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

Judgement reserved on: 01.10.2015

% Judgement delivered on: 23.11.2015

\+ **W.P.(C) 5544/2015**

M/S UDIT TEXTILES ..... Petitioner

versus

THE COMMISSIONER OF CUSTOMS (EXPORT) ..... Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr. Abhas Mishra and Mr. Harish Kohli, Advocates

For the Respondent: Mr Kamal Nijhawan & Ms Shreya Sinha, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J**

1. This writ petition was heard alongwith WP(C) 3598/2015, titled : ***M/s. Santosh Handloom Vs. The Commissioner of Customs (Import) and Ors***. A detailed counter affidavit was filed by the respondent in the said writ petition. The arguments in the said writ petition [i.e. WP(C) 3598/2015] and in the captioned petition were common on the issue of law raised therein; the dates and events not being in dispute.

2. It is a common ground that the facts obtaining in the instant case are largely similar to those which are found in ***Santosh Handloom*** case [i.e. WP(C) 3598/2015]. For the sake of greater clarity, I only set out, the crucial facts obtaining in the present case, which are as follows :-

2.1 The goods, in the instant case, were detained by the Directorate of

Revenue Intelligence (in short DRI) vide panchnama dated 26.07.2014.

2.2 The respondent issued a Show Cause Notice (SCN) dated 23.01.2015 under Section 110(2) of the Customs Act, 1962 (in short the Act), which was served on the Customs House Clearing Agent (in short, the CHA) of the petitioner, on the very same date.

2.3 The CHA, purportedly, made an endorsement on the SCN on the very same date (i.e. 23.01.2015), stating that no personal hearing was required in the matter.

2.4 Based on the above, the respondent passed an order on the very same date i.e. 23.01.2015, whereby in exercise of powers under the proviso to Section 110(2), they extended the period for issuance of the SCN (which was received by the CHA, on 23.01.2015) by a period of six (6) months.

2.5 Admittedly, the SCN dated 23.01.2015, was received by the petitioner via post, only on 03.02.2015.

2.6 Similarly, the order dated 23.01.2015, extending the period for issuance of the SCN was despatched via post on 31.01.2015. Therefore, if the date of service of the SCN dated 23.01.2015, on the petitioner is taken into account then, clearly the service was effected beyond the period prescribed under Section 110(2) of the Act.

2.7 The respondent, as in ***Santosh Handloom*** case [i.e. WP(C) 3598/2015] have argued that service on the CHA, was service, in law, on the petitioner. This submission of the respondent has been discussed in detail in the ***Santosh Handloom*** case [i.e. WP(C) 3598/2015], and thereupon, been rejected.

3. Therefore, in the aforesaid circumstances, both the SCN dated 23.01.2015 and the adjudication order dated 23.01.2015, will suffer the same

fate. The aforementioned SCN and the adjudication order are quashed. Resultantly, the respondent will have to return the goods seized, to the petitioner. However, as indicated in the ***Santosh Handloom*** case [i.e. WP(C) 3598/2015], the proceedings qua confiscation can continue. [See para 17 of the judgment of even date, passed in the case of ***Santosh Handloom*** {i.e. WP(C) 3598/2015}]

4. The captioned petition is disposed of, accordingly.

**RAJIV SHAKDHER, J**

**NOVEMBER 23, 2015**

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