

GAHC030003822023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/87/2023

Robert Hauzel
Proprietor of M/s Rb. H General Enterprises, Kawnveng-2, Zemabawk, Aizawl

VERSUS

Union of India and 2 Ors.
R/b the Secretary, Dept. of Revenue, Ministry of Finance 2:The Commissioner of
Customs (Preventive Division) NER
Customs House
110
Mahatma Gandhi Rd
Shillong
Meghalaya

3:Assistant Commissioner
Customs Division
Aizawl
Chanmar

Advocate for the Petitioner : Mr. Jordan Rohmingthanga

Advocate for the Respondent : Mr. Johny L Tochhawng for R2 & R3

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 25.04.2024 & 29.04.2024

Date of judgment : 10.05.2024

JUDGMENT & ORDER

Heard Mr. Jordan Rohmingthanga, learned counsel for the petitioner and Mr. Johny L. Tochhawng, learned counsel for the respondents.

[2.] This is the second time the petitioner is before this Court. The earlier writ petition being WP(C) No. 54/2018 was disposed of vide Order dated 29.11.2018 after it was submitted to the Court that there is an Appellate Authority under the Customs Act, 1962 (Customs Act). Accordingly, the writ petition was closed by giving liberty to the petitioner to approach the Appellate Authority under the Customs Act with an observation that since there was specific time frame for filing an appeal, the petitioner may file an application for condonation of delay and the Appellate Authority should consider the same fairly. Be it stated herein that challenge made by the petitioner in that writ petition was the recovery notice dated 22.08.2017 and the letter dated 15.01.2018 by which the Assistant Commissioner, Customs Division, Aizawl (respondent No. 3) directed the petitioner to immediately deposit the amount due by disposing of the mobile handsets that were seized.

[3.] After the writ petition was closed in the above manner, the petitioner did not approach the appellate authority and instead, he has filed the instant writ petition. Reasons cited for not approaching the statutory Appellate Authority under the Customs Act by the petitioner is that it is due to want of proper legal advice coupled with precarious financial conditions due to lockdowns and restrictions imposed due to the Covid-19 pandemic.

[4.] By filing the instant writ petition, the petitioner has challenged the Recovery Notice dated 22.08.2017 and the subsequent reminders dated 17.12.2021, 21.02.2022 (not annexed in the writ petition), 23.05.2022, 30.06.2022 and 21.09.2022 by which the petitioner has been directed to pay the balance amount of Customs Duty amounting to Rs. 11,79,459/- (Rupees eleven lakhs seventy nine thousand four hundred fifty nine) only.

[5.] Brief facts of the case as projected by the petitioner is that in the course of his business he purchased a certain number of mobile phones of different make namely, FLY mobile phones and LEMON mobile phones from distributors in Assam. The same was seized by the respondent No. 3 on 22.04.2012 and on 10.05.2012 in Byrnihat-Ri-Bhoi and Mawiong, Meghalaya respectively while the goods were in transit by road from Assam to Aizawl. The value of the goods of the petitioner seized on 22.04.2012 was Rs. 26,33,377/- and those seized on 10.05.2012 was Rs. 45,01,453/-.

[6.] The petitioner thereafter applied for provisional release of the goods before the Customs Authority by submitting an application on 05.06.2012 and he was allowed to take possession of the goods on payment of security deposit amounting to Rs. 3,95,007/- and Rs. 6,75,218/- separately for the two (2) seizures and on executing of bond vide two (2) separate release orders both dated 19.06.2012 which was issued by the respondent No. 3.

[7.] Thereafter, the petitioner was issued two (2) separate Show Cause Notices dated 17.10.2012 and 02.11.2012 by the respondent No. 2 asking him to show case as to why the seized goods should not be confiscated under Section 11(b) and (d) and under Section 119 of the Customs Act and further, as to why the petitioner should not be penalized under Section 112(b) of the Customs Act. The petitioner submitted his written reply to the Show Cause Notice dated 02.11.2012 on 16.04.2013. The petitioner vide letter dated 02.04.2013 was then asked to appear before the Customs Authority concerned on 12th, 16th and 18th April, 2013 at the place and time mentioned in the said letter. Subsequently, the proceedings came to be disposed of vide two (2) separate Orders-in-Original dated 24.05.2013 (Annexure-10) and 03.06.2013 (Annexure-11) respectively. In the Order-in-Original dated 24.05.2013 passed by the Addl. Commissioner of Customs, the mobile handsets of foreign origin belonging to the petitioner valued Rs. 26,33,378/- was ordered to be confiscated under Sections 111(b), (d) and 119 of the Customs Act.

