IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-07-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WRIT APPEAL No.377 of 2016

Malabar Diamond Gallery Pvt. Ltd.
Represented by its Director Mr.Shafeekh VS
New No.72, Old No.169, North Usman Road
T.Nagar, Chennai - 600 017 ... Appellant

-vs-

1.The Additional Director General
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.117, Gopala Krishna Road, T.Nagar
Chennai - 600 017

2.The Commissioner of Customs (Import)
Customs House, No.62, Rajaji Salai
Chennai 600 001

3.The Commissioner of Customs (AIR)
Meenambakkam, Chennai - 600 027 ... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act against the order dated 17.11.2014 made in W.P.18833 of 2013. Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent to release the gold totally weighing 5541.92 gms and seized vide mahazar dated 27.3.2013.

For appellant : Mr.Joseph Prabhakar

For respondents: Mr.V.Sundareswaran
Senior counsel for R1
Mr.A.P.Srinivas,
Senior Standing Counsel
for R2 and R3

JUDGMENT

S.MANIKUMAR, J.

Writ appeal is directed against the order made in W.P.No.18833 of 2013 dated 17.11.2014, by which, the writ court has declined to issue a mandamus to the 1st respondent to release gold weighing 5541.92 Grams seized vide Mahazar dated 23.07.2013.

2. Facts leading to the appeal are that the officers of the Additional Director General, Directorate of Revenue Intelligence, Chennai Zonal Unit, Chennai, visited the premises of the appellant's office on 27.03.2013, in connection with certain enquiry made relating to smuggling of Singapore gold jewellery. According to them, based on intelligence, they seized 28.499 Kgs of smuggled 22 ct gold jewellery from the possession of one Mr.R.Mahaveer. He had given voluntary statements dated 19.03.2013 and 25.03.2013 respectively, confessing that he had smuggled Singapore gold jewellery.

3. Case of the appellant is that they used to receive gold jewellery through their sister concern, namely M/s.Focus Jewel Arcade Pvt. Ltd., Coimbatore and one Mr.Shameem, is the person in-charge of procuring gold jewellery for them.

4. Before the writ court, appellant also contended that the request to provisionally release the seized goods in terms of Section 110-A of the Customs Act, 1962 was not considered, despite appellant's assurance that they would cooperate in the investigation and therefore, they were constrained to file W.P.No.18833/2013, for a mandamus directing Additional Director General, Directorate of Revenue Intelligence, Chennai Zonal Unit, Chennai to release gold weighing 5541.92 Grams, seized vide Mahazar dated 27.03.2013.

5. On behalf of Directorate of Revenue Intelligence, Chennai (1st respondent herein), a counter affidavit has been filed contending inter alia that on specific intelligence, that Mr.R.Mahaveer has smuggled gold jewellery from Singapore, planned to carry the said smuggled gold jewellery weighing about 8 Kgs by Flight No.SG 3241 on 19.03.2013 to Cochin to sell the same and the officers of CUZ-DRI, intercepted at Kamaraj Domestic Terminal of Chennai Airport, along with his son, while they were about to board the said flight. Subsequently, the officers of CZU-DRI, seized 8.452 Kgs of 22 ct gold under Mahazar dated 19.03.2013. The Gold Assayer, certified that the said seized 22 ct gold jewellery is of foreign origin. During the Mahazar proceedings, Mr.R.Mahaveer, admitted that the said 8.452 Kgs of 22 ct gold jewellery is of Singapore origin and that the same was smuggled into India, without payment of

customs duty. According to the Directorate of Revenue Intelligence, Chennai, gold seized is liable for confiscation, in terms of the provisions of the Customs Act, 1962.

6. The Directorate of Revenue Intelligence, Chennai, has further stated that Mr.R.Mahaveer, in his voluntary statements dated 19.03.2013 and 25.03.2013 respectively has stated that he had smuggled gold jewellery from Singalpore, with the help of his Burma Bazaar operators, namely Mr.Karuppaswamy, Mr.Ali, Mr.Malar and Mr.Praveen, who had engaged in different carriers, to smuggle gold jewellery from Singapore, in small quantities (50 to 300 gms), through different airports in India; that his Burma Bazar operators would collect his gold jewellery from these carriers and hand over the same to him; that he would pay a commission of Rs.140/- to 150/- per gm, to these Burma Bazaar operators; that his main suppliers in Singapore are, Kin Leon, Simon and Chia of G&J Jewellery. According to the department, Mr.R.Mahaveer has further stated that he had sold these smuggled gold jewellery to various jewellery shops and brokers of different cities, namely M/s.Khazana Jewellery, Chennai, M/s.Saravana Stores, Chennai, M/s.Malabar Jewellery, Chennai, M/s.Saravana Selvarathinam Jewellery, Chennai, M/s.Nathella Sampathu Jewellery, Chennai, M/s.Prince Jewellery, Chennai, Shri Narayan Soni, Kolkata, M/s.S.K.Chain, Kolkatta, Shri Dilip Jain, Cochin etc; that no invoice was raised for the sale of these smuggled Singapore gold jewellery and that he received equivalent quantity of gold bars of 22 ct from the buyers; that 4.627 Kgs of 24 ct gold bars/bits seized from his premises are nothing but proceeds of the sale of smuggled Singapore gold jewellery.

7. The Directorate of Revenue Intelligence, has further stated that, based on the voluntary statement of Mr.R.Mahaveer, corroborated with documents recovered from his residential premises, simultaneous searches were also conducted on various buyers stated supra, who have purhcased Singapore gold jewellery from Mr.R.Mahaveer. Search conducted at the business premises of M/s.Malabar Diamond Gallery Pvt. Ltd., the appellant herein, on 27.03.2013 led to the recovery of the smuggled gold jewellery of Singapore origin received from Mr.R.Mhaveer. On assaying the gold jewellery, Mr.Mohan Achari, a govt approved assayer certified that the said gold jewellery was 22 ct gold, totally weighing 5541.92 gms, having a market value of Rs.1,54,28,705/-. Simultaneously, on 27.03.2013, during search operations conducted at the business premises of M/s.Focus Jewel Arcade Pvt. Ltd., Coimbatore, a total of 894 gms of Singapore gold jewellery valued at Rs.24,88,896/- was seized by the officers of DRI, Coimbatore, as the same was admittedly the remanants of 1400 gms of smuggled gold jewellery of Singapore origin purchased from Mr.R.Mahaveer without bill.

8. The Directorate of Revenue Intelligence, Chennai further stated that in the voluntary statement dated 28.03.2013, Mr.N.Saju, Director of Malabar Diamond Gallery Pvt. Ltd. inter alia admitted that he had received the said Singapore gold jewellery of 5.5419 Kgs from their sister concern M/s.Focus Jewel Arcade Pvt. Ltd. He also stated that 5.5419 Kgs of gold jewellery were segregated in their stock separately and marked as "Singapore". He also stated that 5.5491 Kgs was purchased by Mr.T.Shameem of M/s.Focus Jewel Arcade Pvt. Ltd. from Mr.R.Mahaveer of Mundhra Jewellers. Mr.Saju also admitted to have received imported Singapore gold jewellery from Mr.R.Mahaveer of Mundhra Jewellers, Chennai on 4 to 5 occasions, in the past, on the instructions of the said Mr.T.Shameem and paid Mr.R.Mahaveer, in terms of equivalent quantity of gold bars (24 carat) as per Mr.Shameem's instructions.

9. The Directorate of Revenue Intelligence, has further submitted that Mr.T.Shameem, Manager of M/s.Focus Jewel Arcade Private Limited, Coimbatore, in his voluntary statement dated 27.03.2013 given before the Senior Intelligence Offier, DGCEI, Coimbatore inter alia stated that Mr.R.Mahaveer of M/s.Mundhra Jewellers, Chennai approached him during October 2012 with sample of gold jewellery of Singapore origin and requested to purchase the same from him; that he agreed to place orders for procurement of the said Singapore origin gold jewellery, as the price quoted for the said gold jewellery of Singapore origin by Mr.Mahaveer was less than the market price; that he received two consignments of gold jewellery of Singapore origin of 608.290 gms and 1688.625 gms covered under Invoice No.MJ/2012-13/Credit 1 dated 09.10.2012 and MJ/2012-13/Credit 3 dated 22.02.2013 respectively; that apart from the above consignments, he also received gold jewellery of Singapore origin ranging from 800 gms to 1400 gms, on 5 occasions around the time without any bill; that, the payment for receipt of those imported Singapore gold jewellery received from R.Mahaveer without bill was made in the form of equivalent 24 carat refined gold; that, sometimes, 24 carat gold bars brought by M/s.Malabar Gold Pvt. Ltd. from Scotia Bank were also given to Mr.R.Mahaveer as payment for the Singapore origin gold jewellery; that mostly Mr.R.Mahaveer used to deliver the gold jewellery of Singapore origin to their showroom in T.Nagar, Chennai; that as per his instructions, Mr.Saju N, Manager of M/s.Malabar Gold and Diamond Pvt. Ltd., Chennai, used to pay Mr.R.Mahaveer for the gold jewellery of Singapore origin in terms of refined gold bars; that during the previous week, they had received around 1400 gms of gold jewellery of Singapore origin without bill from Mr.R.Mahaveer, of which 894 grams came to be seized by the DRI officers; that he was aware that procuring/trading of gold jewellery of Singapore origin without proper documents was an offence, but did so due to their better quality and lower price.

10. The Directorate of Revenue Intelligence, Chennai has further submitted that Mr.Praveen Kumar, Burma Bazaar operator has been arrested and remanded to judicial custody. According to the first respondent, as per Customs Notification No.3/2012 dated 16.01.2012, only passengers of Indian origin or a passenger in possession of a valid passport issued under the Indian Passports Act, 1967, who have stayed abroad for six months and above, are eligible to import gold of foreign origin and clear the same on payment of Customs duty, at the rate prescribed. The said notification, thus imposes restriction on the import of gold into India by a passenger.

