

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

W.P. NOs.34968 AND 34977 of 2015

Between:

M/s. Noble Import Private Limited, Registered office: L2/18, Shastri Nagar, New Delhi – 110052, Branch Office: 17-1-386/1/10, 1st Floor, Keshavnagar, Saidabad, Hyderabad 500079, Telangana rep, by its Manager R. Vishwanath

.... Petitioner

Vs.

Union of India, Ministry of Finance (Department of Revenue), Rep., by its Secretary, New Delhi and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 1712.2015.

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE RAMESH RANGANATHAN

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
AND
*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

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% Dated 17-12-2015

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.... Petitioner

Vs.

\$ Union of India, Ministry of Finance (Department of Revenue), Rep., by its Secretary, New Delhi and others.

.... Respondents

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! Counsel for the petitioner: Sri Avinash Desai

^ Counsel for respondents Sri V. Gopalakrishna Gokhale
Sri P S P Suresh Kumar

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> HEAD NOTE:

? Citations:

- 1) (2014) 1 SCC 603
- 2) AIR 1958 SC 86
- 3) (1983) 2 SCC 433
- 4) (2003) 2 SCC 107
- 5) (2005) 6 SCC 499
- 6) AIR 1954 SC 207
- 7) AIR 1955 SC 425
- 8) AIR 1957 SC 882
- 9) AIR 1966 SC 1089
- 10) AIR 1959 SC 422
- 11) AIR 1965 SC 1321
- 12) (1984) 2 SCC 436
- 13) (1988)n 1 SCC 572
- 14) (1995) 5 SCC 75
- 15) (2000) 6 SCC 293
- 16) (2000) 7 SCC 695
- 17) (2001) 6 SCC 634
- 18) (2001) 8 SCC 509

19) (2002) 7 SCC 484
20) (2003) 1 SCC 72
21) (2004) 7 SCC 166
22) (1970) 2 SCC 355
23) (2008) 16 SCC 276
24) (2006 11 SCC 42
25) (2009) 2 SCC 192
26) (2010) 13 SCC 255
27) (Judgment in W.P.No.21399 of 2015 and batch dated 09.09.2015)
28) 2011 (267) ELT 483 (Delhi)
29) (Judgment in Special Leave to Appeal (Civil) No.24079 of 2010 dated 04.05.2011)
30) (1994) 1 An .W.R.450 (FB)
31) (2003) 5 SCC 448
32) (2001) 2 SCC 247
33) (1944) KB 718
34) (1991)4 SCC 139
35) (1941) 2 All ER 11
36) AIR 1962 SC 83
37) (1989)1 SCC 101
38) AIR 1967 SC 1480
39) (2009) 6 SCC 379
40) (2004) 13 SCC 217
41) (1996) 6 SCC 44
42) (2006) 1 SCC 275
43) (2005) 6 SCC 404
44) AIR 1968 SC 647= (1968) 2 SCR 154
45) (1901) AC 495
46) (1992) 1 SCC 489
47) (1999) 7 SCC 298
48) (2004) 4 SCC 714
49) (1985) 3 SCC 169
50) 1989 Supp (2) SCC 364
51) (2003) 7 SCC 546
52) (1995) 6 SCC 749
53) (1994) 4 SCC 448
54) 1995 Supp (2) SCC 731
55) AIR 1989 SC 997
56) (2004) 2 SCC 590
57) (2006) 8 SCC 590
58) 1925 AC 578
59) (1971) 1 All ER 1148
60) (1891) 7 AC 173 : (1886-90) All ER Rep 651 (HL
61) (2004) 2 SCC 370 : AIR 2004 SC 1581
62) (1996) 4 SCC 69
63) (1770) 98 ER 327
64) AIR 1981 SC 2085
65) 1995 Cal 327

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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W.P. NOs.34968 AND 34977 of 2015

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The relief sought for in these Writ Petitions is to declare the action of the respondents in not clearing the jewellery imported with nil duty under the Preferential Tariff Agreement, in issuing communication dated 09.10.2015 and 13.10.2015 calling upon the petitioners to provide further information, not contemplated under the Regulations, as a pre-condition for clearing the goods imported by the petitioner, as illegal, unlawful, contrary to the provisions of Customs Act, Regulations and the Preferential Tariff Agreement. A consequential direction is sought to direct the respondents to clear the goods forthwith. By way of an amendment, to the prayer in the Writ Petitions, an additional relief is sought to declare the action of the Deputy Commissioner of Customs (the 3rd respondent) in issuing Orders in original dated 30.10.2015 denying preferential rate of duty, claimed by the petitioners, as arbitrary, illegal, unconstitutional, and in violation of principles of natural justice. A consequential direction is also sought to set aside the order dated 30.10.2015.

Facts, to the extent necessary, are that the Government of India, in the exercise of the powers conferred by Section 25(1) of the Customs Act, issued notification dated 46/2011 dated 01.06.2011, in accordance with the Preferential Trading Agreement between the Governments of the Member States of the Association of Southeast Asian Nations and the Republic of India in terms of the 2009 Rules published in Notification No.189/2009 dated 31.12.2009. Notifications No.46/2011 dated 01.06.2011, No.12/2012 dated 17.03.2012, and No.21/2012 dated 17.03.2012 specify the goods which are

to be subjected to a reduced or a nil rate of customs duty, if the conditions stipulated therein are fulfilled. In terms of Notification No.46 of 2011 dated 01.06.2011, jewellery imported from members Nations of the Preferential Tariff Agreement, including Indonesia, is liable to customs duty at nil rate, as against the 15% duty imposed on jewellery imports from non-PTA countries.

The petitioners imported consignments of gold jewellery from PT Antam in Jakarta under their invoice; the consignment of goods, transported by Singapore Airlines, contained the Certificate of Origin, in the prescribed form, duly signed and stamped by the designated Government Officer of Indonesia. The consignment value of the imports was reflected in the invoice. Copies of the invoice, packing list, Air Way Bills and the Certificate of origin were filed, along with the Bill of Entry, by the petitioners' clearing agent. A provisional duty bond was also furnished by M/s. Noble Import Private Limited (the petitioner in W.P. No.34968 of 2015).