However, the petitioner was given the option to pay fine of Rs. 2 lakhs plus appropriate Customs Duty as leviable, in lieu of confiscation, as provided for under the provisions of Section 125 of the Customs Act. Further, the petitioner was imposed a penalty of Rs. 1 lakh. It was also ordered that adjustment be made from the security deposit made by the petitioner earlier for provisional release of the goods. Similarly, vide the Order-in-Original dated 03.06.2013, the Addl. Commissioner of Customs ordered confiscation of the mobile handsets of foreign origin to the petitioner belonging to the petitioner valued at Rs. 45,01,453/- under Section 111(b), (d) and 119 of the Customs Act. However, the petitioner was given the option to pay of fine of Rs. 4 lakhs plus appropriate Customs Duty as leviable in lieu of confiscation under Section 125 of the Customs Act. The petitioner was also imposed with a penalty of Rs. 1 lakh under Section 112(b) of the Customs Act. Since the petitioner had made security deposit for provisional release of the goods, appropriate adjustment was directed to be made towards the fine and penalty imposed upon him. Accordingly, since the security deposit made by the petitioner was more than the penalty and fine imposed upon him, the balance amount refundable was refunded to him after he made an application for the same.

[8.] Thereafter, to the surprise of the petitioner, the respondent No. 2 issued Recovery Notice dated 22.08.2017 seeking recovery of the Customs Duty payable pursuant to the passing of the Orders-in-Original dated 24.05.2013 and 03.06.2013

for a consolidated amount of Rs. 11,79,459/- in terms of Section 142 of the Customs Act. The petitioner in reply through his letter dated 08.12.2017 requested the respondent No. 2 to accept the seized 472 pieces of mobile handsets in lieu of the Customs Duty amount that was demanded. However, the respondent No. 3 vide letter dated 15.01.2018 rejected the request and directed the petitioner to deposit the amount due by disposing of the mobile handsets. Aggrieved, the petitioner filed WP(C) No. 54/2018 and the same was closed as already stated herein above.

[9.] Mr. Jordan Rohmingthanga, learned counsel submits that the impugned Recovery Notices are not sustainable on account of violation of the principles of natural justice and for being issued without jurisdiction. He submits that the petitioner had already paid the redemption fine and penalty arising out of the Show Cause Notices and the Orders-in-Original and had also received refund of the excess amount paid, therefore, the proceedings initiated under Section 142 of the Customs Act are illegal and void *ab initio*. He submits that in absence of any demand of duty, the recovery proceedings initiated under Section 142 of the Customs Act is without any jurisdiction. The learned counsel further submits that when the impugned Recovery Notices are issued without any jurisdiction as no sums are payable by the petitioner, the petitioner not having availed the remedy under the Customs Act will not render the writ petition as not maintainable. He

submits that unless there is finality with a decision on merit, there cannot be a bar in approaching this Court again. Referring to the Recovery Notice dated 17.12.2021, the learned counsel submits that the same has been issued by the respondent authority concerned without any jurisdiction and so are the reminders issued on 23.05.2022, 30.06.2022 and 21.09.2022. The learned counsel also submits that as per Section 128 of the Customs Act, an appeal is to be preferred before the Appellate Authority within 60 days from the date of communication of the decision or order passed by the authority concerned. The same may be extended for a period of 30 days, if sufficient cause is shown. Beyond this period, there is no provision for condoning the delay. He submits that the Customs Act is paramateria with that of the Central Excise Act, 1944 and that the Apex Court in *Singh Enterprises -Vs- Commissioner of Central Excise, Jamshedpur & Others (2008) 3 SCC 70* held that the language used in Section 35(1) of the Central Excise Act, 1944 is clear and it provides that after the expiry of 60 days, which is a normal period of preferring an appeal, the Appellate Authority can condone the delay up to 30 days and not beyond that. That there is complete exclusion of Section 5 of the Limitation Act. The learned counsel submits that under the circumstance, the petitioner has no option but to approach this Court again through the instant writ petition. The learned counsel for the petitioner in support of his submission relies upon the following authorities:-