11. Placing reliance on the decision of the Hon'ble Supreme Court in Sheikh Mohd Omer vs. Collector of Customs, Calcutta reported in 1983 (13) ELT 1439, the Directorate of Revenue Intelligence has further submitted that any prohibition applies to every type of prohibitions, which may be complete or partial and even a restriction imposed on import or export is to an extent, a prohibition. They further added that gold smuggled into India from Singapore through International Airports in India, without declaration and without payment of applicable customs duty, is liable for absolute confiscation under Section 111 of Customs Act, 1962 and therefore, the request for provisional release under Section 110-A of Customs Act, 1962, should not be ordered. The 1st respondent has also submitted that Section 110-A of the Customs Act, 1962 prescribes a reasonable time limit of six months from the date of seizure to complete the investigation and issue show cause notice. On the date of filing of counter affidavit, investigation was under progress and that therefore, the Directorate of Revenue Intelligence, Chennai has stated that investigation would be completed within the said time limit and show cause notice will be issued to the appellant/petitioner, as well as to others, making it answerable to the Adjudicating Authority, namely, the Commissioner of Customs (Seaport - Import). In the above said circumstances, the Directorate of Revenue Intelligence, Chennai has stated that the appellant can approach the Adjudicating Authority, Commissioner of Customs (Seaport - Import). For the above said reasons, he has prayed for dismissal of the writ petition.

12. Materials on record disclose that subsequently, a show cause notice dated 16.09.2013 has been issued by the Additional Director General of Directorate of Revenue Intelligence, Chennai to the appellant, as well as 18 other noticees, as to why the gold seized, should not be confiscated, under Section 111(d) and 111(1) of the Customs Act, 1962 and penalty should not be imposed on them, under Section 112 of the said Act. Materials on record dicloses that in the writ petition, initially, the Additional Director General, Directorate of Revenue

Intelligence, Chennai, Chennai Zonal Unit, Chennai-17 alone was shown as the respondent. Subsequently, vide order in M.P.No.1/2013 dated 05.08.2013, Commissioner of Customs (Import), Chennai-600001 and Commissioner of Customs (AIR), Chennai-600027, have been impleaded as respondents 2 and 3, in the writ petition.

13. On the above facts, when the writ petition came up for hearing, petitioner/appellant has submitted that gold jewels were purchased for valuable consideration, and that a reply dated 18.11.2013 to the show cause notice, has already been submitted.

14. On behalf of the department, submission has been made that the department is ready and willing, to adjudicate the claim, pursuant to the show cause notice, provided all the noticees, cooperate with the department. On the above submissions, the writ court in W.P.No.18833/2013 dated 17.11.2014 has ordered as, hereunder:

> " 5. From the copy of the show cause notice dated 16.9.2013, it is seen that there are 19 persons, against whom, notice has been issued. In such circumstances, no direction can be issued to the respondents, solely at the instance of the petitioner herein, who is one among 19 notices.
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> 6. Therefore, a direction is issued to the third respondent to adjudicate the claim made in the show cause notice dated 16.09.2013 subject to the condition that all the noticees should participate and cooperate with the adjudication. The said exercise shall be completed as expeditiously as possible, preferably within 6 months from the date of receipt of the copy of this order. No costs."

15. Inviting the attention of this court to Section 2(33) of the Customs Act, 1962, which defines "prohibited goods", Mr.Joseph Prabhakar, learned counsel for the appellant submitted that "prohibited goods" means "any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with." He further submitted that import of gold is not prohibited. He further submitted that Chapter IV of the Customs Act, 1962 deals with prohibitions on importation and exportation of goods. According to him, as per Section 11, if the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely

or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

16. Learned counsel for the appellant, further submitted that import of gold is not a prohibited good either under Section 2(33) or under Section 11 of the Customs Act, 1962. Referring to Section 110(1) of the Customs Act, 1962, learned counsel for the appellant submitted that if the proper officer has reason to believe that any goods are liable to confiscation under the Customs Act, 1962 he may seize such goods. Added further, he submitted that as per Section 110(1A) of the Customs Act, 1962, the Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any ohter relevant considerations, by notification in the Official Gazette, specify the goods or clause of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner, as the Central Government may, from time to time, determine after following the procedure hereinafter specified, in the subsequent paragraphs procedure set out in Section 110 of the Act.

17. Referring to the Notification No.72/97-Cus.(NT) dated 22.12.1997, learned counsel for the appellant submitted that as per schedule 4A to the said notification, gold in all forms, including bulliion, ingot, coin, ornament, crude jewellery, has been included as goods of perishable nature, depreciation in the value in the passage time, and therefore, the same can be disposed of, in such a manner as the Central Government may specify from time to time, by the proper officer. Inviting attention of this court to Circular No.22/2004-Cus. dated 03.03.2004, learned counsel for the appellant further submitted that even in the case of provisional assessment/clearance of disputed or offending consignments, Central Board of Excise & Customs, New Delhi has issued the aforesaid circular, by taking adequate bank guarantee/security to safeguard revenue (possible fine and penalty), gold seized can be released. He further submitted that though, the appellant has submitted their reply dated 18.11.2013 to the Commissioner of Customs (Seaport - Import), Chennai, and also assured cooperation, one of the 19 noticees, has filed a writ petition, challenging the show cause notice dated 16.09.2013 and by virtue of interim stay granted in the said writ petition, adjudication proceedings is not continued, and therefore, there is a delay in adjudication, for which the appellant is not responsible. In the above said circumstances, learned counsel reiterated that when gold is not a prohibited goods, the same can be released provisionally,

subject to taking adequate bank guarantee/security including possible fine and penalty, if any, to be passed in the adjudication proceedings.

18. Learned counsel for the appellant further submitted that Section 110 of the Customs Act, 1962, deals with seizure of goods, documents and things states that, if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods. Despite section 110(1-A) of the Act, which empowers the proper officer to dispose of the goods, and when they are not released, according to him, taking note of the difficulties, in the matter of release of goods, until the adjudication is finalised, by Act 2006 with effect from 13.07.2006, Section 110-A has been inserted, which reads thus:

> "Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

Contending interalia that the very insertion of Section 110-A of the Customs Act, 1962, between Section 110, which deals with seizure of goods, documents and things, and Section 111 of the Act, which deals with confiscation of improperly imported goods, etc., it is the contention of the learned counsel for the appellant that the intention of the Legislature is to provisionally release the goods, taking note of the delay, pendency of the adjudication proceedings and perishable nature of gold and other goods, as per the above said Notification and therefore, it is not open to the respondents to contend that until the adjudication proceedings are concluded, no provisional release can be made. According to him, objection of the respondents, is against the very statutory provision of Section 110-A of the Act.

19. At this juncture, he further added that, after the filing of the reply dated 18.11.2013 before the Adjudicating Authority, on 23.06.2014, the appellant had also appeared and cooperated with the adjudication but then, the proceedings have been stayed by this court. Though the writ court in W.P.No.18833/2013 dated 17.11.2014 directed the respondents to complete the proceedings as expeditiously as possible, preferably within six months from the date of receipt of a copy of the order and accordingly, adjudication proceedings also commenced, because of the stay of the proceedings, the appellant could not effectively implement the orders.

20. Referring to Section 125 of the Customs Act, 1962, learned counsel for the appellant submitted that whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging it, may, in the case of any goods, the importation or exportation thereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.

21. Reiterating that import of gold is not prohibited under the Customs Act, 1962 or any other law for the time being in force, learned counsel for the appellant submitted that even taking for granted that the gold seized is authorised by the Customs Act, 1962, is liable for confiscation, still the officer adjudging, is empowered to give it to the owner of the goods, from whom possession or custody was taken, with an option to pay in lieu of confiscation as the officer thinks fit and in the light of the power conferred on the authority and relying on the decision in Navshakthi Industries Pvt. Ltd. vs. Commr. of Cus., ICD, TKD, New Delhi reported in 2011 (267) E.L.T. 483 (Del.), learned counsel for the appellant submitted that provisional release of goods seized, is permissible subject to appellant furnishing a bank guarantee for the duty, on the entire amount of gold seized from the appellant.

22. Placing reliance on M/s.R K Enterprises vs. Commissioner of Customs, Chennai and others reported in 2015-TIOL-2733-HC-MAD-CUS, learned counsel for the appellant further submitted that considering the prayer for provisional release, court has to consider the interest of the importer viz-a-viz that of the revenue and by doing so, the following factors have to be considered:

(i) Whether the goods are prohibitory goods;
(ii) Whether the goods require specific licence; and
(iii) Whether goods are contra band

According to him, when gold is not a prohibitory good, in terms of Section 2(33) of the Customs Act, 1962, read with the notifications cited supra, provisional release, should be ordered.

23. Per contra, taking this court through the show cause notice dated 16.09.2013, as to how 5541.92 grams of gold were seized from the business premises of the appellant, confession statements Mr.R.Mahaveer and others, recorded during investigation and summarised in the show cause notice dated 16.09.2013, Mr.A.P.Srinivas, learned counsel for the second

respondent submitted that the gold seized, was of Singapore origin and that they are goods of foreign origin. Referring to Section 123(1)(a) of Customs Act, 1962, he further submitted that where any goods to which the sub-section applies are seized under the Customs Act, 1962 and where there reason to believe that they are smuggled goods, the burden of proving that they are not smuggled goods shall be:

> (a) in a case where such seizure is made from the possession of any person, -
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> (i) on the person from whose possession the goods were seized; and
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> (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
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> (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

Referring to sub-section (2) of Section 123 of the Customs Act, 1962, he further submitted that the said section shall apply to all the goods including gold. According to him, unless the appellant satisfies that they are not smuggled goods and discharged their burden, they cannot seek for release of goods. In this context, he also referred to section 2(39) of the Customs Act, 1962, which defines "smuggling" and the said section reads "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113 of the Customs Act. Learned counsel for the 2nd respondent submitted that when the act or omission of the appellant renders the goods liable to be confiscation under Section 111 or 113 of the Act, as the case may be, such goods will fall under the definition of prohibited goods, within the meaning of Section 2(33) of the Customs Act, 1962.

