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

Date of decision: 9th October, 2012

+ WP(C) 5600/2012

M/S. AUTO CREATERS

..... Appellant

Through: Mr. C.Hari Shankar and Mr. S.Sunil,
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Mukesh Arora, Adv. for UOI
Mr. Satish Kumar, Sr. Standing
Counsel with Mr. Chirag Bhatia, Adv.
for R-1 to R-3

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

S. RAVINDRA BHAT,J: (OPEN COURT)

1. The petitioner seeks a direction against the respondent nos.2 and 3 to forthwith comply with the order in appeal dated 19.07.2012 issued by the Commissioner of Customs (Appeals) ('Commissioner' for short) and release the automobile parts imported on 27.12.2011.

2. The brief facts are that the writ petitioner had imported automobile parts under a bill of entry i.e. 5582659 on 27.12.2011. The goods were seized by the customs authorities on 11.1.2012. During the pendency of further proceedings the writ petitioner requested for provisional release of goods on 7.3.2012 (by

virtue of Section 110A of the Customs Act, 1962). The provisional release was granted but subject to certain conditions – (which were not acceptable to the petitioner) by an order dated 23.3.2012. The petitioner therefore approached this Court under Article 226, by filing W.P.(C) No. 2522/2012. A learned Single Judge of this Court on 06.07.2012 disposed of the writ proceedings noticing that an alternative remedy against the impugned conditions was available by way of an appeal and directed the Commissioner to treat the writ petition as an appeal and dispose of the same. The Commissioner by an order dated 19.07.2012, allowed the appeal and set aside the impugned conditions. The Commissioner pertinently observed as follows:-

“The subject appeal No. ICD/364/2012, has been filed by M/s. Auto Creators, 903, Yogesh Tower, Fly Over Road, Chikuwadi, Boriwali (W), Mumbai – 400092, against the provisional release order, as communicated by Deputy Commissioner of Customs (SIIB), ICD, Tughlakabad, dated 20.03.2012 vide Letter No.VIII/ICD/TKD/SIIB/INV/Auto Creator/03/12, where in the full duty at enhanced value, plus interest and Bank Guarantee of 25 per cent of the differential duty amount, have been stipulated for allowing provisional release.

2. The appellant filled a writ in the Hon’ble High Court of Delhi vide W.P. No. 2522/2012 dated 18.04.2012 and honorable judges have directed the undersigned to take up this appeal for disposal with in 15 days. The order has been received on 17.07.2012 and P.H. was undertaken on 18.07.2012. The appellant was heard. He cited many case laws to request relaxation from harsh conditions, imposed by the Tughlakabad Customs Commissionerate. He also argued that no Show Cause Notice has been issued in respect of subject seizure and goods may be returned to the owner.

3. I have examined the issue. I find that Special Investigation Branch of ICD, Tughlakabad is making out a case of undervaluation, but details have not been disclosed in the

provisional release order. However, the fact remains that valuation aspects are under investigation and hence the goods have been provisionally released under Section 110 A of Customs Act, 1962.

4. *As per Section 110(2) –*

“Where any goods are seized under Sub Section (1) and no notice in respect thereof is given under clause (a) of section 124, the goods shall be returned to the person from whose possession they were seized. Provided that after said period of six months may on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding Six month.”

5. *In this case goods were seized in December, 2011, and no Show Cause Notice has been issued till 30th June 2012, no extension also has been granted by the jurisdictional authorities. Therefore in the light of many case laws also goods will have to be returned to the owner without any conditions. And it is so ordered in this case. Needless to add that the order relating to provisional release stands void, con-sequent upon vacation of seizure...*

Appeal is disposed off as above.”

3. It is urged by the writ petitioner that with the order of Commissioner, if there were any doubts as to the validity or the legality of the Customs authorities' position about continuing with the conditions, the same were dispelled. In this regard, the petitioner alleges that the time limit prescribed under Section 110(2), i.e. six months from the date of seizure (extendable by another six months), defines the limit and also prescribes the conditions in which goods can be held. It is argued that the six months period expired on 11.7.2012, within which period a show cause notice under Section 124 of the Customs Act was not issued. The time was also not extended by a separate order. Consequently, the proviso to Section 110(2) operated, entitling the writ petitioner to the unconditional release of the goods. The learned counsel also

relied upon the recent judgment of this Court in *Jatin Ahuja v. Union of India and Ors.* W.P.(C) No.2952/2012 decided on 04.09.2012.