- (1) *State of H.P & Ors. -Vs- Gujarat Ambuja Cement Ltd. & Anr. (2005) 6 SCC 499.*
- (2) *Radha Krishnan Industries -Vs- State of Himachal Pradesh & Ors. (2021) 6 SCC 771.*
- (3) *UMC Technologies Private Limited -Vs- Food Corporation of India & Anr. (2021) 2 SCC 551.*
- (4) *Commissioner of Customs, Mumbai -Vs- Toyo Engineering India Ltd. (2006) 7 SCC 592.*
- (5) *Arun Kumar & Ors.-Vs- Union of India &Ors.(2007) 1 SCC 732.*
- (6) *Raza Textiles Ltd. -Vs- Income Tax Officer, Rampur. (1973) 1 SCC 633.*
- (7) *Escorts Farms Ltd. -Vs- Commissioner, Kumaon Division, Naintal, U.P & Ors. (2004) 4 SCC 281.*
- (8) *Order dated 09.03.2022 passed by the Principal Commissioner RA and Ex-Officio Additional Secretary to the Govt. of India, Ministry of Finance, Department of Revenue. (Sh. HardikPandya -Vs. Principal Commissioner of Customs, Mumbai)*
- (9) *Joepeth Pothan -Vs- State of Kerala (1965) 2 SCR 868.*
- (10) *Beerbal Singh -Vs- State of Uttar Pradesh & Ors. (2018) 13 SCC 675.*
- (11) *Himmatlal Harilal Mehta -Vs- State of Madhya Pradesh & Ors. (1954) 1*

SCC 405.

(12) Singh Enterprises -Vs. Commissioner of Central Excise, Jamshedpur & Ors. (2008) 3 SCC 70.

(13) State of Tripura -Vs- Manoranjan Chakraborty & Ors. (2001) 10 SCC 740.

(14) Judgment dated 22.02.2023 of the High Court of Gujarat in SCA No. 7165/2021. (Raghav International & Ors.-Vs- Union of India & Anr.)

[10.] Mr. Johny L. Tochhawng, learned counsel for the respondents submits that the instant writ petition not maintainable as it is a second writ petition filed by the same party against the same respondents and on the same subject. The earlier writ petition was a challenge made by the petitioner on the Recovery Notice dated 22.08.2017 and similarly, the instant writ petition is also a challenge made on the same Recovery Notice. The learned counsel submits that when the earlier writ petition was being disposed of 29.11.2018, the petitioner did not seek leave or liberty to the approach this Court once again. Therefore, the petitioner cannot be permitted to once again approach this Court without seeking any leave and liberty. In support of his submission, the learned counsel relies upon the case of *Pankaj Kumar Tiwari -Vs- Indian Overseas Bank Asset Recovery Management Branch & Ors.* decided by the Apex Court vide judgment dated 13.10.2023 through Civil Appeal No. 6736/2023 and *Vinod Kapoor -Vs- State of Goa & Ors. (2012) 12 SCC*

378.

[11.] The learned counsel submits that the petitioner was transporting mobile handsets of foreign origin namely, FLY and LEMON, which were illegally brought into the country. Therefore, the seized goods are liable to be confiscated as per the relevant provisions of the Customs Act. However, in lieu of such confiscation, the respondent authority concerned can give the petitioner an option to pay fine and penalty apart from imposing Customs Duty. He therefore submits that there is nothing wrong with the Orders-in-Original and the Recovery Notices issued to the petitioner. The learned counsel has also drawn the attention of this Court to the statements made in their counter affidavit and also to the definitions of 'import', 'imported goods' and 'smuggling' as defined under Section 2(23), (25) and (39) of the Customs Act. The learned counsel submits that the petitioner was given due opportunity to show cause as to why the mobile handsets should not be confiscated and in reply to the show cause, the petitioner could not justify or establish the fact that the mobile handsets are not imported goods or that he had duly paid the Customs Duty for importing them. He thus submits that the writ petition is not only not maintainable on technical ground but on merit as well. Therefore, the same should be dismissed.