24. Referring to Chapter IV-A of the Customs Act, 1962, which deals with detention of illegally imported goods and prevention of the disposal thereof, and in particular Section 11-A of the Act, learned counsel for the 2nd respondent submitted that illegal import means that import of any goods in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force and, on the facts and circumstances of this case, submitted that when the appellant has not discharged the burden under Section 123 of the Act, the goods seized, are smuggled goods and thus prohibited goods under Section 2(33) of the Customs Act, 1962.

25. Placing reliance on the decision of the Hon'ble Apex Court in N.K.Bapna vs. Union of India reported in 1992 (60) ELT 13 SC (LB), learned counsel for the respondents submitted that in the reported case, the department permitted bonding of the goods. It was the case of the department that goods were smuggled. Subsequently, the goods were clandestinely removed. On the above facts, the appellant therein contended that no confiscation of the goods can be ordered. However, the Hon'ble Supreme Court, held that reading of the section 111(j) makes it clear that to arrive at a conclusion as to whether the goods are liable for confiscation or not and not to the actual confiscation of the goods which have been clandestinely removed. In the light of the above, Mr.A.P.Srinivas, learned counsel for the respondents contended that the goods which are not assessed to duty are liable for confiscation, and therefore, the seizure effected and the consequential adjudicatory proceedings have to be concluded and till such time, provisional release should not be ordered.

26. Refuting the arguments of the appellant that ultimately, even if the adjudicating authority arrives at a conclusion that goods seized are liable for confiscation, and at this stage of adjudication it is always open to the adjudicating authority to release the goods, on payment of fine in lieu of confiscation, when there is no absolute prohibition and that there is no need to hold the goods till the conclusion of the proceedings, placing reliane on Union of India vs. Lexus Exports P Ltd reported in 1994 (71) ELT 348 (SC), learned counsel for the 2nd respondent submitted that whether on the conclusion of the adjudication proceedings, the adjudicating authority would give right of redemption or not, is not a matter to be decided at the stage of provisional release and it can be done only on the conclusion of the adjudication proceedings by the adjudicating authority and in such circumstances, as on today, there is no right, much less absolute right, to claim release of gold, which according to the department is smuggled in to the country. In this context, he also referred to the relevant paragraphs in Lexus Exports case. At this juncture, he also submitted that when Lexus Exports P Ltd's case was decided in 1994 when Section 110-A of the Customs Act, 1962 was not there in the statute book. According to him, at that point of time, power to provisionally release the seized goods was exercised under Rule 206 of the Central Excise Rules, 1944 and in that context of the matter, drew the attention of this court to the judgment in Southern Springs and wire products vs Collector of Central Excise reported in 1990 (48) ELT 335 (Mad).

27. Placing reliane on Om Prakash Bhatia vs. Commissioner of Customs, Delhi reported in 2003 (155) ELT 423 (SC), the learned counsel for the respondents submitted that when clause (d) of Section 111 of the Customs Act, 1962 states that any goods which

are imported or attempted to be imported contrary to any provision imposed by any law for the time being in force in this country is liable to be confiscated and when restrictions are made in the statute, subject to which goods are to be imported and when the appellant has failed to discharge the burden under Section 123 of the Customs Act, 1962 then the goods seized are liable for confiscation. According to him, the Hon'ble Supreme Court, has categorically held restriction is one type of prohibition and therefore, prayed to reject the contentions of the appellant. Taking through the judgment in Om Prakash Bhatia vs. Commissioner of Customs, Delhi, Mr.A.P.Srinivas, learned counsel for the 2nd respondent submitted that even over invoicing of the goods for export, has been held as prohibited.

28. Placing reliance on Commissioner of Customs (AIR), Chennai -1 vs. Samynathan Murugesan reported in 2009 (247) ELT 21 (Mad)(DB), learned counsel for the 2nd respondent submitted that the decision in Omprakash Bhatia's case has been followed, giving effect to the meaning of the word 'prohibition' and on appeal, Samynathan Murugesan case has been confirmed by the Hon'ble Supreme Court. On the aspect as to how the meaning of the word 'prohibition' in the Act is understood, reference was also made to a decision of Commissioner of Customs, Chennai vs Brinda Enterprises reported in 2010 (262) ELT 239 (Mad)(DB).

29. Placing reliance on the decision in Abdul Razak vs Union of India reported in 2012 (275) ELT 300 (Ker)(DB), learned counsel for the respondents submitted that the very aspect, as to whether gold is a prohibited item or not, and when importers are aware of the restriction, including the necessity to declare the goods on arrival at the customs station and to make payment of duty at the rate prescribed, a Hon'ble Division Bench of the Kerala High Court in Abdul Razack's case held that the goods brought, is prohibitory, and hence prohibited goods, liable for confiscation.

30. Referring to the judgment in First Track Traders vs. Commissioner of Customs reported in 2012 (286) ELT 681 (Mad) (DB), learned counsel for the respondents submitted that the appellant cannot, at the matter of right, claim provisional release of goods on payment in redemption of duty and in the reported case, the court has held that even false declaration of goods and violation of the conditions would make the goods, fall within the ambit of section 2(33) of the Customs Act, 1962 (prohibited goods).

31. Placing reliance on a decision in Ashish Kumar Chaurasia vs. Commissioner, CESTAT reported in 2015 (325) ELT 250 (All) (DB), learned counsel for the respondents further submitted that when the appellant has not produced any valid documents and

discharged the burden under Section 123 of the Customs Act, 1962, goods seized are to be treated as smuggled goods and hence prohibited.

32. By way of reply, Mr.Joseph Prabhakar, learned counsel for the appellant submitted that Section 11A of the Customs Act, has no application to the case on hand, as the said Section defines, “illegal import”, as import of any goods in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force.

33. Referring to Sections 111 and 125 of the Customs Act, which deal with confiscation of imported goods, etc., and option to pay fine in lieu of confiscation respectively, learned counsel for the appellant submitted that Section 125 has two limbs, (1) either confiscation of any goods, importation or exportation thereof, are prohibited and (2) in the case of any other goods, gives an option, to the owner of the goods, to pay, in lieu of confiscation, such fine, as the said officer thinks fit. He further submitted that the decisions relied on by the learned counsel for the respondents, rendered in individual cases, with reference to baggage rules, are not applicable to the facts of this case.

34. Heard the learned counsel appearing for the parties and perused the materials available on record.

35. The fact that gold weighing 5541.92 gms, was seized, under mahazer, dated 27.03.2013, is not disputed. Details of the search in other places and statements given, have been extracted in the foregoing paragraphs. A show cause notice, dated 16.09.2013, has been issued by the Directorate of Revenue Intelligence to the appellant and 18 others, calling upon them, as to why, the seized gold jewellery, should not confiscated, under Section 111(d) and Section 111(l) of the Customs Act, 1962 and penalty should not be imposed on them, under Section 112 of the Customs Act, 1962.

36. Before the issuance of the show cause notice, the appellant has filed W.P.No.18833 of 2013, praying for a direction to the Directorate of Revenue Intelligence, to release the seized gold. Subsequently, vide order in M.P.No.1 of 2013, dated 05.08.2013, Commissioner of Customs (Import), Chennai and the Commissioner of Customs (AIR), Chennai, have been impleaded as respondents 2 and 3.

37. Taking note of the fact that a show cause notice, dated 16.09.2013, has been issued to many noticees, reply affidavit, dated 18.11.2013 of the appellant, the Writ Court was not inclined to issue any direction to the respondents, solely at the instance of the appellant, who is one among the 19 noticees.

So saying, the Writ Court has issued a direction to the Commissioner of Customs (AIR), Chenni, third respondent herein, to adjudicate the claim made in the show cause notice, dated 16.09.2013, subject to the condition that all the noticees should participate and co-operate with the adjudication. Writ Court has further directed that the adjudication proceedings should be completed as expeditiously as possible, preferably within six months, from the date of receipt of passing of the order. However, at the instance of one of the noticees, adjudicatory proceedings have been stayed.

38. Before adverting to the rival contentions of both parties, it is relevant to have a cursory look at the provisions of the Customs Act, 1962. As per Section 2(33) of the Customs Act, "prohibited goods" means, any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

39. Positively, prohibited goods are defined, as goods, import or export of which, should be subject to any prohibition under this Act or any other law for the time being in force. Negatively, Section 2(33) of the Act, also states that goods are not prohibited goods, when import or export of which, does not include any such goods, in respect of which, the conditions subject to which the goods are permitted to be imported or exported have been complied with. The expression "subject to any prohibition under this Act or any other law for the time being in force and compliance of the conditions, subject to which, the goods are permitted to be imported or exported, are the determining factors, to understand and to give effect to the meaning of the words, "prohibited goods".

40. Literal interpretation of the words, "prohibited goods" and the contention that gold is not notified and therefore, to be released, would cut down the wide ambit of the inbuilt prohibitions and restrictions in the Customs Act, 1962 and any other law for the time being in force.

(i) In Poppatlal Shah v. State of Madras reported in AIR 1953 SC 274, the Supreme Court held that, "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."

(ii) It is well settled that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act, so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugancy either within the statute or between a Section or other parts of the statute. [Ref. Raj Krishna v. Bonod Kanungo reported in AIR 1954 SC 202].