It is the petitioners' case that the Bill of Entry and the Supporting Country of Origin Certificate, filed on behalf of the petitioners, are in accordance with the provisions of the Origin Rules, and were issued by the exporter in the prescribed Form; the commercial invoices, produced along with the relevant Bills of Entry, contain a specific declaration from the exporter that, in the jewellery produced by them, they use 35% of locally produced gold and, after the mined gold is refined and is made into standard gold bars, it is used to manufacture gold jewellery in Indonesia only; the said declaration also specifies that each article of the exporter fulfils the origin criteria; PT Antam is engaged in mining, refining, and in manufacturing jewellery and minted coins; in Indonesia it is a well known exporter of gold and silver bars to various countries including India; there is no doubt regarding the credibility of the declaration given by the exporter; the country of origin certificates also bear a specific certification from the concerned authorities in Indonesia to the effect that the declaration of the exporter, that the goods are of Indonesian Origin, is correct; therefore, the goods ought to have been cleared by granting exemption in terms of the Exemption Notification, and the Origin Rules; however the goods, imported by the petitioners under the relevant Bills of Entry, were not cleared for home consumption; the 3rd respondent insisted on execution of full financial

guarantee to recover the differential duty by referring to certain instructions; the goods imported were not cleared despite all the relevant documents having been submitted; and insistence by the 3rd respondent, on preferential full financial guarantee to release the imported goods, is contrary to the law declared by this Court in W.P. No.21399 of 2015 and batch dated 09.09.2015.

After the Writ Petition was filed, the 3rd respondent passed the orders in original on 30.10.2015. The petitioners, thereafter, filed applications to amend the prayer, to include a challenge to the orders in original; and the said applications were ordered, and the prayer in the Writ Petitions were permitted to be amended.

By the order in original dated 30.10.2015, the adjudicating authority denied preferential rate of duty for the gold jewellery *vide* Serial No.966 of the Customs Notification No.46/2011 dated 01.06.2011, as amended; and ordered for assessment of the gold jewellery, imported *vide* Bill of entry dated 24.06.2015 from Indonesia, at merit rate of duty at 15% BCD, 2% ED and 1% SHE Ed.Cess on the BCD and SAD at 1%.

In his order dated 30.10.2015, the adjudicating authority held that the petitioner was asked, by letter dated 09.10.2015, to submit certain information in terms of Rule 16(b) of Annexure-III to Notification No.189/2009 dated 31.12.2009 so as to ascertain whether the goods satisfy the prescribed origin criteria to claim preferential rate of duty under Notification No.46/2011 dated 01.06.2011; in reply thereto, the importer had furnished certain information *vide* letter dated 14.10.2015; the importer was again given an opportunity, by letter dated 21.10.2015, to represent their case in person before the adjudicating authority on 26th, 27th and 28th October, 2015 along with the documents on which they wish to rely upon; the importer did not appear for the personal hearing on any of the three occasions and informed, by letter dated 26.10.2015, that they had approached the High Court by filing W.P. No.34968 of 2015; they sought an adjournment of personal hearing for two weeks; and they also requested that, in any event, no orders be passed without giving them an opportunity of being heard.

The adjudicating authority, thereafter, noted that the certificate of

origin tallied with the specimen signature that was circulated by the Commissionerate; the CNB, and the jewellery which was unbranded, were verified and the goods were found to be in the form of jewellery (pendents); on a harmonious reading of Rules 3 to 6 and Rule 12 of Notification No.189/2009 dated 31.12.2009, (ie Customs Tariff Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India Rules, 2009) (hereinafter called the “2009 Rules”), it was evident that an importer, importing goods at Preferential Rate of Duty, for goods “Not Wholly Produced” or “Obtained Products”, was required to ensure that the local content of the goods was not less than 35% of the FOB value; the Non Originating material should have undergone at least a change in the Tariff Sub-Heading level; in the instant case, at least 35% of the gold, used in the manufacture of jewellery, ought to have been mined in the soil of the exporting country in terms of Rule 5 read with Rule 4(e); the final process of manufacture should have been performed within the territory of the exporting country; the importer should also have produced documentary evidence to show that the goods satisfy the Origin criteria stipulated in the Rules; the importer had failed to furnish the relevant information/documents to establish that the local content/RVC, in the impugned goods, satisfied the conditions stipulated in Rule 5 read with Rules 6 and 12, and the Non Originating material had been subjected to the manufacturing process as mandated in Rule 5(ii); in the present case the importer, instead of submitting the documents/information sought for by the Department by their letter dated 09.10.2015 in terms of Rule 16(b) of the Operational Certification Procedures for the Rules, to determine compliance of the impugned goods to the origin criteria under Rule 5, had approached the High Court by filing the Writ Petitions; it was evident that the importer did not have any evidence/information to establish conformity of the impugned goods to the origin criteria, as prescribed in the Rules, to claim preferential rate of duty; and the importer had failed to discharge the obligation cast on them under the 2009 Rules.

The adjudicating authority, thereafter, referred to certain other certificate of origin for which a retro-active check was conducted by the Department; and to the contents of the letter dated 27.04.2015 from the

supplier M/s. PT Antam. In their letter dated 27.04.2015, M/s.P.T.Antam stated that they did not maintain any inventory to indicate the origin of gold ore or gold dore bars which were smelted for the purpose of producing refined gold; and their refinery's annual production was 200 tonnes of refined gold. According to the adjudicating authority, information in the public domain showed that the mining capacity of Indonesia was not more than 65 tonnes; the Indian Embassy at Jakarta had also stated that 37 tonnes of gold mined in Indonesia was exported in the form of gold powder, lumps and cast bars; in case, where a manufacturer used both originating (wholly produced) and non originating inputs in the manufacture of the products, Rule 12 required the origin of such material to be determined by generally accepted accounting principles of stock control applicable to, or inventory management practiced in, the exporting country; it was an obligation on the part of the exporting companies, producers and manufacturers to maintain a record of the materials in a manner so as to establish the origin of the material, or the inputs used to manufacture the goods exported under preferential benefits; absence of such accounting principles prescribed in Rule 12, and non-conducting of pre-exportation examination under Rule 5, was non-fulfilment of the obligation mandated under the 2009 Rules; the importer had not fulfilled their obligations to determine the origin criteria of the goods, in terms of the 2009 Rules, and make themselves eligible to claim preferential tariff benefits laid down in Notification No.46/2011, as amended; the importer had claimed the rate of "Not Wholly Produced or Obtained Products" with 35% local content in terms of Rules 5 and 6 of the 2009 Rules; and, as the supplier had confirmed that they did not maintain any inventory to indicate the origin of the gold ore, or the gold dore bars, which were smelted to get refined gold for manufacturing gold jewellery, the importer, on whom the burden of proof lay, had failed to fulfil the conditions stipulated in Notification No.46/2011 in respect of the origin criteria of the goods under the 2009 Rules. The petitioners' request, for grant of preferential rate of duty, was negated by the adjudicating authority *i.e.*, the Deputy Commissioner of Customs (Import) (the 3rd respondent).