[12.] I have heard the submissions made by the learned counsels for the parties and I have perused the materials available on record. It may be stated herein that

this Court while issuing notice of motion on 20.07.2023 had passed an interim order directing the respondent authorities to maintain status quo as on that date. The interim order continues as on today.

[13.] From the projection made by the parties, the issue to be decided is as to whether the instant writ petition is maintainable since there is a statutory remedy available to the petitioner under the Customs Act. Further, the petitioner having not sought leave and liberty to approach this Court again when the first writ petition was disposed of, whether the instant writ petition can be maintained. The further issue to be decide is as to whether the respondent authority concerned is justified in seeking the recovery of the Customs Duty amounting to Rs. 11,79,459/- after the penalty and fine had been paid by the petitioner in terms of the Orders-in-Original.

[14.] Pursuant to the recovery of mobile handsets of foreign origin from the petitioner on 22.04.2012 and 10.05.2012, two (2) Show Cause Notices were issued to him on 17.10.2012 and 02.11.2012 respectively for the said recoveries. The petitioner was put to notice through the said Show Cause Notices as to why the seized goods should not be confiscated under Section 111(b) and (d) and Section 119 of the Customs Act and as to why penalty should not be imposed upon him under Section 112(b) of the same Act. It appears that the petitioner did not reply to the Show Cause Notice dated 17.10.2012 but only to the Show Cause Notice

dated 02.11.2012 since there is neither any document annexed to the writ petition nor a statement made to that effect. The petitioner in his reply dated 16.04.2013 against the Show Cause Notice dated 02.11.2012, claimed of having complied with all the formalities required towards payment of tax while denying of any involvement in importing mobile handsets into India. Following the reply and the personal hearings, which were scheduled on 12th, 16th and 18th April, 2013 the Orders-in-Original came to be passed on 24.05.2013 and 03.06.2013 in respect of the seizure made on 22.04.2012 and 10.05.2012 respectively. The operative portion of the Order-in-Original dated 24.05.2013 at paragraph Nos. 5.1 to 5.3 may be abstracted hereunder:

“5.1 I order confiscation of the mobile handsets of foreign origin valued Rs. 26,33,378/- (Rupees twenty six lakh thirty three thousand three hundred seventy eight) only seized vide case number 06/CL/IMP/CUS-DIV/SH/12-13 dated 22.04.2012 under Section 111(b), (d) and 119 of the Customs Act, 1962 for reasons as discussed above. However, I give Sri Robert Hauzel an option to pay a fine of Rs. 2,00,000/- Rupees (two lakh) only plus appropriate Customs Duty as leviable, in lieu of confiscation, as provided for under the provision of Section 125 of the Customs Act 1962.

5.2 I impose a penalty of Rs. 1,00,000/- Rupees (one lakh) only on Sri Robert Hauzel.

5.3 Since the seized goods had been released provisionally on execution of bond and security deposit of Rs 3,95,007/- (Rupees three lakh ninety five thousand and seven) only, I order

appropriation/adjustment of the said security deposit towards fine and penalty so imposed and duty leviable in terms of para 5.1 & 5.2 above. The bond may be released upon realization of the fine, penalty and duty/other charges as leviable."

And similarly in respect of the Order-in-Original dated 03.06.2013 the operative portion at paragraph Nos. 14 to 16 is as under:

"14. I order confiscation of the mobile handsets of foreign origin valued Rs. 45,01,453/- (Rupees forty five lakh one thousand four hundred fifty three) only seized vide case No. 10/CL/IMP/CUS- DUV/SH/12-13 dated 10/05/2012 under Section 111(b), (d) and 119 of the Customs Act, 1962 for reasons discussed above. However, I give Sri Robert Hauzel, the owner of the seized goods, an option to pay a fine of Rs. 4,00,000/- (Rupees four lakh) only plus appropriate Customs Duty as leviable, in lieu of confiscation, under Section 125 of the Customs Act 1962.

15. I impose a penalty of Rs.1,00,000/- (Rupees One lakh) only on Sri Robert Hauzel under Section 112 (b) of the Customs Act, 1962 for reasons as discussed above.