(iii) In The State of Bihar v. Hira Lal Kejriwal reported in AIR 1960 SC 47, the Supreme Court, at Paragraph 6, held that,

> "To ascertain the meaning of a section it is not permissible to omit any part of it: the whole section should be read together and an attempt should be made to reconcile both the parts. ......The first part gives life to that Order, and, therefore, the acts authorised under that Order can be done subsequent to the coming into force of the Ordinance. ......The second part appears to have been enacted for the purpose of avoiding this difficulty or, at any rate, to dispel the ambiguity."

(iv) In State of W.B., v. Union of India reported in AIR 1963 SC 1241, the Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

(v) In State of Uttar Pradesh v. Dr.Vijay Anand Maharaj reported in AIR 1963 SC 946, the Hon'ble Supreme Court held as follows:

> "The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature."

(vi) In Namamal v. Radhey Shyam reported in AIR 1970 Rajasthan 26, the Court held as follows

> "11. Maxwell in his book on Interpretation of Statutes (11th Edition) at page 226 observed thus:--
>
> "The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of

the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well us other statutes, is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Cole's words, to suppress the mischief and advance the remedy."

(vii) In Commissioner of Sales Tax v. M/s.Mangal Sen Shyamlal reported in 1975 (4) SCC 35 = AIR 1975 SC 1106, the Apex Court held that, "A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is. not to resile. It has to abide by the maxim, "ut res magis valiat quam pereat", lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(viii) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In Ku.Sonia Bhatia v. State of U.P., and others reported in 1981 (2) SCC 585 = AIR 1981 SC 1274, the Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(ix) In Balasinor Nagrik Co-operative Bank Ltd., v. Babubhai Shankerlal Pandya reported in 1987 (1) SCC 606, the Supreme Court, at Paragraph 4, held as follows:

"It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section. ....It also provides for the manner of the exercise of such power. .... Sub-section (1) of Section 36 is made subject to the fulfilment of the conditions prerequisite,"

(x) In the case of Reserve Bank of India v. Peerless G.F., & Co., Ltd., AIR 1987 SC 1023, the Hon'ble Apex Court held :

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

(xi) In Balram Kumawat v. Union of India reported in 2003 (7) SCC 628, the Supreme Court held that, "Contextual reading is a well-known proposition of interpretation of statute. The classes of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of "ex visceribus actus" should be resorted to in a situation of this nature."

(xii) In State of Gujarat v. Salimbhai Abdulgaffar Shaikh reported in 2003 (8) SCC 50, the Supreme Court held that,

"Broadly speaking, therefore, an appeal is a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court.......

........It is well settled principle that the intention of the legislature must be found by reading the Statute as a whole. Every clause of Statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole Statute. It is also the duty of the Court to find out the true intention of the legislature and to ascertain the purpose of Statute and give full meaning to the same. The different provisions in the Statute should not be interpreted in abstract but should be construed keeping in mind the whole enactment and the dominant purpose that it may express."

(xiii) In A.N.Roy Commissioner of Police v. Suresh Sham Singh reported in AIR 2006 SC 2677, the Apex Court held that,

> "It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(xiv) In Visitor Amu v. K.S.Misra reported in 2007 (8) SCC 594, the Supreme Court held that, "It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

41. In the light of the decisions and in the context of what is observed above, the expression, in section 2(33) of the Act, "prohibition under this Act" or any other law for the time being, has to be examined with the other provisions in the Customs Act, 1962. Section 2(39) of the Act, defines "Smuggling" in relation to any goods, which means, any act or omission which will render such goods liable to confiscation under section 111 or section 113. Chapter IV of the Act, deals with prohibition on importation and exportation of goods. Section 11 deals the power to prohibit importation or exportation of goods and the said Section is extracted hereunder:

> "(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification

in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:-

(a) the maintenance of the security of India;

(b) the maintenance of public order and standards of decency or morality;

(c) prevention of smuggling;

(d) prevention of shortage of goods of any description;

(e) conservation of foreign exchange and the safeguarding of balance of payments;

(f) prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;

(g) the prevention of surplus of any agricultural product or the product of fisheries;

(h) maintenance of standards for the classification, grading or marketing of goods in international trade;

(i) establishment of any industry;

(j) the prevention of serious injury to domestic production of goods of any description;

(k) protection of human, animal or plant life or health;

(l) the protection of national treasures of artistic, historic or archaeological value;

(m) conservation of exhaustible natural resources;

(n) protection of patents, trademarks and copyrights;

(o) prevention of deceptive practices;

(p) carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;

(q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;

(r) implementation of any treaty, agreement or convention with any country;

(s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;

(t) prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;

(u) prevention of the contravention of any law for the time being in force; and

(v) other purpose conducive to the interests of the general public."

42. Chapter IV-A deals with detection of illegally imported goods and prevention of the disposal thereof. Section 11A speaks about illegal import, intimated place, notified date and notified goods. Section 11A(a) of the Act, defines, "illegal import" and the same is extracted hereunder:

"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force."

43. Chapter XIII deals with searches, seizure and arrest. Section 110 of the Act, deals with seizure of goods, documents and things and the same reads as follows

"SECTION 110. Seizure of goods, documents and things. - (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

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

(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

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

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

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

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

44. Section 110A deals with provisional release of goods, documents and things seized pending adjudication and the said section is extracted hereunder:

"Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

45. Chapter XIV deals with the confiscation of goods and conveyances and imposition of penalties. Section 111, dealing with confiscation of improperly goods, etc., read as follows:

"The following goods brought from a place outside India shall be liable to confiscation: -

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

(n) any dutiable or prohibited goods transited with or without transhipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened."

46. Section 112 deals with the penalty for improper importation of goods, etc., and the same is extracted hereunder:

"SECTION 112. Penalty for improper importation of goods, etc.- Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest."

47. Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confisaction under Section 111 of the Act. Sub section (b) to Section 111 of the Act covers the persons involved.

48. Section 123 of the Act, deals with burden of proof in certain cases and the same is extracted hereunder:

"(1) where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

(a) in a case where such seizure is made from the possession of any person, -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."

49. Section 125 of the Act, speaks about the option to pay fine in lieu of confiscation and the said Section is extracted hereunder:

"(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) 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."

50. Section 126 of the Act, deals with, on confiscation, property to vest in Central Government. The said Section reads thus,

"(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods."

51. The main contention of the learned counsel for the appellant is that the gold is not a prohibited good, in terms of Section 2(33) of the Customs Act, 1962 and when the Central Government, having regard to the perishable nature, depreciation in the value of the goods with the passage of time, constraints of storage space and valuable nature of the goods, mentioned in

the Schedule, vide Notification No.72/97-Cus. (NT), dated 22.12.1997, in exercise of the powers conferred by sub-Section (1A) of Section 110 of the Customs Act, 1962 (52 of 1962), made amendments in the Schedule 4A to the said notification, specifying gold in all forms, including bullion, ingot, coin, ornament, crude jewellery, the provisional release is permissible, pending adjudication proceedings and that the appellant has every right to seek for such release and need not wait till the out of the adjudication proceedings. Notification in Circular No.22/2004-Cus, dated 03.03.2004, dealing with the delay in release of consignments due to classification disputes, seizure and provisional release thereof, is extracted hereunder:

> "I am directed to say that the trade has represented to the Board that the items involved in classification disputes should not be withheld but should be released by resorting to provisional assessment.
>
> 2. The matter has been examined by the Board. It may be mentioned that in case of classification disputes, by and large, option is given for provisional clearance/assessment, if the inquires are going to take time. However, the Board desires that a dispute or offending consignment should also not be held up unless its import/clearance is totally prohibited or banned under any law for the time being in force [E.g. PFA, CITES, Weight & Measures Act, etc.] or where prosecution is contemplated. At most, samples should be drawn and consignment should be allowed to be cleared on provisional basis as a matter of right. This will prevent congestion at ports and warehouses. Adequate B.G./security may be taken to safeguard revenue (including possible fine and penalty). In case where it is decided to detain the consignment action should be taken to shift the same to a Customs Warehouse under Section 49 of the Customs Act, 1962 [Board's Circular No.84/95-Cus., dated 25.07.1995 may be referred to - 1995(79) ELT T12].
>
> 3. Kindly, bring the above instructions to the knowledge of all concerned."

52. Though the learned counsel for the appellant submitted that gold is included as one of perishable items in Schedule 4A to the Notification, dated 22.12.1997, issued under Section 110 (1A) of the Customs Act, 1962 and also referred to the Circular, dated 03.03.2004, dealing with the issue of delay in release of consignments, due to classification disputes, seizure and provisional release thereof, reading of the above Circular,

makes it clear that it mainly deal with the delay in classification disputes and therefore, it is the considered view of this Court, that the circulars do not mandate that smuggled goods seized and liable for confiscation, also should be mandatorily released, immediately after seizure.

53. The Board has made it clear, unless the import/clearance is totally prohibited or banned, under any law, for the time being in force or where prosecution is contemplated, good seized need not be released. There cannot be any dispute that, smuggling as defined in section 2(39) of the Act and included in Sub-Section (i) to Section 11 of the Act is prohibited. That apart, in the instant case, FIR has been lodged and and one Mr.Praveen Kumar, has already been arrested and produced before the Court. It is not the case of the appellant that there is any congestion at the Ports or Warehouses. One of the important aspects to be taken note by the authorities while exercising their powers under Section 110-A of the Act is whether, import of goods is prohibited, within the meaning of Section 2(33) of the Customs Act, 1962 and where, in the Customs Act or any other law for the time being in force, such prohibition is mentioned? what are all the things to be prohibited and whether the goods imported or exported are in contravention of the subject matters, enumerated in the Customs Act, 1962 or any other law for the time being in force, are prohibited goods? At this juncture, the authorities also duty bound to consider, as to whether, for the goods imported/exported, there is prohibition or restriction, in the Customs Act, 1962 or any other law for the time being in force.

