and 'B' were handed over to Mr. Praveen Goel on *superdari* under *supardiginama* dated 12<sup>th</sup> December 2007 for safe keeping. According to the Petitioners, the Respondent No.1, i.e., the Commissioner of Customs was not acting independently. He was acting under the dictation of the DRI and was consequently not acting in accordance with law.

24. By the impugned order dated 9<sup>th</sup> January 2008, the Commissioner of Customs directed the provisional release of the goods, subject to the following conditions:

- “i) Payment of differential duty involved on the seized goods;
- ii) Execution of bank guarantee to the extent of 25% of the seizure value;
- iii) Execution of indemnity bond to the extent of full seizure value of seized goods;
- iv) Execution of an affidavit by the party that he will not challenge the identity of the said seized goods during the course of adjudication or prosecution proceedings, if any.”

25. Against the aforementioned order dated 9<sup>th</sup> January 2008, the Petitioner filed an appeal before the CESTAT on 15<sup>th</sup> January 2008. By an order dated 20<sup>th</sup> February 2008 the CESTAT dismissed the appeal on the ground of maintainability holding that against the order directing provisional release passed by the Commissioner under Section 110(A) of the Customs Act, no appeal could lie to the CESTAT under Section 129A of the Act.

26. In the companion writ petition by RPC, the prayer is for release of the goods in the godown at village Hiran Kudna which according to this Petitioner is its godown and factory. The Petitioner refers to a site plan which shows that the godown was sealed from the common main gate which links this godown with the godown of NIPL. RPC had sought to implead himself in Writ Petition (Civil) No.3813 of 2007 filed by NIPL. Later RPC filed Writ Petition (Civil) No.8049 of 2007. In that writ petition, this Court passed an order asking the Respondents to grant the Petitioner a personal hearing in relation to the goods seized from the godown. It was noted in the order dated 29<sup>th</sup> August 2008 by this Court that according to the Respondents the goods do belong to RPC but to NIPL and that Mr. Pradeep Kumar, the Proprietor of RPC was also a Director of NIPL. According to the Petitioner, the above observation in the order dated 29<sup>th</sup> August 2008 indicates that the goods are not unclaimed but are of RPC whereas the Respondents claim it to be that of NIPL.

27. According to RPC, the Respondent throughout confirmed that the godown as well as the goods therein belonged to RPC since the name board of RPC was displayed outside the godown. It is claimed that the godown remained

sealed since 31<sup>st</sup> July 2007. When it was opened much later, RPC submitted documents of purchase which mentioned ‘paper’ in the description of goods. The explanation is that “when the Petitioner purchases mixed lot of paper of varying size and quality from the market and the invoice is issued only showing description as paper. This is normal trade practice due to the fact and reason the mixed lot of varying size and quality are sold”. It is then contended that the RPC appeared at the personal hearing and produced documents like the rent receipt of the godown, a receipt showing that RPC is registered in the Sales Tax Department, the documents showing that the godown was insured with the United India Insurance Company. On the above basis it is stated that once NIPL disowned ownership of the goods in the said godown, the goods necessarily had to be released to RPC on provisional basis. It is stated that since no one else has claimed the goods and since there is no evidence to the contrary, the goods should be released to RPC.

28. The thrust of the submissions of Mr. T.P.S. Kang, the learned counsel appearing for both Petitioners is that the conditions imposed by the Commissioner of Customs in the order dated 9<sup>th</sup> January 2008 were harsh considering that both the Petitioners have been able to demonstrate that this seizure of the entire quantity of goods in both godowns by the Respondents authorities was not justified. A satisfactory explanation had been provided with reference to the documents produced that these goods were validly imported. As regards the godown in Kavita Colony, it is submitted that the NIPL was able to show that the quantity found was attributable to the newsprint imported under Open General Licence (OGL) and for the clearance

of which full duty was paid as per value assessed by the customs. The DRI had taken the value on the presumption of Rs.45 per Kg, which was double of that assessed by the customs. Once the full assessed duty was collected at the time of clearance, no differential or any other kind of duty was payable on the value of the goods. In relation to the goods where the RNI is shown as Reliant Media Pvt. Ltd., and Competition Review Pvt. Ltd., it is submitted that those goods were imported on behalf of the publishers/actual users and the duty was paid at the time of clearance and therefore no differential duty remained payable. Moreover, the above importers were not parties to the case. Here again it is claimed that no duty as such is payable. It is submitted that the differential duty is totally fabricated with the malafide intention of harassing the Petitioners to keep the goods under seizure so that it may be spoiled and be of no use. Counsel for the Petitioners refers to an order dated 31<sup>st</sup> August 2006 passed by this Court in Writ Petition (Civil) No.9414-15 of 2006 where this Court directed the provisional release of the goods upon furnishing of bonds for 25% of the value of the goods. A reference is also made to an order dated 10<sup>th</sup> October 1988 passed by the Supreme Court in Civil Appeal Nos.3935 and 3937 of 1988 where the goods were directed to be provisionally released upon payment of 20% of the difference of the duty and furnishing of bonds for the remaining 80% of the duty.