16. Since the seized goods had been released provisionally on execution of bond and security deposit of Rs 6,75,218/- (Rupees Six lakh seventy five thousand two hundred eighteen) only to Shri Robert Hauzel. I order appropriation/adjustment of the said security deposit towards fine and penalty so imposed and duty leviable in terms of paras 14 & 15 above. The bond may be released upon realization of the fine, penalty and duty/other charges as leviable."

[15.] From the above abstract, it may be seen that the Addl. Commissioner, Customs ordered confiscation of the mobile handsets in terms of Section 111(b), (d) and Section 119 of the Customs Act for the reasons mentioned in the order.

However, in lieu of the confiscation, the petitioner was given a choice or option to pay fine as was stipulated along with appropriate Customs Duty as leviable under the provision of Section 125 of the Customs Act. The petitioner was also imposed a penalty of Rs. 1 lakh each in both the cases. The amount of fine and penalty was recovered from the security deposit he had earlier made for the provisional release of the mobile handsets and the excess amount after deducting the penalty and fine was returned to him on application. However, what can be seen is that the Orders-in-Original clearly stipulated that confiscation of the goods seized can be waived on payment of fine and appropriate Customs Duty as found leviable. It is therefore on the strength of the said Orders-in-Original that Recovery Notice dated 22.08.2017 was issued directing the petitioner to deposit the balance amount of Customs Duty amounting to Rs. 11,79,459/-. The petitioner being aggrieved filed WP(C) No. 54/2018 before this Court challenging the Recovery Notice. It is true that the legality of the impugned Recovery Notice or otherwise was not decided by this Court but the petitioner was given liberty to approach the Appellate Authority under the Customs Act with appropriate application for condoning the delay in approaching the Appellate Authority. Despite the same, the petitioner did not approach the Appellate Authority and is before this Court again through the instant writ petition challenging the impugned Recovery Notice. The petitioner has sought to justify his action in approaching this Court once again by referring to the Recovery Notice dated 17.12.2021 and the subsequent reminders issued by the

Customs authority concerned by stating that the steps taken are without jurisdiction since the petitioner has not been put to notice prior to demanding the Customs Duty. A perusal of the Recovery Notice dated 17.12.2021 goes to show that the petitioner has been informed that despite being directed by the High Court to approach the Appellate Authority, the petitioner not having approach the Appellate Authority under the Customs Act, the petitioner was liable to pay the Customs Duty as was indicated to him through the Recovery Notice dated 22.08.2017.

[16.] As already noticed in the preceding paragraph, the Orders-in-Original clearly stipulated that the option given to the petitioner in lieu of confiscation was payment of fine and appropriate Customs Duty as leviable. Whether the Orders-in-Original were rightly passed or not should have been tested by the petitioner by filing appropriate appeal under the Customs Act. The petitioner has taken the stand that due to want of proper legal advice, he has once again approached this Court. It may however be seen that in the first page of the two (2) Orders-in-Original dated 24.05.2013 and 03.06.2013 (Annexures - 10 & 11 respectively) it has been clearly mentioned at Sl.No. 2 as follows:

“2. Any person deeming himself aggrieved by this order may appeal against the order to the COMMISSIONER (APPEALS), CUSTOMS & CENTRAL EXCISE, NORTH EASTERN REGION, CUSTOM HOUSE, NILAMANI PHUKAN PATH, CHRISTIAN BASTI, GUWAHATI - 781 005 IN

FORM CA-1 within sixty days from the date of personal service or the date of receipt by post by the party."

[17.] Therefore, from the above abstract, it may be seen that the petitioner was clearly put to notice that there was a provision for appeal and such appeal should be filed within a period of 60 days from the date of personal service or the date of receipt of the order by post. This is in terms of Section 128 of the Customs Act. Even if the same had been overlooked by the petitioner, he was given an opportunity by this Court in the first writ petition when the same was closed vide Order dated 29.11.2018. Having regard to the fact that there was already some delay to approach the Appellate Authority, this Court had made an observation that the petitioner should file an application for condonation of delay and the Appellate Authority should fairly consider the same. The petitioner however failed to avail the opportunity. The provisions of the Central Excise Act, 1944 may be para-materia with the Customs Act and the Apex Court in *Singh Enterprises* (supra) had upheld the order of the Commissioner and the High Court that there was no power for condoning the delay after the expiry of the extended period of 30 days. However, it is not the case of the petitioner in his writ petition that being aware of the case of *Singh Enterprises* (supra) that he has chosen not to approach the Appellate Authority. Therefore, the justification sought to be made cannot be accepted.