54. If the contentions of the appellant have to be accepted, then all the goods seized and liable for confiscation have to be provisionally released, in terms of Section 110(1A) of the Customs Act, 1962, and in such circumstances, the very object of the Customs Act, 1962, would be defeated. Going through the notifications, we are of the view that the abovesaid notifications do not confer any absolute right to the appellant, to seek for provisional release of gold, alleged to have been smuggled. At this juncture, it is relevant to extract Paragraphs 41 and 42 in the show cause notice, dated 16.09.2013, issued by the Directorate of Revenue Intelligence, as to how, the gold came to be seized and liable for confiscation,

> "41. As per Section 111(d) of Customs Act, 1962, any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force are liable to be confiscated. As per Section 111(1) of the Customs Act, 1962, any dutiable or prohibited goods which are not

included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77 are also liable for confiscation. While this being the legal position, several carriers operated by 'Burma Bazaar' agents of Shri Mahaveer have smuggled gold jewellery from Singapore while arriving at various airports and have neither declared them to Customs nor they paid any duty on them. Hence, they are liable to confiscation as per section 111(d) and 111(1) of the ibid Act. Further, as per Section 79 of Customs, only bona fide baggage of a passenger is exempted from payment of duty, subject to the limits prescribed under Baggage Rules, 1998. As per Section 77 of the Customs Act, 1962, the owner of any baggage shall for the purpose of clearing the same has to make a declaration of its content to the proper officer. Further, according to Customs Notification No.3/2012 dated 16.01.2012, only passengers of Indian origin or a passenger in possession of a valid passport issued under the Indian Passports Act, 1967 who have stayed abroad for six months and above, are eligible to import gold jewellery of foreign origin and clear the same on payment of Customs duty at the rate prescribed.

42. A combined reading of the above mentioned legal provisions under Foreign Trade Regulations and the Customs Act, 1962, clearly indicate that conditions have been imposed on the import gold jewellery into india as baggage by a passenger inasmuch as only passengers complying certain conditions such as he/she should be of Indian origin or a Indian passport holder with minimum six months stay abroad etc, can import gold jewellery for their bona fide personal use and the same has to be declared to the Customs at the time of their arrival and pay applicable duty. These conditions are nothing but restrictions imposed on the import of gold jewellery through passenger baggage. It is pertinent to mention here that Hon'ble Supreme court of India in Sheikh Mohd Omer Vs. Collector of Customs, Calcutta (1983 (13) ELT 1439) clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition. Hence the restriction imposed on the import of gold jewellery through passenger baggage is to an extent a

prohibition and any violation of the said conditions/restrictions would make the impugned goods viz., gold jewellery liable for confiscation under Section 111 of Customs Act, 1962.

55. In the light of the above, let us consider the decisions, relied on by the learned counsel appearing for both parties.

56. In N.K.Bapna v. Union of India reported in 1992 (60) ELT 13 (SC), the petitioner therein was the Managing Director of Company, engaged in the business of manufacture and production of plastic compounds, plastic films and sheets and plastic chemicals. A detention order was passed, under section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, with a view to prevent him from abetting the smuggling of goods. Consignment of Ethyle Hexanol (EHA) was transported to bonded warehouses, after assessment to duty in October-November, 1989 and subsequently, the goods were removed from the bonded warehouse, without the permission of the proper officer. Referring to Sections 111(J) and 243 of the Customs Act and Section 2(39), which defines, "Smuggling", the Hon'ble Apex Court held that,

> "The third point made by Sri Sen is that once goods are cleared by the customs authorities, they are not liable to confiscation unless the order granting clearance is reversed in appropriate proceedings. He places reliance for this proposition on Union of India v. Jain Shudh Vanaspathi [1992 (1) Scale 34], affirming the decision of the Delhi High Court in Jain Shudh Vanaspati Ltd., and Anr. v. Union of India & Ors., [1982] 10 E.L.T. 43 (Del.) (to which one of us was a party). There was some discussion before us as to whether this Court has confirmed the decision of the High Court on the above point or left it open in para 4 of the judgment. We do not think it is necessary for for us to enter into this controversy. That was a case where the goods had been completely cleared accepting the plea of the importer that their import was not prohibited. The High Court held that so long as this acceptance stood the goods were not liable to confiscation. We are here concerned with the question whether the goods are liable to confiscation under s.111(j) and this question has to be answered in the affirmative in view of the language of the section. The conclusion here that the goods are liable to confiscation does not go behind or ignore the effect of the order of clearance, as in that case. It accepts the fact of clearance and proceeds on the footing that the

goods, rightly cleared under s.59, have been clandestinely removed from the warehouse within the meaning of s.59. The decision cited by learned counsel is, therefore, of no assistance to him."

The above reported case, is relied on by the respondents, for the purpose that the goods, clandestinely imported into the country, for evading the assessment of duty, are liable for confiscation.

57. In Union of India v. Lexus Exports Pvt. Ltd., reported in 1994 (71) ELT 348 (SC), a learned single Judge directed release of the seized goods. On appeal by the revenue, a Hon'ble Division Bench directed export of the goods, during the pendency of adjudicatary proceedings. While testing the correctness of the same, the Hon'ble Supreme Court, at Paragraphs 2 and 3, held as follows:

"2. We fail to appreciate how this intervention could have been made by the High Court in a matter of this kind at that particular stage. Sri Chidambaram, learned senior counsel, however, submitted that respondents would in any event be entitled to have the goods released on payment of fine in lieu of confiscation even if there was such confiscation. He said that in that view of the matter even the prospect of an order of confiscation of the goods in the statutory adjudication need not detain the export as the respondents could always pre-empt confiscation by payment of fine in lieu thereof.

3. This submission looks attractive on the face of it but on closer scrutiny it is not as sound as it is attractive. The proceedings of seizure and confiscation are proceedings in rem. Until the culmination of the adjudication it is difficult to envisage any right on the part of the respondents from whom they are seized to export them on the basis of a future title they expect to acquire by payment of fine. Learned Counsel, however, says that it would earn foreign exchange for the country. But sanctity of legal proceedings cannot be whittled down on grounds of such expediency.

4. In the circumstances, we set aside both the orders of the learned Single Judge as well as of the Division Bench. The Writ Petition before the High Court deserves to be and is hereby dismissed. The interest of the respondents will be adequately protected, if we direct the statutory adjudication to be completed within 45 days from 1st February, 1994. The first date of hearing before the statutory authority shall be 1st February, 1994, and the

respondents shall appear before the authority without further notice. The authority shall call the matter on that date for further proceedings in the matter. The claim of the respondents to entitlement to redeem the goods by payment of fine in lieu of confiscation may be considered by the authority at the appropriate stage and in accordance with law. If the goods are so returned to the respondents, then respondents may become entitled to export them. Against the adjudication the respondents shall, of course, be entited to pursue their statutory appeals etc."

58. Reverting to the facts on hand, as rightly contended by Mr.A.P.Srinivas, learned counsel for the respondents that in Lexus Exports' Pvt. Ltd.,'s case (cited supra), when submissions were made by the Lexus Exports Pvt. Ltd., that the respondents therein would in any event be entitled to have the goods released on payment of fine in lieu of confiscation even if there was such confiscation, the Hon'ble Supreme Court rejected the said contention, by stating that, "until the culmination of the adjudication, it is difficult to envisage any right on the part of the respondents therein from whom they are seized to export them on the basis of a future title they expect to acquire by payment of fine."

59. In Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) ELT 423 (SC), the Hon'ble Apex Court considered a case of over-invoicing goods and consequently, a claim of fraudulent drawback. According to Mr.A.P.Srinivas, learned counsel for the respondents 2 and 3, Om Prakash Bhatia's case (cited supra), is the Bible, wherein, the Hon'ble Supreme Court, defined, what is meant by prohibited goods. Rejecting the contention of the appellant therein that Section 113(D) of the Customs Act, would be applicable, as the goods were not prohibited goods and agreeing with the contention of the revenue, that over-invoicing is not permitted under the Act and therefore, it is in violation of the statutory provisions and in that context, Section 113(D) of the Act would be attracted, which states that, "any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force." and with reference to the word, "prohibition" imposed by or under the Act or any other law for the time being in force and also taking note of Section 2(33) of the Act, which defines "prohibited goods", with the opening sentence of Section, starts that, "any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force", the Hon'ble Supreme Court, at Paragraph 9, held as follows:

“9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta and others [(1970) 2 SCC 728], wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negatived the said contention and held thus:—

"… What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restriction is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues."

60. In Commissioner of Customs (AIR), Chennai-I v. Samynathan Murugesan reported in 2009 (247) ELT 21 (Mad.), about 7.075 Kgs gold ornaments were recovered from a T.V. Set. Goods were claimed to be prohibited, as the petitioner therein did not belong to the category of persons, who could bring gold at concessional rate of duty. Contentions were made by the Revenue that goods were imported in violation of Import (Control) Order, 1955, read with Section 3(i) of Import and Export Control Act, 1947. Though in the above case, a contention was raised by the respondent that the gold is not a prohibited item and it was only a restricted item and therefore, there is a mandatory duty, on the part of the proper officer to give option to the person, guilty of adjudicatory proceedings to pay fine, in lieu of confiscation, taking note of the judgment in Shaik Jamal Basha v. Government of India reported in 1997 (91) ELT 277 (AP), the Hon'ble Division Bench of this Court, following Om Prakash Bhatia's case (cited supra), at Paragraphs 7, 9 and 10, held as follows:

"7. Section 11 empowers the Central Government to prohibit either absolutely or subject to such conditions to be fulfilled before or after clearance the import or export of the goods of any specified direction by issuing a notification in this behalf. The effect of interpretation of the words prohibited goods was considered inOm Prakash Bhatia Vs. Commissioner of Customs (2003 (6) SCC 161) and in paragraph No.10 of the said judgment the Supreme Court held as follows:

"10. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in Sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in Sheikh Mohd. Omer v. Collector of Customs, Calcutta and others [(1970) 2 SCC 728], wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by Clause (3) of the Import Control Order, 1955. The Court negatived the said contention and held thus:--

"...What Clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "Any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restriction is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues." Therefore, if we apply this judgment to the notification, the notification contemplates import of gold subject to certain conditions. The relevant paragraphs of Import trade control order are extracted as follows:

“Import of Gold permitted as Baggage.