Sri Avinash Desi, learned counsel for the petitioners, would submit

that the documents, referred to in the order in original dated 30.10.2015, were not supplied to the petitioners before the impugned adjudicating order was passed; the genuineness of the certificate of origin is not in dispute; the documents, referred to in the order of adjudication, could only have been relied upon if they had been made available to the petitioners earlier, and they were given an opportunity to put forth their submissions regarding these documents; even otherwise, clause 16(b) of Annexure-III to the 2009 Rules is merely a prelude to clause 16(a); no adjudication order can be passed without a retroactive check being conducted in terms of clause 16(a); and both on the grounds of violation of principles of natural justice, and non-compliance with the 2009 Rules, the adjudication order necessitates being set-aside.

On the other hand Sri P.S.P. Suresh Kumar, learned Standing Counsel for Central Excise, would draw our attention to the letter addressed by the PT Antam on 27.04.2015 to the Director of Exports and Imports, Directorate General of Foreign Trade Indonesia to submit that PTA Antam had specifically stated that they refine gold jewellery exclusively from within the country, gold jewellery was manufactured from refined gold, once the material arrives in the refinery it becomes a single inventory, it is difficult to ascertain exactly the flow of gold, and whether the gold, used in the production and export of jewellery, is mined gold only; it is evident from the said letter, that the petitioners' contention that more than 60 tonnes of refined gold, used to manufacture jewellery, were imported into Indonesia is not tenable; as the adjudicating authority had given several opportunities to the petitioner which they failed to avail, he had no option but to proceed and pass an adjudication order; even if this Court were to set-aside the order in original dated 30.10.2015, Regulation 4 of the Customs (Provisional Duty Assessment) Regulations, 2011 ("2011 Regulations" for short) confers power on the adjudicating authority to require security to be furnished for release of the imported goods; in terms of the CBEC Circular dated 06.10.2015, 100% bank guarantee is to be furnished for provisional assessment; and the petitioner has an effective and efficacious alternative remedy of an appeal under Section 128 of the Customs Act, without availing which they had invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

I. ALTERNATIVE REMEDY - NOT A BAR FOR INVOKING THE JURISDICTION OF THE HIGH COURT UNDER ARTICLE 226 OF THE CONSTITUTION:

While the jurisdiction, which this Court exercises under Article 226 of the Constitution of India, is no doubt discretionary; and this discretion would, ordinarily, not be exercised where the petitioner has an effective statutory remedy available to them, existence of an alternate remedy is merely a factor to be taken into consideration. It is within the discretion of the High Court to grant relief under Article 226, despite the existence of an alternative remedy, examining various documents, and the evidence to the transaction, more so where there is no disputable questions of fact; and the jurisdictional error, committed by the respondent authorities, is on account of misappreciation of the law and the statutory provisions. (**CIT v. Chhabil Dass Agarwal**^[1]; **State of U.P. v. Mohd. Nooh**^[2]; **Titaghur Paper Mills Co. Ltd. v. State of Orissa**^[3]; **Harbanslal Sahnia v. Indian Oil Corpn. Ltd.**^[4]; **State of H.P. v. Gujarat Ambuja Cement Ltd.**^[5]; **K.S. Rashid and Son v. Income Tax Investigation Commission**^[6]; **Sangram Singh v. Election Tribunal**^[7]; **Union of India v. T.R. Varma**^[8]; **K.S. Venkataraman and Co. (P) Ltd. v. State of Madras**^[9]; **N.T. Veluswami Thevar v. G. Raja Nainar**^[10]; **Municipal Council, Khurai v. Kamal Kumar**^[11]; **Siliguri Municipality v. Amalendu Das**^[12]; **S.T. Muthusami v. K. Natarajan**^[13]; **Rajasthan SRTC v. Krishna Kant**^[14]; **Kerala SEB v. Kurien E. Kalathil**^[15]; **A. Venkatasubbiah Naidu v. S. Chellappan**^[16]; **L.L. Sudhakar Reddy v. State of A.P.**^[17]; **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra**^[18]; **Pratap Singh v. State of Haryana**^[19]; and **GKN Driveshafts (India) Ltd. v. ITO**^[20]).

The rule of exclusion of the writ jurisdiction, in view of the existence of an alternative remedy, is not a rule of compulsion. (**Harbans Lal Sahnia**⁴;

Gujarat Ambuja Cement Ltd.⁵). When, on undisputed facts, the authorities are shown to have assumed jurisdiction which they do not possess, a writ petition can be entertained. (**Gujarat Ambuja Cement**⁵). Some exceptions to the rule of alternative remedy have been recognized i.e. where the statutory authority has not acted in accordance with the provisions of the enactment or in defiance of the fundamental principles of judicial procedure etc. (**Chhabil Dass Agarwal**¹).

The existence of an alternative remedy is merely a factor to be considered, and would not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. (**S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**^[21]). If the High Court has entertained a petition, despite availability of an alternative remedy, and has heard the parties on merits it would, ordinarily, not be justified in dismissing the Writ Petition on the ground of non-exhaustion of the statutory remedies unless it finds that factual disputes are involved, and it would not be desirable to deal with them in a writ petition. (**L. Hirday Narain v. Income Tax Officer, Bareilly**^[22]; **Gujarat Ambuja Cement Ltd**⁵). As the petitioners question the adjudication order on the grounds of violation of principles of natural justice, and that the 3rd respondent lacks jurisdiction to pass the adjudication order even before a retro-active check is conducted, we see no reason to relegate them, after having heard the matter elaborately on merits, to the alternate remedy of an appeal under the Customs Act.