[18.] The learned counsel for the petitioner has relied upon the case of *Escorts*

Farms Ltd. (supra) to contend that *res judicata* is a plea available in civil proceedings in accordance with Section 11 of the CPC. It is doctrine applied to give finality to 'lis' in original or appellate proceedings. He submits that a final decision rendered by a Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent action involved the same claim, demand or cause of action. On this point, the learned counsel similarly relies upon the case of *Joseph Pothan* (supra) and submits that unless a decision is rendered on merits, there cannot be any bar for approaching the same Court once again. In the present case, the earlier writ petition i.e., WP(C) No. 51/2018 was not disposed of on merits but liberty was given to the petitioner to approach the appropriate appellate authority under the Customs Act. The petitioner also did not seek leave and liberty to approach this Court again. The petitioner may not have sought leave or liberty to once again approach this Court in the earlier writ petition but that itself may not debar him to approach this Court once again particularly when it was not a case of withdrawal on the part of the petitioner. However, what cannot be ignored is that there is a statutory remedy available under the Customs Act and this Court was also seized of the said provision as can be seen from the Order dated 29.11.2018 passed in WP(C) No. 54/2018. Despite this, the petitioner did not avail the remedy.

[19.] The Apex Court in the case of *Commissioner of Income Tax & Anr. -Vs-*

Chhabil Dass Agarwal reported in (2014) 1 SCC 603 at paragraph 15 held as follows:

“15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1946 SC 1419], Titagarh Paper Mills case [Titaghur Paper Mills Co. Ltd v. State of Orrisa, (1983) 2 SCC 433 ; 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

[20.] Referring to the above abstract, a three (3) Judges Bench of the Apex Court vide Judgment dated 10.04.2024 passed in Civil Appeal No. 4845 of 2024 arising out of *SLP(C) No. 8867 of 2022 (PHR Invent Educational Society -Vs- UCO Bank & Ors.)* observed that certain exceptions have been carved out when a petition under Article 226 of the Constitution can be entertained despite the availability of alternative remedy but the same was however clarified that the High Court will not entertain a writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute

under which the action complained of has been taken itself contains a mechanism for redressal of grievance. Therefore, the writ petition was dismissed and the High Courts reminded about the law regarding entertaining a writ petition under Article 226 of the Constitution of India in case of alternative remedy as was also explained in the case of *United Bank of India -Vs- Satyawati Tondon & Ors.* reported in (2010) 8 SCC 110.

[21.] The case of *Commissioner of Customs, Mumbai* (supra), *UMC Technologies Private Limited* (supra), *Arun Kumar & Ors.* (supra) and *Raza Textiles Ltd.* (supra) are relied upon by the learned counsel for the petitioner to question the jurisdiction of the authority concerned for having issue the Show Cause Notices. It may be seen that the Show Cause Notices were issued under Section 124 of the Customs Act, which is required to be issued before confiscation of goods etc. The petitioner filed a reply against the Show Cause Notice dated 02.11.2012, denying of having imported the Mobile Handsets while requesting that the same may not be confiscated and that penalty may also be not imposed on him. Following the reply, the Orders-in-Original came to be issued wherein, confiscation of the Mobile Handsets were directed but an option was given to pay fine as was quantified plus appropriate Customs Duty as leviable under Section 125 of the Customs Act. Section 125(2) of the Customs Act provides that where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or

the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods. Therefore, it is clear that apart from the fine and penalty that was imposed, there is also a liability of paying Customs Duty as may be leviable. As such, under the given facts and circumstances, the authorities relied upon by the learned counsel are found to be not applicable.

[22.] In view of the analysis and findings arrived at in the preceding paragraphs, I do not find any merit in the writ petition and accordingly, the same is dismissed. Interim order passed earlier stands vacated. In view of the conclusion arrived at, reference to the remaining authorities cited by the parties is found to be not necessary. No cost.

JUDGE

Comparing Assistant