Import of gold in any form, including ornaments but excluding ornaments studded with stones or pearls, is allowed to be imported as part of baggage by passengers of Indian origin or a passenger holding a valid passport issued under the Passport Act subject to the following conditions:

that the passenger importing the gold is coming to India after a period of not less than six months of stay abroad;

the quantity of gold imported shall not exceed 10 Kg, per passenger import duty on gold shall be paid in convertible foreign currency;

there will be no restriction on sale of such imported gold.

A person shall be deemed to be of Indian origin, if he held an Indian passport at any time, or he or either of his parents or any of his grand parents, was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); provided that the national of Pakistan or Bangladesh shall be deemed to be not of Indian origin.

A spouse (not being a national of Pakistan or Bangladesh) of a person of Indian origin shall also be deemed to be of Indian origin."

8. ....

9. In view of meaning of the word prohibition as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold that the imported gold was prohibited goods since the respondent is not an eligible passenger who did not satisfy the conditions. The impugned order deserves to be set aside.

10. In 1992 (61) ELT 372(cited supra), the Supreme Court directed the Collector to consider the exercise of discretion. In this case, the Collector had rightly considered it and refused to give the option."

61. Decision in Samyanathan Murugesan's case (cited supra), has been confirmed by the Hon'ble Supreme Court in Samyanathan Murugesan v. Commissioner of Customs (AIR) reported in 2010 (254) ELT A15(SC).

62. In Abdul Razak v. Union of India reported in 2012 (275) ELT 300 (Ker)(DB), there was an attempt by the appellant therein to smuggle gold, weighing over 8 Kgs, by concealing the same, in emergency light, mixie, grinder and car horns, etc. The authorities seized the same. Adjudicatory proceedings ended in confiscation. Contention of the appellant therein, before the High Court, was that Section 125 of the Customs Act, 1962, does not provide for confiscation of goods, other than prohibited goods. Repelling the said contention and following Om Prakash Bhatia's case (cited supra), at Paragraph 6, after referring to Section 2(33) of the Customs Act, 1962, a Hon'ble Division Bench of Kerala High Court, held as follows:

"After hearing both sides and after considering the statutory provisions, we do not think the appellant, as a matter of right, can claim release of the goods on payment of redemption fine and duty. Even though gold as such is not a prohibited item and can be imported, such import is subject to lot of restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. There is no need for us in this case to consider the conditions on which import is permissible and whether the conditions are satisfied because the appellant attempted to smuggle out the goods by concealing the same in emergency light, mixie, grinder and car horns etc. and hence the goods so brought is prohibitory goods as there is clear violation of the statutory provisions for the normal import of gold. Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

63. On the facts and circumstances, the dictum laid down by the Kerala High Court in Abdul Razak's case (cited supra), is that even though gold is not an enumerated prohibited item and thus, can be imported, but when such import is subject to restrictions, including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed, release of the smuggled goods cannot be ordered.

64. Dictum of the Hon'ble Supreme Court and the High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, "prohibited goods", in Section 2(33) of the Customs Act, 1962, which states that, "any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with." When there is a violation of statutory prohibitions, mentioned in Sections 11 and 11A of the Customs Act, 1962 or any other law, for the time being in force or restrictions imposed, such restrictions would also encompass the expression, any prohibition.

65. Though the learned counsel for the appellant contended that the decisions in Samyanathan Murugesan's case (cited supra) and Abdul Razak's case (cited supra), have been rendered in individual cases and with reference to baggage rules, thus, inapposite to the facts on hand, the said contention cannot be countenanced. When the Hon'ble Supreme Court in Om Prakash Bhatia's case (cited supra), has explained that, "Any prohibition" means every prohibition or all types of prohibitions, and "restriction", is also one type of prohibition, the ratio decidendi of the Hon'ble Supreme Court duly followed in the above referred cases, cannot be eschewed. Decisions cited supra apply to all the importers and they are bound to comply with the conditions of import and there cannot be any exception to the binding precedent. Distinction sought to be made, on the above grounds, is liable to be rejected and accordingly, rejected.

66. In Commissioner of Customs, Chennai v. Brinda Enterprises reported in 2010 (262) ELT 239 (Mad.), the company mis-declared the goods and there was no specific licence or certificate of registration. The adjudicating authority ordered for confiscation. Matter went upto the Tribunal, which remanded the same, for a decision, which ultimately landed up in the High Court. After considering the rival contentions therein, and Om Prakash Bhatia's case (cited supra), at Paragraph 20, a Hon'ble Division Bench of this Court, held as follows:

> "20. If we employ the meaning of the word "prohibition" as was done in Om Prakash Bhatia's case we have to hold that the imported "druid" was "Prohibited goods" since the respondent is not an eligible passenger as he did not satisfy the conditions. The impugned order deserves to be set aside. In view of the above decision, the order, dated 30.04.2008 consequent to the order of remand also is set aside. Since we are of the opinion that the conclusion of the Tribunal was wrong and the order of remand was also erroneous."

67. From the decisions in Samyanathan Murugesan's case (cited supra), Abdul Razak's case (cited supra) and Brinda Enterprises's case (cited supra), it is manifestly clear that the adjudicating authorities/Courts have to consider two aspects, viz., (1) eligibility of the passengers to import the goods; and (2) whether such passengers had fulfilled the conditions of import or export, any restriction on import or export, which is also to be treated as prohibition.

68. In Fast Track Traders v. Commissioner of Customs (Seaport - Imports), Tuticorin reported in 2012 (286) ELT 681 (Mad.), there was mis-declaration of goods. Finding that there was a false declaration, a Hon'ble Division Bench of this Court held that when the condition is violated, the authorities can definitely have the recourse under law.

69. In Ashish Kumar Chaurasia v. Commissioner, CESTAT reported in 2015 (325) ELT 250 (All.), 79 silver ingots of foreign orgin, were recovered from the premises of the appellant therein. On the facts and circumstances of the case, the Allahabad High Court held that the appellant therein has failed to prove that the seized silver ingots were not smuggled goods and in such circumstances, upheld the levy of penalty, and ordered for confiscation. In the instant case, adjudicatary proceedings are pending.

70. In Sheik Mohammed Rafique Ahmed v. Joint/Additional C.C., Airport, Chennai reported in 2016 (331) ELT 337 (Mad.), a learned single Judge considered a case, where a passenger was carrying gold chains of 18 carat, two bangles of 24 carat purity, 12 kg of saffron, RMD Kutka, Gudang Garam Cigarette cartons, perfumes and two samsung mobiles. A search was conducted by the Officers of Directorate of Revenue Intelligence, Trivandrum, in the baggages of the petitioner therein. Thereafter, statements were recorded. On completion of the investigation, a show cause notice was issued, under Section 124 of the Customs Act, 1962, proposing as to why, the seized goods should not be confiscated and penalty should not be imposed. He sent a reply, disputing the allegations. A Writ Petition has been filed, seeking for a direction to the respondent therein to release the seized imported goods, under the Mahazar. Accepting the contention of the revenue that since the passenger had attempted to smuggle goods into India, by concealing the same in his person, as well as in his hand baggage and checked-in-baggage, without declaring the same to the Customs, in order to evade payment of Customs duty, the aforestated goods, are held liable for confiscation, under the provisions of Section 111(d) and 111(1) of the Customs Act, 1962 and hence, cannot be released provisionally under Section 110 of the Customs Act, 1962, at Paragraphs 13 and 14, a learned single Judge of this Court held as follows:

> "13. Further, when the goods were confiscated under Section 111(d) and 111(I) of the Customs Act, 1962, the question of provisional release under Section 110 of the Customs Act, 1962, does not arise. Therefore, this Court is of view that only after the completion of adjudication process, the adjudicating authority would decide whether the goods confiscated under Section 111(d) and 111(1) of the Customs Act, 1962, could be released or not.

14. Accordingly, the respondent, who is the adjudicating authority, is directed to complete the adjudication, after affording an opportunity of personal hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner shall cooperate with the adjudicating authority to complete the adjudication as aforestated."

71. In Commissioner of Customs (Prev.), Mumbai v. M.Ambalal & Co., reported in 2010 (260) ELT 487 (SC), after referring to the expression, "dutiable goods", "duty", "import", "imported goods", "importer" and "smuggling", etc., the Hon'ble Supreme Court explained the object of the Act and as to how, the words, "smuggled goods" should be read within the definition of `imported goods' for the purpose of the Customs Act, 1962. At Paragraphs 6 to 8, 10, 13 and 14, the Hon'ble Supreme Court held as follows:

"6) We may now briefly notice the scheme of the Act. The expression `dutiable goods', `duty', `import', `imported goods', `importer' and `smuggling' are defined in the following manner :-

`Dutiable Goods' means any goods which are chargeable to duty and on which duty has not been paid.

`Duty' means a duty of Customs and leviable under this Act. `Import', with its grammatical variations and cognate expressions, bring into India from a place outside India.