II. DOES THE THIRD RESPONDENT LACK JURISDICTION TO PASS THE ADJUDICATION ORDER WITHOUT A RETRO- ACTIVE CHECK BEING CONDUCTED?

In examining the contention, urged on behalf of the petitioners, that the 3rd respondent lacks jurisdiction to pass the adjudication order, before a retroactive check is conducted, it is useful to refer to certain provisions of the 2009 Regulations. Annexure III, which contains the operational certificate procedures prescribed under the 2009 Rules, stipulates that, for the purpose of implementation of the 2009 rules, the operational certificate procedures shall be followed. Clause 7 thereof relates to issuance of AIFTA Certificate

of Origin. Clause 7(a) stipulates that the AIFTA Certificate of Origin shall be in International Organisation for Standardisation (ISO) in conformity with the specimen as in the Attachment to these Operational Certification Procedures. Clause 7(b) stipulates that the original copy shall be forwarded, together with the triplicate, by the exporter to the importer; and the original copy shall be submitted by the importer to the Customs Authority at the port or place of importation. Clause 7(c) stipulates that, in cases where an AIFTA Certificate of Origin is not accepted by the Customs Authority of the importing party, such AIFTA Certificate of Origin shall be marked accordingly in box 4, and the original AIFTA Certificate of Origin shall be returned to the issuing Authority within a reasonable period, but not to exceeding two months. Clause 7(c) also requires the Issuing Authority to be notified of the grounds for denial of preferential tariff treatment. Clause 7(d) stipulates that in cases where an AIFTA Certificate of Origin is not accepted, as stated in clause 7(c), the Issuing Authority shall provide detailed, exhaustive clarification addressing the grounds for the denial of preferential tariff treatment raised by the importing party. The Customs Authority of the importing party shall accept the AIFTA Certificate of Origin, and grant the preferential tariff treatment, if the clarification is found satisfactory. It is not in dispute that, in the present case, neither has the Certificate of Origin, submitted by the petitioner to the Customs Authorities, been rejected, nor has it been returned by the Customs Authorities to the petitioner.

The verification process, prescribed in Clause 16(a) of Annexure III to the 2009 Rules, reads as under:-

“The importing party may request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof. The Issuing Authority shall conduct a retroactive check on the producer/exporter’s cost statement based on the current cost and prices within a six-months timeframe prior to the date of exportation subject to the following procedures:

- (i) the request for a retroactive check shall be accompanied by the AIFTA Certificate of Origin concerned and specify the reasons and any additional information suggesting that the particulars given in the said AIFTA Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;
- (ii) the Issuing Authority shall respond to the request promptly and reply within three months after receipt of the request of the retroactive check;
- (iii) in case of reasonable doubt as to the authenticity or accuracy of the document, the Customs Authority of the importing party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and there is no suspicion of fraud; and
- (iv) the retroactive check process, including the actual process and the

determination of whether the subject good is originating or not, should be completed and the result communicated to the Issuing Authority within six months. While the process of the retroactive check is being undertaken, sub-paragraph (iii) shall be applied.

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Clause 16(b) reads thus:

“(b) The Customs Authority of the importing party may request an importer for information or documents relating to the origin of imported goods in accordance with its domestic laws and regulations before requesting the retroactive check pursuant to paragraph (a).”

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From a reading of clause 16(b), it is evident that the requirement of obtaining information of the documents, relating to the origin of the imported goods in accordance with its domestic laws and regulations, is a prelude to the request for retroactive check in terms of clause 16(a). If the documents, sought for by the competent authority, are furnished by the importer and, if the concerned authority is satisfied with it, then preferential tariff can be extended to the importer. If, on the other hand, the information, or the documents furnished, are found not to be satisfactory, then, in terms of clause 16(a), a retro-active check can be conducted.

Sri Avinash Desai, learned counsel for the petitioner, would submit that the information sought for by the adjudicating authority is incapable of being furnished by the importer. Even if we were to proceed on the premise that the said information could have been furnished by the petitioners herein, their failure to do so would only enable the concerned authority to have a retroactive check conducted in terms of clause 16(a) of Annexure III of the 2009 Regulations, and then take action in terms of Clause 17, which reads as under:-

(a) If the importing party is not satisfied with the outcome of the retroactive check, it may, under exceptional circumstances, request verification visits to the exporting party. Prior to conducting a verification visit –

- (i) the importing party shall deliver a written notification of its intention to conduct the verification visit, through the competent authority, simultaneously to:

(1) the producer/exporter whose premises are to be visited;

(2) the Issuing Authority of the party in the territory of which the verification visit is to occur;

(3) the competent authority of the party in the territory of which the verification visit is to occur; and...”

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It is only after a retroactive check is conducted, and the concerned authorities are satisfied that the Certificate of Origin cannot be accepted, are they entitled, thereafter, to pass an adjudication order under the Customs Act. Without conducting a retroactive check, in terms of clause 16(a) of Annexure III to the 2009 Regulations, it was not open to the 3rd respondent to pass an adjudicating order. The impugned orders dated 30.10.2015,

passed even before conducting a retro-active check in terms of clause 16(a),
are without jurisdiction.

III. WAS THE ADJUDICATION ORDER DATED 30.11.2015 PASSED IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE?

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Even otherwise, failure to furnish the documents, referred in the adjudicating order, to the petitioner herein is in violation of principles of natural justice which are those rules laid down by Courts as affording the minimum protection of the rights of the individual against the arbitrary procedure adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent the authority from being unjust. (**Nagarjuna Construction Co. Ltd. v. Govt. of A.P.**,^[23]). Rules of natural justice are not codified canons. They are principles ingrained in the conscience of man. Justice is based substantially on natural ideals and human values. It is the substance of justice which should determine its form. Adherence to principles of natural justice, as recognised by all civilised States, is of supreme importance when a statutory authority embarks on any administrative action involving civil consequences. (**Nagarjuna Construction Co. Ltd.**²³).

An order passed by a statutory authority, which would visit a person with civil or evil consequences, must meet the test of reasonableness.