29. On behalf of the Respondents Mr. Satish Aggarwala, the learned Senior Standing Counsel for DRI submits that with CESTAT having dismissed the appeal of the Petitioner NIPL and Mr. Praveen Kumar Goel on 20<sup>th</sup> February 2008 on the ground of maintainability, and that order not having been

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challenged, those Petitioners should not be permitted to re-agitate the correctness of the order dated 9<sup>th</sup> January 2008 of the Commissioner of Customs. He then submits that the provisions of Section 110A of the Act permits the Commissioner of Customs to impose such conditions as it deems fit. He points out that the Petitioners here have not only prima facie been found to have acquired the goods by misdescription but also by undervaluing them. Therefore, there was no merit in the contention that the Petitioners cannot be asked to pay the differential duty. Referring to an order dated 15<sup>th</sup> December 2008 passed by the Division Bench of the Punjab & Haryana High Court in Civil Writ Petition No.13914 of 2008 (*M/s Kundan Rice Mills Ltd. v. Union of India*), it is submitted that the High Court will not normally interfere with the determination of the appropriate conditions for provisional release of goods.

30. As regards the preliminary objection of the Respondents 2 & 3 to the maintainability of the writ petition, this court finds that the CESTAT declined to entertain the appeal filed by the Petitioner only on the ground of maintainability. There has been no finding on the merits. Consequently it cannot be said that the Petitioner cannot agitate the correctness of the order dated 9<sup>th</sup> January 2008 passed by the Commissioner of Customs by way of the present petition. Consequently, this preliminary objection is overruled.

31. The principal contention of the counsel for the Petitioners as far as Writ Petition (Civil) No.2228 of 2008 by NIPL is concerned is that there is

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substantial correlation between the goods seized in the godown and the documents produced by the Petitioner which would show that these goods were validly imported. Counsel for the Petitioners has taken this court in great detail through the goods described in the *panchnama* prepared pursuant to the directions issued by this Court. It is sought to be contended that in the circumstances, the conditions imposed for granting provisional release of the goods are indeed harsh and required to be considerably relaxed.

32. This Court finds that while the documents on record show that some correlation has taken place as regards the description of the goods, it cannot be said that there is correlation as regards their value. It must be remembered that the show cause notice alleges not only mis-description of the goods by the Petitioners but also of their undervaluation. Therefore, when a full-fledged adjudication has yet to take place pursuant to the show cause notice, it is not possible for this Court to conclude that the goods were indeed correctly valued by the Petitioner at the time of their clearance. This is a crucial factor in determining whether the direction for payment of differential duty at the stage of provisional release is justified or not. The Petitioner has not been able to make out a *prima facie* case for release of the goods without payment of differential duty. In other words, merely because the Petitioner has acquired the goods under the *exim* policy by payment of the duty as assessed it cannot mean that the customs authorities are precluded from realizing the actual duty payable on the correct value of the goods as determined after the conclusion of the adjudication proceedings.

33. The other objection pertains to the execution of the bank guarantee to the extent of 25% of the seizure value. Learned counsel for the Respondents is right in his contention that under Section 110A, there is a discretion with the Commissioner of Customs to impose conditions. The said provision reads as under:-

**“110A. Provisional release of goods, documents and things seized pending adjudication.**\_\_\_Any goods, documents or things seized under section 110, may, pending the order of the adjudication officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.”

The key phrase in the above provision are that “pending the order of the adjudication officer, the goods could be released to the owner” on taking a bond from him in the proper form “with such security and conditions as the Commissioner of Customs may require”. Indeed, the Commissioner of Customs is in the best position to determine what should be the conditions to be imposed for provisional release of the goods. Given the details set out in the show cause notice which indicate the large-scale nature of the scam involving a very large number of persons whereby the imported newsprint was being diverted to domestic market, it cannot be said that a condition requiring execution of bank guarantee to the extent of 25% of the seizure value, is arbitrary or is unreasonable as to shock the conscience of the court. It is not possible therefore for this Court to agree with the submission of the counsel for the Petitioners that this condition is harsh and unreasonable and requires to be either waived or relaxed.

34. The other two conditions concern the execution of an indemnity bond to the extent of full seizure of goods and execution of an affidavit of the party stating that he will not challenge the identity of the seized goods. These are the usual conditions which in any event counsel for the Petitioners, was not particularly aggrieved by. In the circumstances, this Court is not inclined to interfere with any of the conditions imposed on the Petitioners in the impugned order dated 9<sup>th</sup> October 2008 of the Commissioner of Customs.

35. As regards the prayer made in Writ Petition (Civil) No.8243 of 2008, this Court finds that the RPC has not been able to establish positively that the goods found in the godown A in fact belonged to RPC. The Petitioner seems to be only contending that with NIPL not claiming ownership of those goods, the Commissioner of Customs is obliged to release the goods found in the said godown to the RPC. However, that is not a correct understanding of the legal position. Unless the RPC is able to prima facie establish by proper documentation that the goods found in the godown A belong to it, there is no obligation on the Commissioner of Customs in law to even provisionally release those goods to RPC. What RPC has produced is a bunch of documents claiming to be invoices for purchase of 'paper'. Considering that what was seized in the godown is imported newsprint, such invoice can hardly constitute even a prima facie evidence that the imported goods in fact belonged to RPC. Moreover, RPC claims that it had stopped importing goods for the last seven years. RPC has not been able to satisfactorily explain even prima facie how these goods were found in its godown. Merely producing documents to establish that the godown is of RPC is not the same thing as

showing that the goods found therein belong to RPC.

36. Consequently this court is unable to accede to the prayers in the writ petitions.

37. For the aforementioned reasons, both the writ petitions are dismissed with costs of Rs.5,000/- each which will be paid by the Petitioners to the Respondents within a period of four weeks from today.

**3<sup>rd</sup> MARCH, 2010**  
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**S. MURALIDHAR, J.**