`Imported goods' means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

`Importer' means in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

`Smuggling', in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Act.

7) Dutiable goods are goods whose import is permitted by the Act or any other law in force. Duty is the tax leviable on the goods occasioned by their import into India or their export out of India. The dutiability of the goods is covered by Section 12 of the Act which is the charging section. Under this Section, all goods imported into or exported from

India are liable to Customs duty unless the Customs Act itself or any other law for the time being in force provides otherwise. The rate of duty is fixed by the Customs Tariff Act, 1975. "Import" and "Imported Goods" means that if goods are brought into India, meaning thereby into the territory of India from outside, there is import of goods and the goods become imported goods and become chargeable to duty upto the moment they are cleared for home consumption. The word `importer' has been defined in the Act as importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner or any person who holding himself out to be importer. The word `smuggling', in relation to goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Act.

8) Section 11 of the Act enables the Central Government to prohibit importation or exportation of goods either absolutely or subject to conditions as specified in the notification, the import or export of the goods of any specified description. Section 11A to 11G speaks of detention of illegally imported goods and prevention of the disposal thereof. Section 12 of the Act is the charging Section. Under this Section, the duty is leviable on all imported goods. Valuation of the imported goods is done as provided under Section 14 of the Act. Section 25 of the Act empowers the Central Government to issue notifications exempting generally either absolutely or subject to such conditions as specified in the notification, goods of any specified description from the whole or any part of the Customs Act leviable thereon. The definition of imported goods has to be read along with Section 111 of the Act which deals with goods brought from place outside India. Section 111 of the Act provides for confiscation of goods and conveyances and imposition of penalties. Section 111(d) of the Act provides that any goods which are imported or attempted to be imported or are brought within Indian Custom Waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable for confiscation. Section 112 of the Act provides for penalties for improper importation of goods.

....

10) It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgements emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgements at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.

....

13) In short, question before us is whether goods that are smuggled into the country can be read within the meaning of the expression `imported goods' for the purpose of benefit of the exemption notification. We are of the view that `smuggled goods' will not come within the definition of `imported goods' for the purpose of the exemption notification, for the reason, the Act defines both the expressions looking at the different definitions given to the two classes of goods: imported and smuggled, and we are of the view that if the two were to be treated as the same, then there would be no need to have two different definitions.

14) In order to understand the true meaning of the term `imported goods' in the exemption notification, the entire scheme of the Act requires to be taken note of. As noted above, `imported goods' for the purpose of this Act is explained by a conjoint reading of Section 2(25), Section 11, Section 111 and Section 112. Reading these Sections together, it can be found that one of the primary purposes for prohibition of import referred to the latter is the prevention of smuggling [See Section 11(2)(c)]. Further, in the light of the objects of the Act and the basic skeletal framework that has been enumerated above, it is clear

that one of the principal functions of the Act is to curb the ills of smuggling on the economy. In the light of these findings, it would be antithetic to consider that `smuggled goods' could be read within the definition of `imported goods' for the purpose of the Act. In the same light, it would be contrary to the purpose of exemption notifications to accord the benefit meant for imported goods on smuggled goods."

72. Following an earlier decision of this Court in W.P.No.21194 of 2013, dated 08.10.2014, in a decision in R.K.Enterprises v. The Commissioner of Customs reported in 2015-TIOL-2733-HC-MAD-CUS, a learned single Judge held that while considering the prayer for provisional release, the following factors have been considered, viz., (i) whether the goods are prohibited goods; (ii) whether the goods require specific licence; and (iii) whether the goods are contraband, held that, "if these three factors are not available, in a case, which comes up for consideration, then, this court has to safeguard the interest of the revenue and the interest of the importer can be considered by imposing conditions. On the facts and circumstances of the instant case before us to consider the prayer for provisional release of gold, Clauses (1) and (3) of the Conditions, stated supra, require consideration.

73. In City Office Equipments v. Commissioner of Customs (Seaport-Import), Chennai-I reported in 2015 (316) ELT 199 (Mad.), a Writ of Mandamus was sought for, directing the respondents therein to assess and permit the clearance of 129 packages of the so called second hand Digital Multifunction Print and Copying Machines, forming the subject matter of the Bill of Entry dated 26.5.2014, upon payment of applicable duties of customs. Insofar as the second hand goods are concerned, Paragraph 2.17 of the Foreign Trade Policy, prior to its amendment, stipulated that Digital Multifunction Print and Copying Machines were restricted items, and that they would be allowed to be imported only as per the provisions of the Foreign Trade Policy. On the expression, "prohibited goods", at Paragraphs 12 to 14, a learned single Judge, held as follows:

"12. The expression " Prohibited Goods" is defined in Section 2(33) of the Customs Act, 1962 to mean "any goods, the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force, but it does not include any such goods in respect of which, the conditions subject to which the goods are permitted to be imported or exported have been complied with."

13. Unfortunately, the Act does not define the expression "Restricted Goods". But the definition of the expression "Prohibited Goods" itself contains an indication as to how the expression "Restricted Goods" has to be understood.

14. A careful look at Section 2(33) would show that even prohibited goods could be permitted to be imported or exported subject to some terms and conditions. The moment those conditions are complied with, those goods would cease to be prohibited goods. This is why the exclusion clause contained in the second part of Section 2(33) uses the expression "any such goods". Therefore, it appears that the Customs Act recognizes only two types of goods namely: (1) those that are prohibited; and (2) those that are not prohibited. The Act also recognizes the fact that even prohibited goods could be imported or exported subject to certain conditions. If those conditions are fulfilled, prohibited goods would automatically become non-prohibited goods."

While considering Sections 111 and 125(1) of the Customs Act, 1962, the Court held thus,

"15. Section 11 of the Act empowers the Central Government, by Notification in the official gazette, to prohibit either absolutely or subject to such conditions to be fulfilled before or after clearance of the import or export of goods of any specified description. The expression "illegal import" is defined in Section 11A(a) of the Customs Act, 1962 to mean the import of any goods in contravention of the provisions of the Customs Act or any other law for the time being in force.

16. What is to be done if goods are improperly imported into or exported outside India, is spelt out in Chapter XIV. Section 111, which makes certain goods liable for confiscation, states that any prohibited goods brought into any bay or any goods which are imported contrary to any prohibition imposed or under the Customs Act, 1962 or any other law for the time being in force, are liable for confiscation. Under Section 112, the person guilty of improper importation of goods is also made liable for a penalty. But before confiscation, an adjudication is to take place in terms of the procedure prescribed under Section 122A. "

74. No sooner goods are brought from outside, into the territorial waters of the country, they become imported goods. At this juncture, it has to be seen, as to whether, such goods

are legally or illegally imported, whether they fall within Section 11 of the Customs Act, 1962, which defines, an illegal import as, import of any goods in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force. Goods imported, contrary to the enumerated subject matters in chapters IV and IV-A of the Customs Act, 1962, which deal with prohibition on importation and exportation goods and detection of illegally imported goods prevention and disposal thereof, morefully described in Sections 11 and 11A of the Act, are also to be treated as prohibited. Goods imported from outside of the territory waters of the country, against any prohibition or restriction under the Customs Act, 1962 or any other law, time being in force, are to be treated as prohibited goods.

75. There is one thing to state that gold is not one of the enumerated prohibited goods and another, to state that goods are not permitted to be brought into the country, by smuggling, which, means any act or omission which would render such goods liable to confiscation under section 111 or section 113. There may not be total prohibition for import of goods, but if import is not done lawfully, in other words against any prohibition or restriction, which are inbuilt in the Customs Act, 1962 or any other law for the time being in force, then such goods should fall within the definition of Section 2(33) of the Act.

76. A conjoint reading Sections 2(33), 11 or 11A of the Act and other provisions in the Customs Act, 1962, and any other law, for the time being in force, would also make it clear that importation of goods, defined as illegal or prohibited or without complying with the conditions, or in violation of statutory provisions in the Customs Act, 1962 or any other law for the time being in force and in all cases, whether there is either total prohibition or restriction, in the light of the judgmnet of the Apex Court in Om Prakash Bhatia's case, such goods should fall within the definition of Prohibited goods. When import is in contravention of statutory provisions, in terms of Sections 11 or 11A of the Customs Act, 1962 or any other law, for the time being in force and when such goods squarely fall within the definition “illegal import”, or the other provisions in the statute, dealing with prohibition/restriction, the same are to held as, "prohibited goods" and liable for confiscation.

77. As rightly contended by Mr.A.P.Srinivas, learned counsel for the respondents that under Section 123 of the Customs Act, 1962, if the importer fails to discharge the burden that the goods seized from him, were not smuggled, then there is a strong reason for the proper officer to seize such goods. Smuggling is nothing but importing goods clandestinely, without payment of duty and such goods would squarely fall within the definition of “Prohibited goods”, under Section 2(33) of the Act.

78. The expression, "subject to the prohibition under the Customs Act, 1962 or any other law for the time being in force, in Section 2(33) of the Customs Act, has to be read and understood, in the light of what is stated in the entirety of the Act and other laws. Production of legal and valid documents for import, along with payment of duty, determined on the goods imported, are certainly conditions to be satisfied by an importer. If the conditions for import are not complied with, then such goods, cannot be permitted to be imported and thus, to be treated as prohibited from being imported.

79. In Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) ELT 423 (SC), the Hon'ble Apex Court held that if there is intentional over-invoicing of the goods imported, then such goods imported, fall under the category, "prohibited goods", as per Section 2(33) of the Customs Act, 1962. Smuggling under the Customs Act, 1962, in relation to any goods, means any act or omission which will render such goods liable to confiscation, under section 111 or section 113 of the Act and therefore, those goods, would also fall under the definition of prohibited goods, in terms of Section 2(33) of the Customs Act, 1962.