(**Banaras Hindu University v. Shrikant**^[24]; **Kothari Filaments v. Commr. of Customs**^[25]). The concept of fairness would require the adjudicating authority to furnish copies of those documents on which he has placed reliance. To this extent, the principles of natural justice and concept of fairness are required to be read into the Rules. A person, to whom a notice is issued, is always entitled to satisfy the adjudicating authority that those very documents, upon which reliance has been placed, do not make out even a prima facie case requiring any further action. (**Natwar Singh v. Director of Enforcement**^[26]).

Documents, relied on by the authority, are required to be furnished to the person, on whom a notice is served, enabling him to show proper cause as to why action should not be taken against him. (**Natwar Singh**²⁶). The

Customs Act does not prohibit application of principles of natural justice. The Customs authorities (adjudicating authorities) cannot pass orders on the basis of material known only to them, copies whereof were not supplied to the petitioner. A person, against whom an order is passed, is entitled to a proper hearing which would include supply of the documents relied upon by the adjudicating authority. Only on knowing the contents of the documents, can he furnish an effective reply. Where the adjudicating authority intends to rely on certain documents, he should supply copies thereof to the person against whom action is intended to be taken. (**Kothari Filaments²⁵**).

Reliance placed on documents, not made available to the assessee, violates principles of natural justice; and necessitates the impugned order being set aside on this ground also.

IV. DOES THE JUDGMENT IN MAHADEV METALIKS PVT LTD²⁷, TO THE EXTENT IMPORTED GOODS WERE DIRECTED TO BE RELEASED ON PAYMENT OF 30% DIFFERENTIAL DUTY, CONSTITUTE A BINDING PRECEDENT?

In **Mahadev Metaliks Pvt. Ltd v. Union of India**^[27], a Division bench of this Court, after examining various provisions of the 2009 Rules, faulted the authorities in not releasing the goods. The Division bench opined that clause 16(a)(iv) of the 2009 Rules enables the authorities to release the goods provisionally, pending the retroactive check, subject to any administrative measures which is deemed fit and necessary; and, as “administrative measures” have not been defined, guidance in this regard is to be found in the Customs (provisional duty assessment) Regulations which provide for release of goods on a provisional basis.

On the adjudicating order being set aside, the imported goods should be released on provisional assessment, in terms of the Customs (provisional duty assessment) Regulations, 2011 (“2011 Regulations” for short). Regulation 2 of the 2011 Regulations prescribe the conditions for allowing provisional assessment. Regulation 2(1) stipulates that where (a) an importer or an exporter is unable to make self-assessment under Section 17(1) of the Customs Act and makes a request in writing to the proper officer for assessment; or (b) the proper officer, on account of any of the grounds specified in sub-section (1) of Section 18 of the said Act, is unable to verify the self-assessment or make re-assessment of the duty on the imported

goods or the export goods, he shall make an estimate of the duty to be levied (hereinafter referred to as the provisional duty). Under Regulation 2(2), if the importer or the exporter, as the case may be, executes a bond in an amount equal to the difference between the duty that may be finally assessed or reassessed and the provisional duty, and deposits with the proper officer such sum not exceeding twenty per cent of the provisional duty, as the proper officer may direct, the proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty. Regulation 3 relates to the terms of the bond and Regulation 4 to the surety or security of the bond. Regulation 4 enables the proper officer to require that the bond, to be executed under these regulations, may be with such surety or security or both, as he deems fit.

On provisional assessment, the assessee can only be asked to deposit a sum not exceeding 20% of the provisional duty. In addition thereto, it is open to the concerned officer to call upon the petitioner to furnish such security or surety or both as he deems fit. While the 2011 Regulations disable the concerned authority from requiring deposit of a sum exceeding 20% of the provisional duty, the nature of the surety and the extent of the security to be furnished is, under Regulation 4, left to the discretion of the proper officer.

In **Navashakti Industries Private Limited v. Commissioner of CUS., ICD, TKD, New Delhi**^[28], the Delhi High Court Division bench directed the customs authorities to release the goods, to the appellants therein, on furnishing a bond for 20% of the differential duty to the satisfaction of the concerned Commissioner of Customs. Aggrieved thereby the Commissioner of Customs carried the matter in appeal to the Supreme Court. In **Commissioner of Customs v. M/s. Navashakti Industries Pvt. Ltd.**^[29] the Supreme Court directed that 30% of the differential duty be furnished as a bank guarantee. The Division bench of this Court, in **Mahadev Metaliks Pvt. Ltd.**²⁷, directed that the imported goods be released on condition that the petitioner pays 30% of the duty on the goods being imported, and furnished a surety bond, to the satisfaction of the Custom Authorities, for the balance 70% of the differential duty.

Sri Avinash Desai, learned counsel for the petitioners, would submit that, on the adjudication order being set-aside, the 3rd respondent has, necessarily, to take action in accordance with the 2011 Regulations; reliance placed by the respondents, on the Circular dated 06.10.2015 issued the CBEC, is misplaced as it relates only to “wholly obtained” gold jewellery imported from Indonesia; and not to cases, like the present, where the imports are of gold jewellery under the “Not Wholly Obtained” category; as the Division Bench in **Mahadev Metaliks Pvt. Ltd**²⁷ noticed Regulation 4, and yet directed release of the goods on payment of 30% duty, and the remaining 70% by way of a surety bond to the satisfaction of the customs authorities, a similar order should be passed in these Writ Petitions also.

We must express our inability to agree. Though Regulation 4 of the 2011 Regulations was brought to its notice, the Division Bench, in **Mahadev Metaliks Pvt Ltd**²⁷, did not consider its scope and purport; and, without doing so, directed payment of 30% duty and a surety bond for the balance 70% to be furnished to the satisfaction of the customs authorities. It is no doubt true that a Division Bench of a High Court is bound by the judgment of another Division Bench, and cannot differ from the earlier judgment of co-ordinate jurisdiction merely because they hold a different view on the question of law for the reason that certainty and uniformity in the administration of justice are of paramount importance. (**Commissioner of Income Tax v. M/s B.R. Constructions**^[30]).

In **State of Bihar v. Kalika Kuer**^[31] the Supreme Court observed:-

“.....Whatever has been held or observed in the case of *Ramkrit Singh*¹ may not appear to be correct or may seem to be against the provisions of the Act but that would not be a valid ground to hold that the earlier judgment was rendered per incuriam or that decision would not be binding on the Bench of a coordinate jurisdiction.

