IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3739 OF 2015

Mr. Mavin Keezhil Mohamed Aslam	}	**Petitioner**
versus		
Union of India and Ors.	}	**Respondents**

WITH
WRIT PETITION NO. 3740 OF 2015

Mr. Mohammed Aboobacker	}	**Petitioner**
versus		
Union of India and Ors.	}	**Respondents**

Mr. Bharat Raichandani with Mr. Mahesh Raichandani for the Petitioners.

Mr. Pradeep S. Jetly for Respondent Nos. 1 and 2.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- AUGUST 31, 2015

P.C. :-

We have heard Mr. Raichandani at some length and perused, with his assistance, relevant part of section 110 of the Customs Act, 1962, which, according to Mr. Raichandani, mandates "giving" of the notice within six months of the seizure, else the seizure action must fail and everything lapses. Even if one takes recourse to the proviso to sub-section (2) of section 110 of the said Act, in the present case, the Revenue has not approached the Principal Commissioner within the said time nor he exercised the power of extension. Therefore, the show cause notice could not be adjudicated at all.

2) Mr. Raichandani places reliance upon the provisions of the Customs Act, 1962 and the Judgment of Hon'ble Supreme Court of India in the case of *K. Narsimhiah vs. H. C. Singri Gowda* reported in **AIR 1966 SC 330**. He submits that the law laid down in this decision has been applied and followed by the High Court of Punjab, High Court of Gujrat and High Court of Delhi as well. Copies of the judgments of these three High Courts are brought to our notice.

3) We do not wish to go into details simply because we find that the Petitioners' stand is expressly denied in affidavit by the Revenue. After this Court issued notice on the Writ Petitions, the Revenue filed a reply and in the reply, it is stated that the notice was issued and was received within a period of six months and not beyond it. Therefore, there was no requirement of approaching the Principal Commissioner.

4) The argument of the Revenue presupposes that there is compliance with the statutory requirement or in any event, the requirement cannot be construed to mean that the Revenue cannot go ahead with the seizure action and adjudicate the show cause notice.

This Court had granted status quo on 13th April, 2015 and therefore none could proceed further.

5) We have heard the Counsel at length.

6) We are of the opinion that there is a disputed question of fact. The issue or plea of limitation is always a mixed question of law and fact. In the present case, it would not affect or go to the root of the power to issue the show cause notice and adjudicate it. Therefore, the contention of delay or time bar can be raised before the adjudicating authority and relying on the above materials. If such a contention is raised, we have no doubt that the adjudicating authority will be obliged to deal with it after hearing both sides, in accordance with law. The apprehension of Mr. Raichandani in general terms that the adjudicating authorities are reluctant to go into these issues, though raised, need not detain us. Even otherwise, we take care of this apprehension expressed before us and direct that the adjudicating authority to whom the present show cause notice and subject matter of the Writ Petitions is referred for adjudication shall consider the plea as raised before us by Mr. Raichandani and elaborated and after the conclusion of the proceedings, while passing a speaking order, the authority must render a finding also on the point or question of delay. That shall be rendered after both sides are given complete opportunity to place the relevant

materials on record. Both the Writ Petitions are disposed of with these directions. The order of status quo is vacated forthwith.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**