80. Sub-Section 1A of Section 110 of the Customs Act, 1962, states that, "the Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.", cannot be construed to mean that it is mandatory, for the proper officer to immediately release the goods, after seizure, under sub-Section (1) of Section 110A of the Act and thus, dispose of the goods seized.

81. Section 110A, states that, "Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require." The word used in Section 110A is "may" and having regard to the prohibitions/restrictions in the Act and the conditions to be complied with, in terms of Section 2(33) of the Act, it cannot be contended by the appellant, that de hors the prohibition/restriction in the Customs Act, 1962 or any other law for the time being in force, provisional release of the goods, liable for confiscation, is automatic. While considering

the right of an importer or any person, covered under Section 112 of the Act, for provisional release, the authority is mandated to consider, what is prohibition and restriction in the Customs Act, 1962 and any other law for the time being in force and the decision in Om Prakash Bhatia's case (cited supra) the same.

82. In the case on hand, admittedly, statements have been recorded, under Section 108 of the Customs Act and a search has been conducted in many places. Though it is the contention of the appellant that the gold seized from the business premises are purchased from his sister concern, under Invoice, per contra, it is the case of the respondents that during enquiry, it was found that there are prima facie material to arrive at the conclusion that gold has been smuggled into the country by the method, stated in the foregoing paragraphs and thus, the goods seized are liable for confiscation under Section 125 of the Act, for which, notices have been issued to 19 persons, including the appellant.

83. On the contention of the learned counsel for the appellant that though the appellant had co-operated in the adjudication proceedings, by filing a reply and also appeared in person, the adjudication proceedings had been stayed, at the instance of one of the noticees and in the said circumstances, gold should not be under the custody of the respondents endlessly, and therefore, provisional release to be ordered, this Court is not inclined to accept the said contention.

84. Reading of Sections 110(1A) and 110A of the Act, also makes it clear that the language employed by the Legislature is only, “may”. Few decisions on the aspect of usage of words, “shall” or “may”, in the context, in which, such words appear in an enactment, are reproduced hereunder:

(i) In P.T.Rajan v. T.P.M.Sahir reported in 2003 (8) SCC 498, the following conclusions are relevant,

> “45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependant on the user of the words ‘shall’ or ‘may’. Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.
> 46. …..
> 47. The construction of a statute will depend on the purport and object for which the same had been used. …...
> 48. …..
> 49. Furthermore, a provision in a statute which is procedural in nature although employs the word ‘shall’

may not be held to be mandatory if thereby no prejudice is caused."

(ii) In Ashok Lanka v. Rishi Dixit reported in 2005 (5) SCC 598, para No.53 is relevant, which reads as under:-

> "53. The question as to whether a statute is mandatory or directory would depend upon the statutory scheme. It is now well known that use of the expression 'shall' or 'may' by itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve. (see P.T.Rajan v. T.P.M.Sahir and U.P.SEB v. Shiv Mohan Singh). "

85. If Sections 110(1A) and 110A of the Customs Act, 1962 were to be interpreted in the manner, as contended by the learned counsel for the appellant, to confer powers on the proper officer to release of the goods, pending orders of the adjudicating authority, then the Legislature would have used the word, "shall", instead of word, "may". In the case on hand, considering the material on record, the respondent-adjudicating authority, has decided not to order provisional release, pending adjudication.

86. If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited. For prohibitions and restrictions, Customs Act, 1962, provides for machinery, by means of search, seizure, confiscation and penalties. Act also provides for detection, prevention and punishment for evasion of duty.

87. The expression, "subject to prohibition in the Act and any other the law for the time being in force." in Section 2(33) of the Customs Act, has wide cannotation and meaning, and it should be interpreted, in the context of the scheme of the Act, and not to be confined to a narrow meaning that gold is not an enumerated prohibited good to be imported into the country. If such narrow construction and meaning have to be given, then the object of the Customs Act, 1962, would be defeated.

88. Provisions in the Customs Act, 1962, dealing with prohibition/restriction or any other law for the time in force, have to be read into Section 2(33) of the Act. Section 11A of the Act, as to what is "illegal import", cannot be thrown to winds, while interpreting, "what is prohibited goods", in terms of Section 2(33) of the Customs Act, 1962. To add, while interpreting Section 2(33) of the Customs Act, 1962, as to what is prohibition, imposed in other laws, for the time being in force, one cannot ignore, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, rules framed

by way of delegated legislation, like the Baggage Rules, 1998, framed in exercise of the powers conferred under Section 79 of the Customs Act, 1962 or for the matter, Section 77 of the Customs Act, 1962, which mandates, the owner of the baggage for the purpose of clearing the goods, to make a declaration of the contents of the baggage to the proper office and also the customs Notification No.3/2012, dated 16.01.2012, that only passengers of Indian origin or a passenger in possession of a valid passport, issued under the Passport Act, 1967, who have stayed abroad for six months and above alone are eligible to import gold of foreign origin and clear the same on payment of customs duty, at the rate prescribed.

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, “restriction”, also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

90. When a claim for provisional release under Section 110A of the Customs Act, is made, in the light of the decision in Lexus Exports Pvt. Ltd's case (cited supra), exercise of such right under Section 110A is only provisional and not absolute. On the culmination of adjudication proceedings, the authority may grant an option to pay fine in lieu of confiscation under Section 125 of the Customs Act, 1962 and such expected or anticipated right, cannot give rise to a cause for issuance of any mandamus sought for, under Section 110A of the Act and on the facts and circumstances of the case, when provisional release, sought for, is denied by the authorities, by filling a counter affidavit, contending that there is a prima facie case of smuggling.

91. If Courts have to consider the prayer sought for, under Section 110A of the Act, on the presumption that such rights are likely to be granted in future, under Section 125 of the Act, by the competent authority, then we would be exceeding in our jurisdiction. At the stage, when provisional release is either ordered or denied, discretion exercised by the authority, is administrative in nature.

92. Objective satisfaction, at the stage of provisional release, casts a duty on the authority, to consider, as to whether, there are prohibitions/restrictions in the Customs Act, 1962, or any other law for the time being in force and whether he is bound to exercise his discretion, satisfying principles of fairness, reasonableness and whether, it is in accordance with the objects sought to be achieved. At the time of provisional release, it is also to be seen as to whether subjective satisfaction is based on valid materials, and not on whims and fancies of the authority.

93. Keeping in mind, the objects and purpose for which, Customs Act, 1962, is enacted, dealing with prohibition/restriction, this Court is of the considered view that the competent authority, has to arrive at a satisfaction, as to whether, goods seized and liable for confiscation, can be released provisionally, pending adjudication, and in that context, the role of the Courts, in exercise of the powers, under Article 226 of the Constitution of India, should be confined only to test such satisfaction, arrived at, by the competent authority, with regard to the objects of the Customs Act, 1962 and any other law for the time being in force. When the competent authority, under the Customs Act, 1962, makes a plea that there is a prima facie case of smuggling and that the appellant has failed to discharge the burden, in terms of Section 123 of the Customs Act and when the adjudication proceedings are pending, we are of the considered view that it would be appropriate to direct provisional release?

94. Though the argument of the learned counsel for the appellant is that since gold is not notified, as one of the prohibited goods, by way of any notification, in the official gazette and therefore, provisional release can be ordered, we are inclined to accept the said contention, as prohibition/restriction, is inbuilt in the Customs Act, 1962. While considering the objections, on the notification and other provisions, relied on and pressed into service, we cannot reject the objections of the revenue. Sub-Section (d) of Section 111 of the Customs Act, 1962, clearly states that any goods which are imported or attempted to be imported contrary to any provision imposed by any law, for the time being in force, in this country, are liable to be confiscated. Therefore, when prohibitions/restrictions are inbuilt in the statute, or by notifications, relied on by the department, subject to which, goods are to be imported and when there is a failure to comply with the conditions, they are liable for confiscation, for which, in the instant case, a show cause notice has been issued.

95. Under the Customs Act, 1962, the authorities are duty bound to pass orders for confiscation, impose penalty, initiate prosecution and pending conclusion of the adjudicating

proceedings, may order provisional release. At the time, when discretion is exercised under Section 110A and if any challenge is made under Article 226 of the Constitution of India, the twin test, to be satisfied is "relevance and reason". Testing the discretion exercised by the authority, on both subjective and objective satisfaction, as to why, the goods seized, cannot be released, when smuggling is alleged and on the materials on record, we are of the view that the discretion exercised by the competent authority, to deny provisional release, is in accordance with law. When there is a prima case of smuggling, for which, action for confiscation is taken, such proceedings taken should be allowed, to reach its logical end, and not to the stiffed, by any provisional release.

96. Going through the material on record, and in the light of the decisions considered, in particular, Om Prakash Bhatia's case (cited supra), we are of the considered view that the discretion exercised by the competent authority, considering the objects of the Customs Act, 1962, or any other law for the time being in force, cannot be held as not in confirmity with the Customs Act, 1962, or any other law, for the time being in force.

97. In the light of the above discussion and decisions, this Court is of the view that the appellant has not made out a case for interference, with the order impugned. Hence, the present Writ Appeal is dismissed. No costs.
asr/skm

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To
1.The Additional Director General
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.117, Gopala Krishna Road, T.Nagar Chennai - 600 017.

2.The Commissioner of Customs (Import)
Customs House, No.62, Rajaji Salai Chennai 600 001.

3.The Commissioner of Customs (AIR)
Meenambakkam, Chennai - 600 027.

+ 1 cc to M/s.V.Sundareswaran, Advocate SR 43437
+ 1 cc to M/s.A.P.Srinivas, Advocate SR 43146
+ 1 cc to M/s.Josesph Prabakar, Advocate SR 43085
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