.....An earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.” (emphasis supplied)

If the order in **Mahadev Metaliks Pvt. Ltd**²⁷ constitutes a binding precedent, this Court would be required to refer the matter to a Full Bench for resolution of the issue, even if it were to disagree with the view taken in the said judgment, for it is well settled that when a bench of coordinate jurisdiction disagrees with another bench of coordinate jurisdiction, whether on the basis of “***different arguments***” or otherwise on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety, forms the basis of judicial procedure and it must be respected at all costs. (**Vijay Laxmi Sadho (Dr) v. Jagdish**^[32]).

It must, however, be borne in mind that the ‘quotable in law’ is avoided and ignored if it is rendered ‘*in ignoratium* of a statute or other binding authority’. (**Young v. Bristol Aeroplane Co. Ltd**^[33]). This principle has been accepted, approved and adopted by the Supreme Court while interpreting Article 141 of the Constitution of India which embodies the doctrine of precedents as a matter of law. (**State of U.P. v. Synthetics and Chemicals**^[34]). If the provisions of the Act/Rules/Regulations were noticed and considered before the conclusion was arrived at, the judgment cannot be ignored merely on the ground that the other bench is of the view that it has erroneously reached the conclusion. (**B.R. Constructions**³⁰). The mere fact that the earlier Court misconstrued a statute/statutory rule, or ignored a rule of construction, is no ground for impugning the authority of the precedent. A precedent, on the construction of a statute, is as much binding as any other, and the fact that it was mistaken in its reasoning does not destroy its binding force. (**B.R. Constructions**³⁰; **Salmond on jurisprudence, Twelfth Edition, at page 151**).

A decision rendered ‘without any argument, without reference to the crucial words of the rule and without any citation of the authority’ is not a binding precedent. (**Lancaster Motor Company (London) Ltd. v. Bremith Ltd**^[35]). A decision, which is neither founded on reasons nor it proceeds on a consideration of an issue, cannot be deemed to be a law declared to have

a binding effect. A decision is binding not because of its conclusions but in regard to its ratio, and the principles laid down therein'. Any declaration or conclusion, preceded without any reason, cannot be deemed to be the declaration of law or authority of a general nature binding as a precedent. (**Jaisri Sahu v. Rajdewan Dubey**^[36]; **Municipal Corporation of Delhi v. Gurnam Kaur**^[37]; **B. Shama Rao v. Union Territory of Pondicherry**^[38]; **Synthetics and Chemicals Ltd.**³⁴). Uniformity and consistency are undoubtedly the core of judicial discipline. But that which escapes in the judgment, without any occasion, is not the *ratio decidendi*. (**Synthetics and Chemicals Ltd.**³⁴; **Gurnam Kaur**³⁷).

Though the order of the Division Bench, in **Mahadev Metaliks Pvt. Ltd**²⁷, records reference having been made, on behalf of the respondents, to Regulation 4 of the 2011 Regulations, the direction, that the imported goods should be released on payment of 30% of the provisionally assessed duty, and on furnishing security for the remaining 70%, was issued without analyzing the statutory provision (Regulation 4), and is a mere direction of the Court. A decision is binding not because of its conclusions, but in regard to its ratio and the principles laid down therein'. Any declaration or conclusion arrived at without being preceded by any reason, cannot be deemed to be the declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law. (**Synthetics and Chemicals Ltd.**³⁴; **B. Shama Rao**³⁸). A mere direction of the Court without considering the legal position is not a precedent. (**Vishnu Dutt Sharma v. Manju Sharma**^[39]). The view, if any, expressed without analysing the statutory provision/Rule cannot be treated as a binding precedent. (**N. Bhargavan Pillai v. State of Kerala**^[40]). The enunciation of the reason or principle on which a question, before a court, has been decided is alone binding as a precedent. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case, or is put in issue, would constitute a precedent. It is the rule deductible from the application of law to the facts and circumstances of the

case which constitutes its *ratio decidendi*. (**Union of India v. Dhanwanti Devi**^[41]; **State of Orissa v. Mohd. Illiyas**^[42]; **ICICI Bank v. Municipal Corpn. of Greater Bombay**^[43]; **State of Orissa v. Sudhansu Sekhar Misra**^[44]; **Quinn v. Leathem**^[45]).

If, on an analysis of Regulation 4, the said regulation was misconstrued, it would then not have been a ground for impugning the authority of the earlier judgment. It is only because Regulation 4 was not considered, despite it being brought to their notice, and was not preceded by an analysis of the said Regulation, and no reasons were assigned for issuing such a direction, does the judgment, in **Mahadev Metaliks Pvt. Ltd**²⁷, not constitute a precedent binding on a co-ordinate bench.

V. CAN AN ORDER, SIMILAR TO THAT PASSED BY THE SUPREME COURT IN “COMMISSIONER OF CUSTOMS V. M/S. NAVASHAKTI INDUSTRIES PVT LTD”, BE PASSED IN THESE WRIT PETITONS ALSO?

Reference to the order of the Supreme Court in **Commissioner of Customs v. M/s.Navashakti Industries Pvt. Ltd.**²⁹, preferred by the revenue against the Division Bench judgment of the Delhi High Court in **Navshakti Industries Pvt. Ltd**²⁸), is inapposite. The direction to the competent authority, to release the goods on furnishing a bank guarantee for 30% of the differential duty, was issued by the Supreme Court in the exercise of its powers under Article 142 of the Constitution of India. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary “for doing complete justice in any case or matter pending before it”, which authority the High Court does not enjoy. The jurisdiction of the High Court, in writ proceedings, is circumscribed by limitations which cannot be transgressed on the whim or subjective sense of justice varying from Judge to Judge. (**State of Punjab v. Surinder Kumar**^[46]). The power which is available to the Supreme Court under Article 142 is not available to the High Courts. (**Chairman, Grid Corpn. Of Orissa Ltd (Gridco) v. Sukamani Das**^[47]). The power conferred on the High Court, under Article 226 of the Constitution of India, is not on par with the constitutional jurisdiction conferred upon the Supreme Court under

Article 142 of the Constitution of India. (**State of U.P. v. Johri Mal**^[48]; **State of H.P. v. A parent of a Student of Medical College**^[49] and **Asif Hameed v. State of J&K**^[50]). Although the High Court may pass an order for doing complete justice to the parties, they do not have the power akin to Article 142 of the Constitution of India. (**Johri Mal**⁴⁸; **Guruvayoor Devaswom Managing Committee v. C.K. Rajan**^[51]; **B.C. Chaturvedi v. Union of India**^[52]). Exercise of the extraordinary jurisdiction, constitutionally conferred on the Supreme Court under Article 142(1) of the Constitution, can be of no guidance on the scope of Article 226. (**State of Haryana v. Naresh Kumar Bali**^[53]; **State of H.P. v. Mahendra Pal**^[54]). It would be wholly inappropriate for us, therefore, to issue a direction, similar to that passed by the Supreme Court, with regards surety or security to be furnished by the assessee for release of the subject goods.