4. The respondents in their reply as also through their counsel urged that the petitioner opted for the relief of a provisional release of goods under Section 110A and even approached this court. Subsequently, he approached the Commissioner (Appeals). In the meanwhile, after the orders of the Commissioner, a show cause notice was issued on 09.08.2012. In these circumstances, this Court should not take cognizance of the time spent by the petitioner in agitating the issue of unconditional release before this Court as well as before the Commissioner. So viewed, the proviso to Section 110(2) would not operate; consequently the show cause notice would then be deemed to be within the time specified as to enable the custom authorities to insist upon the continued imposition of the conditions and also operation of Section 110A of the Customs Act, 1962.

5. The above narrative would reveal that the petitioner has succeeded in substance and in fact before the Commissioner who, by an order dated 19.12.2012, directed unconditional release of the goods on account of the operation of proviso to Section 110(2). That provision reads as follows:-

“110. Seizure of goods, documents and things. –

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) *Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

(3) *The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the Act.*

(4) *The person from whose Custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs."*

"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 adjudicating authority may require, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

.....

124. Issue of show cause notice before confiscation of goods etc.- No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against

the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in Clause 9(a) and the representation referred to in Clause (b) may, at the request of the person concerned be oral.”

6. Section 110A which speaks of provisional release of goods etc. states that the concerned customs authorities may in their discretion, pending the order of the adjudicating authority, release to the owner the goods or documents etc., seized on furnishing of a bond, in the proper form in addition to such security and conditions as may be imposed. As is apparent, Section 110A enables the concerned customs authorities to exercise discretion pending the issuance of show cause notice. This aspect was emphasized in *Jatin Ahuja (supra)* which noticed the previous decisions of the Supreme Court in *Assistant Collector of Customs v. Charan Das Malhotra*, AIR 1972 SC 689 and *J.K. Bardolia Mills v. Dy. Collector and Ors.* 1994 (5) SCC 332. In the last mentioned decision the Court stated that the effect of non-compliance with the provisions of Section 110(2) would be that seized goods would be returned to the persons from whose possession the goods were taken. This Court also considered the decision of the Bombay High Court in *Jayant Hansraj Shah v. Union of India* 2009 (1) Bom. CR 474 wherein the Court proceeded to observe:

“Section 110 speaks of no notice being given under Clause (a) of Section 124 within six months of the seizure or confiscation of the goods. The procedure for confiscation of the goods can be resorted to if the goods are not provisionally released. If the owner in terms

of Section 110-A applies for provisional release and an order is passed it can be said that the goods continue to be under seizure as the order under Section 110-A is a quasi judicial order. Section 110(2) would not be operative. It is only in the case where no pro-visional order is passed for release of the seized goods and if no notice is issued under Section 124(a) for confiscation of the goods then only would Section 110(2) apply and the respondent would be bound to release the goods.

Any other reading of the section would mean that a person whose goods are seized would seek a provisional release of the goods, get an order of provisional release, allow the authorities to proceed to believe on that basis that such person seeks to release the goods provisionally and on the expiry of the period of six months if notice is not issued under Section 124(a) then contend that the terms for provisional release of the goods are no longer binding as the period of six months has expired and no notice has been served. The period of notice is only when the respondents seek to confiscate the goods. If there be a provisional release order it is not within the jurisdiction of the respondents to proceed to issue the notice under Section 124. At the highest they can proceed under Section 110(1A) by following the procedure set out therein. In our opinion, therefore, as procedure for confiscation could not have been initiated pursuant to the order of provisional release the contention urged by the petitioners that the goods should be released under Section 124 has to be rejected.”

7. It was therefore concluded in *Jatin Ahuja (Supra)* that the effect of the statute, by virtue of Section 110 would be that on expiration of the total period of one year in the absence of a show cause notice the seized goods have to be released unconditionally. In this case the respondent urged that a show cause notice was in fact issued on 09.08.2012. However, there is no material on record to suggest that the proviso to Section 110(2) of the Act was taken recourse to and extension of the seizure order was made before the lapse of six months. In these circumstances and in the absence of any statutory guidelines in

regard to the stopping of time, as it were, as alleged by the customs authorities it is not possible to hold that the time taken for adjudication of any issue has to be excluded while reckoning the six months period mandated by Section 110(2).

8. In view of the above this Court is satisfied that the continued seizure by the customs authorities, of the petitioner's goods even after the order dated 19.07.2012 is unlawful. The goods so seized shall be released forthwith unconditionally. The petitioner is however directed to cooperate with the enquiry pursuant to the show cause notice issued in the meanwhile on 09.08.2012.

9. Writ petition is allowed in the above terms. No costs.

Dasti.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

OCTOBER 09, 2012

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