VI. THE HIGH COURT CANNOT SUBSTITUTE ITS VIEWS FOR THAT OF THE AUTHORITY ON WHOM THE STATUTORY REGULATIONS CONFER DISCRETION:

As the scope of Regulation 4 was not examined by the Division Bench in **Mahadev Metaliks Pvt. Ltd**²⁷, we must examine the scope of Regulation 4 for any direction, which we can issue, can only be in terms thereof, and not contrary thereto. As noted hereinabove, Regulation 4 confers a discretion on the proper officer to require a bond to be executed in terms thereof with “such security or surety or both” as he deems fit. In addition to the bond which the proper officer can require the assessee to execute, he has been conferred a discretion to call upon the assessee to also furnish such security, or surety or both, as he considers fit. The discretionary power under Regulation 4 of the 2011 Regulations is conferred only on the proper officer. Such a power can only be exercised by him and no one else. An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by none else. (**Administrative Law: HWR WADE & C.F. FORSYTH: 10TH**

EDITION). If an authority "hands over its discretion" to another body it acts ultra vires. Such interference by a person or body extraneous to the power is contrary to the nature of the power conferred on the authority. (**State of U.P. v .Dharmander Prasad Singh**^[55]). A discretionary power is a power exercisable in its discretion by the concerned authority. An official on whom discretionary power is vested has, to a greater or lesser extent, a range of options at his disposal and he exercises a measure of personal judgment in making the choice. (**DAVIS, Discretionary Justice : A Preliminary Inquiry, 4 (1969); Principles of Administrative Law: M.P. JAIN & S.N. JAIN 6TH EDITION**). When applied to public functionaries, it (discretion) means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. (**UOI v. Kuldeep Singh**^[56]).

In **Muni Suvrat-swami Jain S.M.P.Sangh v. Arun Nathuram**

Gaikwad^[57] the Supreme Court held:-

".....In our opinion, Section 351 obliges the Municipal Commissioner, if the construction of any building or the execution of any work is commenced contrary to the provisions of the Act, to give notice requiring the person doing the work to show cause why it should not be pulled down. The word used in this context is shall. **If sufficient cause is not shown it is left to the Commissioner's discretion whether or not to demolish the unauthorized construction and, therefore, the High Court, in our opinion, cannot impede the exercise of that discretion by the issuance of a mandatory order. We, therefore, direct the Commissioner to decide the question as to whether he should pass an order for demolition or not.....**" (emphasis supplied)

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It would not be open for us, in view of Regulation 4 of the 2011 Regulations, to substitute our discretion for that of the proper person, or to take upon ourselves the task of exercising discretion in terms of Regulation 4, as such a power has been specifically conferred, by the Regulations, only on the proper officer and none else.

VII. DISCRETION CONFERRED BY STATUTORY REGULATIONS, MUST BE EXERCISED IN A RATIONAL AND REASONABLE MANNER:

It needs no emphasis that the discretion, conferred by Regulation 4 of the 2011 Regulations, is not unfettered, and the proper officer referred to therein must exercise his discretion for just and valid reasons. The word "**discretion**" signifies exercise of judgment, skill or wisdom as distinguished

from folly, unthinking or haste. The word in itself implies vigilance, circumspection and care. (**Kuldeep Singh**⁵⁶). “**Discretion**” does not empower a man to do what he likes merely because he is minded to do so, he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason dictates.”(**Roberts v. Hopwood**^[58]). Statutory discretion must be truly exercised, and when exercised it must be exercised reasonably. A statutory body/ authority, which is entrusted by the statute/statutory rule with a discretion, must act fairly. Its discretion is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body/authority must be guided by relevant considerations, and not by irrelevant ones. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body/authority may have acted in good faith; nevertheless the decision will be set aside. (**Breen v. Amalgamated Engineering Union (now Amalgamated Engineering and Foundry Workers Union)**^[59]).

When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.” (**Sharpe v. Wakefield**^[60]; **National Insurance Co. Ltd. v. Keshav Bahadur**^[61]; **V. Kuldeep Singh**⁵⁶). Where a statute/statutory rule vests discretion in the authority to exercise a particular power, there is an implicit requirement that it shall be exercised in a reasonable and rational manner free from whims, vagaries and arbitrariness. (**Union of India v. Jesus Sales Corporation**^[62]).

Discretion means sound discretion guided by law. (**R. v. Wilkes**^[63]; **CRAIES on Statute Law, 6th Edn., p. 273; Ramji Dayawala & Sons (P) Ltd. v. Invest Import**^[64]; and **Siben Kumar Mandal v. Hindusthan**

Petroleum Corporation Ltd. ^[65]). Notwithstanding the authority given to do according to their discretion, yet the proceedings of the statutory authority ought to be limited and bound into the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substances, between equity and colourable glosses and pretences, and not to do according to their wills and private affections. (**Wade & Forsyth in Administrative Law, 9th Edition, 2005, p.351**). The third respondent shall exercise his discretion, under Regulation 4 of the 2011 Regulations, in a reasonable and rational manner. In case, he considers it necessary for surety or security to be furnished by the petitioners for release of the imported goods, in terms of Regulation 4, he shall assign reasons therefor.

VIII. THE DISCRETION CONFERRED ON THE PROPER AUTHORITY, UNDER THE 2011 REGULATIONS, IS NOT FETTERED BY THE CBEC CIRCULAR DATED 06.10.2015:

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We must, however, clarify that the Circular dated 06.10.2015 issued by the Central Board of Excise and Customs does not fetter exercise of discretion by the third respondent regarding the sum to be deposited by the petitioners, and the surety or security they can be called upon to furnish, in terms of Regulations 2 and 4 of the 2011 Regulations. As is evident from para-3 and 7.1 of the Circular dated 06.10.2015, the instructions therein refer to the Certificates of Origin for “**wholly obtained imports of gold jewellery from Indonesia**”. The said Circular has no bearing on “**not wholly obtained jewellery imported from Indonesia**”. Sri P.S.P. Suresh Kumar, Learned Standing Counsel for Central Excise, would, however, draw our attention to the last three lines of para-7.1 of the Circular dated 06.10.2015, to submit that the goods can be released provisionally only after obtaining a Bank Guarantee of 100% in all cases of provisional assessment, and not merely to wholly imported Certificates of Origin. We disagree. Para-7.1 must be read as a whole, and the last three lines cannot be read out of context. On a reading of para-7.1, of the Circular dated 06.10.2015 in its entirety, it is evident that the direction of the Central Board of Excise and Customs to the authority, to obtain 100% bank guarantee, was only in the context of “**wholly obtained gold jewellery from Indonesia**”, and not “**not**

wholly obtained gold jewellery". We are satisfied that Circular dated 06.10.2015 does not fetter the exercise of discretion by the proper officer under Regulation 4 of the 2011 Regulations.

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IX. CONCLUSION:

We wish to make it clear that we have not expressed any opinion on the amount which the petitioner must be asked to deposit or the nature of surety or the extent of security which the petitioner should be called upon to furnish for release of the imported gold jewellery, as these are all matters in the discretion of the proper officer under Regulation 4 of the 2011 Regulations. Suffice it to direct the third respondent to release the imported goods, after exercising his discretion in terms of Regulations 2 and 4 of the 2011 Regulations and assigning reasons therefor, with utmost expedition and, in any event, not later than two (2) weeks from today.

Both the Writ Petitions are, accordingly, disposed of. There shall be no order as to costs. The miscellaneous petitions pending, if any, shall also stand closed.

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(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

17th December 2015

Note: 1) Issue CC in a week.
2) L.R. copy to be marked.
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[\[1\]](#) (2014) 1 SCC 603

- [\[2\]](#) AIR 1958 SC 86
- [\[3\]](#) (1983) 2 SCC 433
- [\[4\]](#) (2003) 2 SCC 107
- [\[5\]](#) (2005) 6 SCC 499
- [\[6\]](#) AIR 1954 SC 207
- [\[7\]](#) AIR 1955 SC 425
- [\[8\]](#) AIR 1957 SC 882
- [\[9\]](#) AIR 1966 SC 1089
- [\[10\]](#) AIR 1959 SC 422
- [\[11\]](#) AIR 1965 SC 1321
- [\[12\]](#) (1984) 2 SCC 436
- [\[13\]](#) (1988)n 1 SCC 572
- [\[14\]](#) (1995) 5 SCC 75
- [\[15\]](#) (2000) 6 SCC 293
- [\[16\]](#) (2000) 7 SCC 695
- [\[17\]](#) (2001) 6 SCC 634
- [\[18\]](#) (2001) 8 SCC 509
- [\[19\]](#) (2002) 7 SCC 484
- [\[20\]](#) (2003) 1 SCC 72
- [\[21\]](#) (2004) 7 SCC 166
- [\[22\]](#) (1970) 2 SCC 355
- [\[23\]](#) (2008) 16 SCC 276
- [\[24\]](#) (2006) 11 SCC 42
- [\[25\]](#) (2009) 2 SCC 192
- [\[26\]](#) (2010) 13 SCC 255
- [\[27\]](#) (Judgment in W.P.No.21399 of 2015 and batch dated 09.09.2015)
- [\[28\]](#) 2011 (267) ELT 483 (Delhi)
- [\[29\]](#) (Judgment in Special Leave to Appeal (Civil) No.24079 of 2010 dated 04.05.2011)
- [\[30\]](#) (1994) 1 An .W.R.450 (FB)
- [\[31\]](#) (2003) 5 SCC 448
- [\[32\]](#) (2001) 2 SCC 247
- [\[33\]](#) (1944) KB 718
- [\[34\]](#) (1991)4 SCC 139
- [\[35\]](#) (1941) 2 All ER 11
- [\[36\]](#) AIR 1962 SC 83
- [\[37\]](#) (1989)1 SCC 101
- [\[38\]](#) AIR 1967 SC 1480
- [\[39\]](#) (2009) 6 SCC 379
- [\[40\]](#) (2004) 13 SCC 217
- [\[41\]](#) (1996) 6 SCC 44
- [\[42\]](#) (2006) 1 SCC 275
- [\[43\]](#) (2005) 6 SCC 404

- [\[44\]](#) AIR 1968 SC 647= (1968) 2 SCR 154
- [\[45\]](#) (1901) AC 495
- [\[46\]](#) (1992) 1 SCC 489
- [\[47\]](#) (1999) 7 SCC 298
- [\[48\]](#) (2004) 4 SCC 714
- [\[49\]](#) (1985) 3 SCC 169
- [\[50\]](#) 1989 Supp (2) SCC 364
- [\[51\]](#) (2003) 7 SCC 546
- [\[52\]](#) (1995) 6 SCC 749
- [\[53\]](#) (1994) 4 SCC 448
- [\[54\]](#) 1995 Supp (2) SCC 731
- [\[55\]](#) AIR 1989 SC 997
- [\[56\]](#) (2004) 2 SCC 590
- [\[57\]](#) (2006) 8 SCC 590
- [\[58\]](#) 1925 AC 578
- [\[59\]](#) (1971) 1 All ER 1148
- [\[60\]](#) (1891) 7 AC 173 : (1886-90) All ER Rep 651 (HL
- [\[61\]](#) (2004) 2 SCC 370 : AIR 2004 SC 1581
- [\[62\]](#) (1996) 4 SCC 69
- [\[63\]](#) (1770) 98 ER 327
- [\[64\]](#) AIR 1981 SC 2085
- [\[65\]](#) AIR 1995 Cal 327